STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0367

Jeffrey Kremers, et al.,
Appellants,

vs.

James M Dahl, et al.,
Respondents.

Filed January 21, 2014
Affirmed, motions denied
Ross, Judge
Concurring specially, Minge, Judge

Kanabec County District Court
File No. 33-CV-12-410

Daniel A. Eller, Waite Park, Minnesota (for appellants)

Bradley A. Kletscher, Tammy J. Schemmel, Barnz, Guzy & Steffen, Ltd., Minneapolis, Minnesota (for respondents)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Minge, Judge.*

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

ROSS, Judge

In this contract-for-deed resort-property dispute, the sellers seek to cancel the contract after the buyers failed to make their final balloon payment, and the buyers seek a

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

judgment for breach of contract by claiming that the sellers misrepresented the quality of the property. The district court considered the merits early in the litigation and deemed the buyers unlikely to succeed on their breach-of-contract and misrepresentation claims. It therefore declined to issue a temporary injunction preventing the sellers from cancelling the contract. Because we conclude that the district court did not abuse its discretion, we affirm.

FACTS

James and Diana Dahl are competing with Jeffrey and Delila Kremers over ownership of Fish Lake Resort, which has operated on the shore of Fish Lake in Mora since the 1940s. The resort has 98 campsites and a pavilion that shelters a bar, a restaurant, and a banquet hall. It abuts land belonging to the Minnesota Department of Natural Resources (DNR) and is subject to a water flowage easement favoring the state.

The Dahls began operating the resort in 1996 when Diana Dahl's father could no longer manage it. Ten years later they decided to sell it, and they retained Jeffrey Kremers as their realtor in April 2006. The parties made respective representations. Kremers represented himself as an expert in selling resort properties. According to the Kremerses, the Dahls initially represented that the resort had flooded only twice during their operational tenure and that water had entered the pavilion only in the 1970s after a dam broke on a nearby river. The Kremerses also claim that Diana Dahl had indicated that the property extended east as far as a particular fence with DNR signage.

The Dahls listed the property for sale, asking $1.95 million. In one year they received an offer from a potential buyer who would pay only $750,000, citing, among

other things, a concern that the property is located in a floodplain. The Dahls rejected the offer.

In early 2007, the Kremerses offered to buy the resort. They had previously owned a flood-prone resort. Jeffrey Kremers asked again about flooding and he alleges that the Dahls repeated their disclosure that the resort had flooded only twice, water had entered the pavilion only once, and the basement had been wet once. The Kremerses agreed to buy it for $1.52 million under a contract for deed. The parties signed a purchase agreement that required the Dahls to bring the septic system into compliance with state and local requirements (and provide a certificate of compliance) and to remedy any outstanding environmental or health "failures" so the Kremerses could obtain a food-service license. The closing was set for April 2007, but the purchase agreement acknowledged that the Dahls would not be able to provide clean title at that time because Diana Dahl's father retained an interest. Under the agreement, the new legal title would not reduce the total number of campsites.

The parties executed the closing agreement and contract for deed in April 2007. The contract required the Kremerses to make specified monthly payments until April 2012, when they would pay the outstanding balance. The contract required the Dahls to clear the title by July 23, 2008. Escrow accounts would retain the paid funds until the Dahls resolved the title issue and furnished the certificate of compliance for the septic system.

The Dahls had the septic system inspected the day after closing. The inspector certified that the system was in compliance, although the Kremerses maintain that they

did not receive the certificate until 2008. In September 2007, the escrow agent indicated that the Dahls had cleared the title and recommended releasing the escrow funds.

According to the Kremerses' 2013 civil complaint, problems soon arose. The property flooded and the basement had standing water at least once every year after 2007. Patrons told them that flooding was a regular occurrence. Suspicious that the septic system was inadequate, they commissioned a second inspection in 2008. That inspection again indicated that the system complied with regulations. The Kremerses did nothing at the time, but they now assert that this inspection was also suspicious; they allege that the inspector had personal ties to the Dahls and that "someone . . . fraudulently altered" the report. A third inspection of the septic system in 2010 found it noncompliant and opined that it likely should not have been found compliant in the past.

