STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1074

Waterman's Townhome Association
(Common Interest Community #50),
Respondent,

vs.

David R. Patterson, et al.,
Appellants,

vs.

Cindy Swenson, et al.,
third party defendants,
Respondents.

Filed April 14, 2009
Affirmed
Worke, Judge

Goodhue County District Court
File No. 25-CV-07-416

Timothy J. O'Connor, Teresa E. Knoedler, Lind, Jensen, Sullivan & Peterson, P.A., 150 South Fifth Street, Suite 1700, Minneapolis, MN 55402 (for respondent Waterman's Townhome Association)

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Considered and decided by Worke, Presiding Judge; Hudson, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant-townhome owners challenge the district court's grant of summary judgment in favor of respondent-association, arguing that (1) respondent is not a proper party to the litigation because it failed to properly approve the litigation; and (2) the district court's ruling is based on a misreading of the declaration, and any ambiguity must be resolved against respondent. We affirm.

D E C I S I O N

Appellants David R. and Nancy Patterson own a townhome and made alterations within the "common element." Respondent Waterman's Townhome Association instituted this litigation seeking a determination of the rights and obligations of the parties with respect to the alterations.

Appellants first argue that respondent is not a proper party because respondent failed to approve the commencement of the action, as required by Minn. Stat. § 515B.3 102(a)(4) (2008). Challenges to standing are questions of law, which we review de novo. *Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. App. 2004), *review denied* (Minn. Oct. 19, 2004). Standing exists when a "litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Id.* (quotation omitted). A party acquires standing either by suffering an injury-in-fact, or as the beneficiary of express statutory authority granting standing. *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). Appellants contend that respondent failed to comply with its own bylaws when it instituted this litigation. The district court disagreed and

found that the board, by unanimous agreement, authorized potential remedies, including litigation, at the annual meeting on July 15, 2006. The district court also found that the board unanimously approved the commencement of the litigation and retention of an attorney at the December 14, 2006 board meeting. "[A] [district] court's findings of fact . . . shall not be set aside unless clearly erroneous." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). Because the record supports the district court's findings, respondent is a proper party to the litigation.

Appellants next challenge the district court's interpretation of the townhome association's declaration. Appellants argued in district court that section 8.2(c) in the declaration provides automatic approval of the alterations after appellants satisfied certain requirements. The district court determined that section 8.2(c) was inapplicable. Appellants argue that the district court misinterpreted the plain language of the declaration and that any ambiguity must be resolved against respondent.

A townhome association is governed by its operative documents, including a declaration, which constitute a contract between the association and its individual members. *Swanson v. Parkway Estates Townhouse Ass'n*, 567 N.W.2d 767, 768 (Minn. App. 1997). "Construction of a contract presents a question of law, unless an ambiguity exists." *Id.* We review questions of law de novo. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003).

"[T]he primary goal of contract interpretation is to determine and enforce the intent of the parties." *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323 (Minn. 2003). "[T]he intent of the parties is determined from the plain

language of the instrument itself." *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). We will not rewrite, modify, or limit the effect of a contract provision by a strained construction when the provision is clear and unambiguous. *Id.* "A contract is ambiguous if it is reasonably susceptible to more than one construction." *Blackburn, Nickels & Smith, Inc. v. Erickson*, 366 N.W.2d 640, 644 (Minn. App. 1985), *review denied* (Minn. June 24, 1985). We presume "that the parties intended the language used to have effect," and we therefore "attempt to avoid an interpretation . . . that would render a [contractual] provision meaningless." *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 526 (Minn. 1990); *see also Cement, Sand & Gravel Co. v. Agric. Ins. Co.*, 225 Minn. 211, 216, 30 N.W.2d 341, 345 (1947) (stating that the intent of the parties is ascertained by a synthesis in which words and phrases are given meanings in accordance with the obvious contractual purpose). Thus, contract terms are read in context of the entire contract, and will not be construed as to lead to a harsh and absurd result. *Brookfield Trade Ctr., Inc., v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998).

Here, we are required to examine three sections of the declaration:

Section 7.11:

> Alterations. No alterations, changes, improvements, repairs or replacements of any type, temporary or permanent, structural, aesthetic or otherwise (collectively referred to as 'alterations') shall be made, or caused or allowed to be made, by any Owner or Occupant, or their guests, in any part of the Common Elements, or in any part of the Unit which affects the Common Elements or another Unit or which is visible from the exterior of the Unit, without the prior written authorization of the Board . . . as provided in Section 8.

Section 8.1(a):

> Restrictions of Alterations. The following restrictions and requirements shall apply to alterations on the Property:
>
> a. Except as expressly provided in Section 8, no structure, building, addition, deck, patio, fence, wall, enclosure, window, exterior door, sign, display, decoration, color change, shrubbery, material topographical or landscaping change, nor any other exterior improvements to or alteration of any Dwelling or any other part of a Unit which is visible from the exterior of the Unit (collectively referred to as 'alterations'), shall be commenced, erected or maintained in a Unit, unless and until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the alterations shall have been approved in writing by the Board of Directors or a committee appointed by it.

