STATE OF MINNESOTA
IN COURT OF APPEALS
A09-387

Calhoun Place Condominium Association,
Appellant,

vs.

Turnstone Calhoun, LLC,
a foreign limited liability company, et al.,
Respondents.

Filed November 3, 2009
Reversed and remanded
Worke, Judge

Hennepin County District Court
File No. 27-CV-08-23233

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Considered and decided by Schellhas, Presiding Judge; Worke, Judge; and Johnson, Judge.

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

WORKE, Judge

On appeal from summary judgment in this dispute regarding the meaning of a settlement agreement, appellant challenges the district court's conclusion that the release

in the agreement precluded appellant's claims. We reverse summary judgment and remand.

FACTS

In 2004, respondent Turnstone Calhoun LLC converted apartments into condominiums. Turnstone created appellant Calhoun Place Condominium Association, a non-profit organization, and transferred control of the condominiums to appellant.

In 2005, Donna M. Gray, a member of appellant, brought a claim against Turnstone alleging that mold in her unit and in common areas was caused by a defective heating, ventilation, and air conditioning (HVAC) system and that Turnstone should have known about these defects. Gray alleged that she failed to persuade appellant to pursue action against Turnstone, which necessitated her own pursuit of the action; she brought a separate action against appellant for failure to investigate the defects of the HVAC system.

Both actions settled through mediation in 2007. The settlement agreement, which lies at the core of this appeal, included an agreement to release Turnstone and its members from certain claims, providing that appellant:

> hereby generally releases and forever discharges [respondent] from *any and all past, present and future claims*, demands, obligations or causes of action of whatsoever kind or nature, whether known or unknown, asserted or unasserted *related in any way to the alleged Environmental Condition or Contamination* . . . of or at the [Property] including but not limited to any and all claims which have arisen or may in the future arise and all claims that were or could have been included within the Litigation. It is the express intention of [appellant], by execution of this document, to release [respondent] to the fullest extent permitted by law.

> [Appellant] hereby acknowledges the risk that, after executing this document, [appellant] may incur or suffer additional, separate or other injuries, damages, loss or detriment, which may be claimed to be caused by or related to the alleged Environmental Condition or Contamination of or at the Property but which may be presently unknown, unanticipated or merely speculative and that there is a further risk that damages or detriment presently known may be or may become more serious than [appellant] now expects or anticipates. [Appellant] hereby assumes all such risks and agrees that this Agreement applies to all unknown or unanticipated injuries or results related to the alleged Environmental Condition or Contamination of the Property described above in addition to known and anticipated injuries or results. Upon advice of legal counsel, [appellant] waives all right to recover from [respondent] on account of any such injuries, damages, or other detriment. This release shall also attach to and run with the Property.

The agreement defined "Environmental Condition or Contamination" as

> the existence of a Hazardous Substance . . . on the Property, regardless of whether said condition exists in or on, or emanates from, elements of the Property that are owned individually or in common by [appellant] or its members, that may have existed in the past, may presently exist, or may in the future exist at the Property, regardless of the cause of such condition.

The agreement defined "Hazardous Substance" to mean

> [M]old and/or fungi and/or any substance or material defined in or governed or regulated by any Environmental Regulation . . . as dangerous, toxic or hazardous, the presence of which on, in, about or under the Property would subject the owner or operator thereof to any damages, penalties, fines or liabilities under any applicable Environmental Regulation.

In 2008, appellant sued Turnstone and one of its members, Charles Johnson (collectively, respondents), claiming that deterioration of the exterior insulation and finish system (EIFS) on the building led to significant water intrusion, deterioration, and

erosion of structural supports to the building. The complaint alleged that after appellant obtained control of the property, an inspection revealed defective conditions including "existence and widespread calk joint failure in the [EIFS], holes and cracks in the [EIFS], significant moisture intrusion and water damage to the interior cavities of the exterior walls causing damaged sheathing, growth of mold, mildew and fungi, and staining, corrosion and deterioration of the steel framing." Appellant alleged that respondents were aware of these defects when it transferred the property to appellant.

Appellant later filed an amended complaint, which was identical to the original complaint except that it omitted the phrase "growth of mold, mildew and fungi." Respondents moved to dismiss based on the settlement agreement; the district court converted the motion to dismiss to a motion for summary judgment because evidence beyond the complaint was offered to and considered by the court. The district court granted summary judgment to respondents, concluding that the settlement agreement barred appellant's claims. This appeal follows.

D E C I S I O N

"On appeal from summary judgment, we review whether there are any genuine issues of material fact and whether the district court erred in its application of the law." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002). Evidence must be viewed "in the light most favorable to the party against whom summary judgment was granted." *Id.* at 76-77. We are not bound by a district court's determination of a purely legal question. *A.J. Chromy Constr. Co. v. Commercial Mech. Servs., Inc.*, 260 N.W.2d 579, 582 (Minn. 1977).