The Dahls initiated a registration proceeding in 2008 to settle the boundaries of several parcels, including those the Kremerses contracted to buy. All were described in antiquated documents relative to a former road whose precise location was ambiguous. The registration process would definitively fix the borders and legal descriptions of each parcel. As buyers under the contract for deed, the Kremerses assented to the registration process, although they now assert that they objected. The registration proceeding concluded in 2011 and altered the legal description of the property boundaries, but it is unclear whether it affected the resort's footprint.

A later appraisal commissioned by the Kremerses shows that the layout of the campsites does not comply with various state and local size and location requirements. Those requirements threatened to reduce the number of available campsites, in turn

impacting a term of the contract for deed. Although a government inspection had previously implied that the Dahls needed to modify the campsite layout, they continued to submit their extant layout for approval and each time they received a license for 95 to 98 campsites.[1]

Despite all of these alleged problems, the Kremerses continued to make payments until April 2012, when their balloon payment came due. They missed that payment. One month before missing the payment, the Kremerses initiated a civil action asserting numerous contract and quasi-contract claims. They allege that the Dahls misrepresented the frequency and severity of flooding, the location of the boundary line, and compliance with the law. They also allege that the Dahls failed to bring the septic system up to code, breached the escrow agreements relating to the septic system and the title, failed to gain their consent for the registration proceeding, and otherwise misrepresented or failed to disclose material information about the property.

[1] The Kremerses also provide several department of health inspections that identified violations relating to food service, general maintenance, and campsite spacing, and they contend that these also violate the purchase agreement. The Dahls have moved to strike these documents as outside the district court record. We depend only on those facts that are in the record to decide an appeal, and parties do not add to that record merely by including extraneous material with their appeal submissions. *See* Minn. R. Civ. App. P. 110.01 ("The papers filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases."); Minn. R. Civ. App. P. 130.01, subd. 1 (limiting an appellant to append only "portions of the record" to his brief). Although we occasionally entertain motions to strike noncomplying submissions, we also may simply disregard attachments and references that are beyond the record, with or without "striking." The Dahls' motion to strike is denied, but our opinion rests only on the record. We similarly deny the Kremerses' motion to supplement the record with a department of health report and a letter to the Dahls from the local building department because we will not consider new material that is offered to reverse the district court. *See 301 Clifton Place, LLC v. 301 Clifton Place Condo. Ass'n*, 783 N.W.2d 551, 559 (Minn. App. 2010).

Eight months after the Kremerses filed their complaint and missed their balloon payment, the Dahls notified the Kremerses, on December 1, 2012, that they were cancelling the contract and that the Kremerses had 60 days to cure the nonpayment breach. In turn, the Kremerses filed this civil action alleging numerous violations, and they moved the district court to issue a temporary injunction enjoining the Dahls from cancelling the contract.

The district court denied the Kremerses' preliminary injunction motion, holding that they were unlikely to succeed on any of their claims. It also reasoned that public policy and the relationship between the parties disfavored granting the injunction.

The Kremerses filed this appeal. The district court issued a temporary injunction pending the appeal and required the Kremerses to post a bond. The Kremerses did not post the bond, and the district court vacated the injunction. The Kremerses then asked this court to issue an injunction pending the appeal. A special term panel of this court denied the request.

D E C I S I O N

The Kremerses charge the district court with error for denying their motion for a temporary injunction. The Dahls defend the district court's decision, but they first argue that the issue is resolved on procedural grounds. The Dahls maintain that the Kremerses' claims are barred because they failed to post a bond to retain the temporary injunction that the district court granted pending this appeal. We are not persuaded by the Dahls' procedural argument, but they prevail on substance.