Section 8.2(c):

> c. If no request for approval is submitted, approval is denied, unless (i) the alterations are reasonably visible and (ii) no written notice of the violation has been given to the Owner in whose Unit the alterations are made, by the Association or another Owner, within six (6) months following the date of completion of the alterations. Notice may be direct written notice or the commencement of legal action by the Association or an Owner. The Owner of the Unit in which the alterations are made shall have the burden of proof, by clear and convincing evidence, that the alterations were completed and reasonably visible for at least six months following completion and that the notice was not given.

The declaration defines a "Dwelling" as "a part of a building consisting of one or more floors, designed and intended for occupancy as a single family residence, and located within the boundaries of a Unit." A "Unit" is defined as "any platted lot subject to this

Declaration upon which a Dwelling is located or intended to be located, as shown on the Plat, including all improvements thereon, but excluding the Common Elements." The "Common Elements" are defined as "all parts of the Property except the Units, including all improvements thereon, owned by the Association for the common benefit of the Owners and Occupants." "Limited Common Elements are those parts of the Common Elements reserved for the exclusive use of the Owners" and include "[i]mprovements such as decks, patios, balconies, shutters, awnings, window boxes, doorsteps, stoops, perimeter doors, and windows."

The district court determined that section 8.2(c) was inapplicable because the alterations were made in the common/limited common elements, which by definition are not in appellants' "Unit" as required by 8.2(c). There is no dispute that appellants were required to, but did not, submit plans and specifications to the board and await written approval prior to making the alterations. Appellants contend, however, that section 8.2(c) provides for automatic approval because (1) they did not request approval; (2) the alterations are reasonably visible because they are in the common element; and (3) they did not receive written notice of the violation within six months following completion of the alterations. Appellants argue that the district court erred in determining that section 8.2(c) was inapplicable because the declaration's language is either ambiguous or the district court's reading leads to an absurd result.

Section 7.11 provides that no alterations may be made without prior written authorization as provided in Section 8. This language is clear and unambiguous. Section 8, however, is less clear. First, section 8.1(a) does not use the term common element.

Despite this absence, section 8.1(a) contemplates numerous alterations that could be made only to the common/limited common elements, including: deck; patio; fence; wall; shrubbery; material topographical; and landscaping changes. Section 8.1(a) then prohibits the listed alterations from being commenced, erected or maintained *in a unit* without prior approval from the board. While the language is not ambiguous, a conflict exists between the contemplation that the listed alterations can be made only in the common element and a prohibition against them from being made in a unit, which by definition excludes the common elements.

The district court's strict reading of section 8.2(c) ignores the list of alterations in section 8.1(a) that could occur only in the common element, thus rendering the alteration language meaningless. When section 8 is read in its entirety, it appears that contemplated alterations in the common element could be accomplished with written approval of the board. Because sections 8.1(a) and 8.2(c) use similar in-the-unit language, the six-month automatic-approval language of 8.2(c) should apply to the alterations in the common element listed in section 8.1(a) in order to avoid rendering the provision meaningless, or to avoid a harsh or absurd result. *See Oster v. Medtronic, Inc.*, 428 N.W.2d 116, 119 (Minn. App. 1988) (stating that when "there is an apparent conflict between two clauses or provisions of a contract, it is the court's duty to find harmony between them and to reconcile them if possible").

Having concluded that section 8.2(c) is applicable, we turn to the question of whether appellants satisfied the requirements of section 8.2(c). "We will affirm the judgment if it can be sustained on any grounds." *Myers through Myers v. Price*, 463

N.W.2d 773, 775 (Minn. App. 1990), *review denied* (Minn. Feb. 4, 1991). To receive automatic approval, a party must satisfy all of the requirements in 8.2(c). First, the alterations must be commenced and completed without submitting a request for approval. Second, the owner of the unit in which the alterations are made must prove, by clear and convincing evidence, when the alterations were completed. Third, there must be no written notice from another owner or the board within six months of completing the alterations. Finally, the alterations must be reasonably visible for at least six months. There is no dispute that appellants made the alterations without submitting a request for approval. The parties, however, dispute when the alterations were completed, whether appellants received written notice within six months of completion, and whether the alterations were reasonably visible. We will address each in turn.

Appellants argue that the alterations consisted of several projects that were completed by August 2004. Section 8.2(c) requires appellants to establish the completion date by clear and convincing evidence. The district court found and the record demonstrates that all of the alterations were made between 2004 and 2005. The only evidence that the alterations were completed in August 2004 was Mr. Patterson's testimony. But Mr. Patterson also testified that he did not have a start date or a stop date, and that the project was a work in progress. Appellants provided no receipts, building permits, inspection reports, progress photos, or canceled checks. Appellants failed to establish the completion date by clear and convincing evidence. Because the district court's finding that alterations continued into 2005 is supported by the record, the finding is not clearly erroneous. *See Fletcher*, 589 N.W.2d at 101 ("On appeal, a [district]

court's findings of fact are given great deference, and shall not be set aside unless clearly erroneous.").

Appellants also argue that they did not receive written notice within six months of completion. Appellants base this argument on their contention that the alterations were completed in August 2004. But we already concluded that the record shows that alterations continued into 2005. Appellants received written notice requesting correction of the violations on May 13, 2005—just days after appellants completed the alterations. Because appellants received written notice within six months of completion, they fail to satisfy this requirement, and we need not determine whether the alterations were reasonably visible.

Affirmed.