We consider a settlement agreement as a contract. *State ex rel. Humphrey v. Philip Morris USA, Inc.*, 713 N.W.2d 350, 355 (Minn. 2006). The construction of a written contract is a question of law, unless there is ambiguity. *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997). We do not go beyond the language of an unambiguous contract. *Telex Corp. v. Data Prods. Corp*., 271 Minn. 288, 295, 135 N.W.2d 681, 686-87 (1965). Unambiguous language is given its plain and ordinary meaning. *Philip Morris USA*, 713 N.W.2d at 355. Unambiguous words are not to be read in isolation, but rather "in accordance with the obvious purpose of the contract . . . as a whole." *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 324 (Minn. 2003) (quotation omitted). "[W]e will attempt to avoid an interpretation of the contract that would render a provision meaningless." *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 526 (Minn. 1990). When parties intend for their disputes to be terminated, the law encourages the settlement of disputes, and releases are generally presumed valid. *Jeffries v. Gillitzer*, 302 Minn. 402, 407, 225 N.W.2d 17, 20 (1975). "A valid release is a defense to any action on a claim released." *Goldberger v. Kaplan, Strangis and Kaplan, P.A.*, 534 N.W.2d 734, 737 (Minn. App. 1995), *review denied* (Minn. Sept. 28. 1995). "Whether a release was intended to cover an unknown claim becomes a question of law when the evidence of the release's finality is conclusive." *Id.*

The district court found that the settlement agreement "evidence[d] the parties' intentions to fully release [respondent] from all claims that could have been brought at that time, which include the claims in this present litigation." In support of this

conclusion, the district court quoted a portion of a statement in the agreement, which stated that it "generally release[d] and forever discharge[d] [respondent] from any and all past, present and future claims, demands, obligations or causes of action of whatsoever kind or nature." The district court also quoted the portion of the agreement stating that appellant had released respondents from "including but not limited to any and all claims which have arisen or may in the future arise and all claims that were or could have been included within the [Gray] Litigation."

But the district court omitted a critical part of the sentence that contained those two clauses. The omitted part of the sentence reads: "whether known or unknown, asserted or unasserted *related in any way to the alleged Environmental Condition or Contamination*." (Emphasis added.) The settlement agreement defines "Environmental Condition or Contamination" as the "existence of a Hazardous Substance," which it defines as mold, fungus, or "any substance or material defined in or governed or regulated by any Environmental Regulation . . . as dangerous, toxic, or hazardous." In summary, the plain terms of the agreement "fully" and "generally" release respondents from claims related only to mold, fungus, or other "dangerous, toxic or hazardous" substances. Such claims are not at issue here. Respondents do not dispute the validity of the amended complaint, which lacks any reference to mold, fungus, or other "dangerous, toxic or hazardous" substances. And we reject respondents' argument that the claims in the amended complaint are barred because the deterioration of the EIFS may have caused, in addition to the damage listed in the amended complaint, the growth of mold or fungus.

The district court also found that an intent to preclude the claims at issue in this case was evidenced by the next sentence in the agreement, which stated that it was "the express intention of [appellant], by execution of this document, to release [respondent] to the fullest extent permitted by law." But the scope of this statement is defined by the previous sentence in the agreement, which plainly applies only to claims involving "Environmental Condition or Contamination." In summary, the plain and unambiguous terms of the settlement agreement preclude only those claims that are related to mold, fungus, or some other hazardous substance. To interpret the agreement otherwise renders meaningless the provision releasing respondents from claims "related in any way to the alleged Environmental Condition or Contamination." This court shall avoid such an interpretation. *See Chergosky*, 463 N.W.2d at 526 (stating that reviewing courts "attempt to avoid an interpretation of the contract that would render a provision meaningless").

Our determination that the settlement agreement precludes only those claims "related in any way to the alleged Environmental Condition or Contamination" is also consistent with the apparent intent of the agreement as a whole. The beginning of the agreement states that the parties desired to enter into the agreement to "settle all disputes which were the subject of" the Gray litigation; the claims in the Gray litigation were related to mold and fungus. Moreover, the agreement states that appellant acknowledged the risk that it may suffer additional injuries "which may be claimed to be caused by or related to the alleged Environmental Condition or Contamination of or at the Property but which may presently be unknown," and that by executing the agreement, appellant assumed this risk and agreed that the release "applies to all unknown or unanticipated

injuries or results related to the alleged Environmental Condition or Contamination of the Property described above in addition to known and anticipated injuries or results." The agreement describes no other risks that appellant agreed to assume. We therefore conclude that the district court erred in interpreting the settlement agreement to preclude appellant's claims.

Reversed and remanded.