I

The Dahls argue that the Kremerses' claims are barred because the Kremerses failed to post a bond to secure the temporary injunction that the district court granted pending this appeal. We are satisfied that the Kremerses' current action defeats the argument. Sellers may cancel a contract for deed if they serve notice and give the buyers 60 days to cure their default. Minn. Stat. § 559.21, subd. 2a (2012). And when the sellers serve notice of statutory cancellation, a later action by the buyer to rescind will be barred. *Gatz v. Frank M. Langenfeld & Sons Constr., Inc.*, 356 N.W.2d 716, 718 (Minn. App. 1984). But the court has the equitable power to reinstate a contract even after it has been statutorily cancelled. *Coddon v. Youngkrantz*, 562 N.W.2d 39, 44 (Minn. App. 1997) (exercising equitable power in favor of a buyer who made good faith efforts to cure default pending resolution of the matter), *review denied* (Minn. July 10, 1997). And any conclusion by the district court that the Kremerses' claims are not viable because the contract for deed has been cancelled will fail if we reverse the denial of the injunction. *See Seagram Distillers Corp. v. Lang*, 230 Minn. 118, 123, 41 N.W.2d 429, 432 (1950). The Kremerses filed their complaint first, alleging in March 2012 (one month before the missed balloon payment on which the Dahls rest their cancellation action) that the Dahls had already breached the contract. The Dahls did not serve notice of cancellation until December.

Because the Kremerses' suit predates the Dahls' action to cancel the contract, because they continued to make good-faith installment payments after missing the balloon payment, and because they immediately appealed the district court's denial of

their motion to enjoin cancellation, we hold that their claims are not barred despite their failure to post a bond to secure the appeal.

II

The Kremerses challenge the district court's decision to deny their motion for a temporary injunction. We will reverse the district court's decision on a motion for a temporary injunction only if it reflects a clear abuse of discretion. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993). A district court abuses its discretion when it ignores facts or relevant principles of equity. *First State Ins. Co. v. Minn. Mining & Mfg. Co.*, 535 N.W.2d 684, 687 (Minn. App. 1995), *review denied* (Minn. Oct. 18, 1995). And we look at the facts in the light most favorable to the party who prevailed initially. *Metro. Sports Facilities Comm'n v. Minn. Twins P'ship*, 638 N.W.2d 214, 220 (Minn. App. 2002), *review denied* (Minn. Feb. 4, 2002).

The Kremerses argue that the district court abused its discretion by denying their motion for a temporary injunction. The district court may grant a temporary injunction if it finds sufficient grounds for doing so. Minn. R. Civ. P. 65.02(b). A temporary injunction may issue to prevent a contract-for-deed seller from cancelling the contract. Minn. Stat. § 559.211; *Bell v. Olson*, 424 N.W.2d 829, 833 (Minn. App. 1988). But the party seeking the injunction must prove that no adequate legal remedy is available and that irreparable harm would result without the injunction. *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 451 (Minn. App. 2001). Five factors should guide district courts when deciding whether to issue a temporary injunction. They are the nature and background of the relationship between the parties, the balance of the harms to the

plaintiff if the injunction is denied and to the defendant if the injunction issues, the likelihood that the plaintiff will prevail on the merits of his claims, relevant public policy considerations, and the administrative burdens of enforcing an injunction. *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 274–75, 137 N.W.2d 314, 321–22 (1965).

The Kremerses challenge the district court's conclusion that the relationship between the parties, the likelihood of success on the merits, and public policy concerns all favored denying the injunction. The Kremerses rely substantially on *Northwest Hotel Corp. v. Henderson*, 257 Minn. 87, 89–90, 100 N.W.2d 493, 495 (1959), but that case is only slightly relevant. It predates *Dahlberg* and does not apply the *Dahlberg* factors. More important, in *Northwest Hotel*, the supreme court merely affirmed the district court's decision to temporarily enjoin the seller of a hotel from cancelling the sale contract. *Id.* at 88–89, 92, 100 N.W.2d at 494–95, 497. The *Northwest Hotel* holding that the district court acted within its discretion to order the injunction does not answer our question, which is whether the district court abuses its discretion by *not* ordering an injunction.

1. Relationship Between the Parties

The Kremerses contend that the district court erred by deciding that their relationship with the Dahls disfavored granting an injunction. The contention is not compelling. A temporary injunction preserves the status quo until the court can decide the case on the merits. *Pac. Equip. & Irrigation, Inc. v. Toro Co.*, 519 N.W.2d 911, 915 (Minn. App. 1994), *review denied* (Minn. Sept. 16, 1994). We consider the nature and history of the relationship between the parties when assessing the decision to deny a

temporary injunction. *Dahlberg*, 272 Minn. at 274, 137 N.W.2d at 321. A longer relationship will favor granting an injunction, particularly if it is a specialized, unique, or well-developed one. *See id.* at 276, 137 N.W.2d at 322 (holding that a 40-year franchise relationship between an automobile retailer and the parent company favored an injunction); *Metro. Sports Facilities Comm'n*, 638 N.W.2d at 221 (finding that the relationship between a professional baseball franchise and its stadium operators favored an injunction when the franchise threatened to sell the franchise). Courts have also focused on this factor when the parties have a history of contracting together. *See, e.g.*, *Upper Midwest Sales Co. v. Ecolab, Inc.*, 577 N.W.2d 236, 244 (Minn. App. 1998); *Pac. Equip. & Irrigation*, 519 N.W.2d at 915.

The district court reasonably concluded that the relationship between the Kremerses and the Dahls does not favor an injunction. Their relationship is qualitatively different from those in which courts have found an injunction to be necessary. The relationship is a real-estate seller–buyer correlation very common in land transactions. The cancellation does not undermine a longstanding relationship or prevent the defeated seller–buyer relationship from redeveloping. The parties had contracted only once before, establishing a temporary seller–realtor relationship. The Kremerses certainly have "significant interests and expectations at stake" after investing effort and finances to purchase the property. But this is so in most long-term purchase contracts, like a contract for deed. The district court did not abuse its discretion by concluding that the parties' relationship does not favor a temporary injunction.

2. Likelihood of Success on the Merits

The Kremerses argue that the district court should have analyzed their likelihood of success according to the standards of summary judgment. But they provide little authority for their argument that the district court applied the wrong standard of review when deciding the likelihood their claims would succeed on the merits. Courts consider the likelihood a party will prevail on the merits by viewing the facts "in light of established precedents." *Dahlberg*, 272 Minn. at 275, 137 N.W.2d at 321. The parties seeking an injunction bear the burden of proving they are reasonably likely to succeed on the merits. *Queen City Constr., Inc. v. City of Rochester*, 604 N.W.2d 368 (Minn. App. 1999), *review denied* (Minn. Mar. 14, 2000). If they establish only a slight chance of prevailing, the district court is not required to grant an injunction. *See Metro. Sports Facilities Comm'n*, 638 N.W.2d at 226. By contrast, summary judgment is appropriate only when there is no genuine dispute as to a material fact and one party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03; *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). It is deferential to the nonmoving party, whose claims or defenses can survive a summary judgment motion simply on a showing that a material fact remains in dispute. *See* Minn. R. Civ. P. 56.03

The Kremerses argue that a heightened standard, like summary judgment, is necessary to avoid a harsh or unfair result. But by its nature, statutory cancellation of contracts for deed *is* harsh. The harsh result of the loss of the Kremerses' related claims of fraud, misrepresentation, and breach of contract is the kind of result that customarily accompanies cancellation. *See, e.g., Olson v. N. Pac. Ry. Co.*, 126 Minn. 229, 231–33,

148 N.W. 67, 68–69 (1914). The statutory cancellation process is "one of the harshest forfeitures known to American law" but it is "enforced routinely in Minnesota." 25 Eileen M. Roberts & Larry M. Wertheim, *Minnesota Practice* § 6:14 (2012 ed.). The all-or-nothing impact of denying an injunction is not limited to contract-for-deed cases. For example, injunctions can prevent the irreparable harm from misappropriation of a trade secret. Minn. Stat. § 325C.02(a) (2012); *Wyeth v. Natural Biologics, Inc.*, 395 F.3d 897, 900–02 (8th Cir. 2005) (applying Minnesota law). "A trade secret once lost is, of course, lost forever." *FMC Corp. v. Taiwan Tainan Giant Indus. Co.*, 730 F.2d 61, 63 (2d Cir. 1984). Likewise, a contract for deed once lost is forever lost. Although the harshness of the result is contemplated and accepted by law, it is accounted for in another factor—the balancing of harms.

The challenged *Dahlberg* factor asks whether the parties seeking an injunction are *likely* to succeed on the merits, not whether it is *possible* they will succeed. We find no authority supporting the Kremerses' argument that the district court should have considered their likelihood of success differently simply because a finding of unlikelihood carries a result similar to summary judgment. A temporary injunction is an extraordinary remedy to be issued only when necessary. *Pac. Equip. & Irrigation*, 519 N.W.2d at 914. Grafting the summary judgment standard onto temporary injunction proceedings would alter the nature of the proceedings.

The Kremerses also argue that denying an injunction on the ground that the Kremerses are unlikely to win on the merits deprives them of their constitutional right to a jury trial on their contract and contract-related claims. But this wrongly assumes they

have a right to recover under their contract, overlooking that purchasers have no recovery rights under cancelled contracts for deed. *Nowicki v. Benson Props.*, 402 N.W.2d 205, 208 (Minn. App. 1987). And the law protected the Kremerses' potential contract claims, and their right to a jury trial to pursue them, by allowing them to sue on the contract for deed before the sellers cancelled it. And the rules of civil procedure do allow the district court to advance and consolidate a trial with a hearing on the motion for a temporary injunction. Minn. R. Civ. P. 65.02(c). The district court did not abridge any actual right to a jury trial by denying the motion for a temporary injunction.

We turn now to the particular claims and consider whether the district court erred by concluding that the Kremerses are unlikely to prevail on the merits.

A. Flooding Misrepresentation

The Kremerses argue that the district court erred by concluding that they did not reasonably rely on any possible misrepresentations about flooding. The argument fails. A claim of misrepresentation requires the plaintiffs to show that the defending parties falsely represented a material fact, knew the representation was false and intended the plaintiffs to rely on it, and that the plaintiffs actually relied on the representation and were harmed. *Hoyt Props., Inc. v. Prod. Res. Grp., L.L.C.*, 736 N.W.2d 313, 318 (Minn. 2007). Reliance in fraud cases is a function of the alleged victim's "intelligence, experience, and *opportunity* to investigate." *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 369 (Minn. 2009) (emphasis added). We have previously denied a claim of reasonable reliance by an experienced real estate investor who had an opportunity to investigate the

financial situation of a failed investment. *Sit v. T & M Props.*, 408 N.W.2d 182, 185–86 (Minn. App. 1987).

The Kremerses maintain that the Dahls misled them as to the frequency and severity of flooding on Fish Lake, repeatedly asserting that the Dahls told them the resort had flooded only twice during their tenure and that the pavilion basement had flooded only once. Regardless of what the Dahls may have represented about flooding—a question of considerable disagreement—by the time they contracted to purchase the land the Kremerses had ample notice of potential flooding, making their reliance on the alleged representations unreasonable. The resort bar openly displayed a collage featuring photos of prior floods. Although the Kremerses claim they never actually saw the photo, the district court apparently was not persuaded. The Dahls forbade the Kremerses from discussing the sale with regular customers, a circumstance that raises the suspicions of a reasonable realtor. They also indicated that the property was subject to a flowage easement, a circumstance that would inform any reasonable person, particularly a reasonable person with Kremers's expertise in resort sales, that the property has been earmarked for occasional submerging from waterway overflow. Either the purchase agreement or disclosures had revealed that the pavilion had previously taken on water. And Kremers had received a letter from a potential buyer offering the Dahls less than half the asking price, noting specifically that the resort sits in a floodplain. The Kremerses acknowledge that being in a floodplain indicates potential flooding.

The Kremerses correctly argue that their right to rely on the Dahls' claims does not include the duty to investigate the flood history of the resort. But this misses the

central issue. Jeffrey Kremers's unique position as a resort salesman, a former resort owner, and the former realtor for the Fish Lake property, undermines the reasonableness of his claimed reliance on the Dahls' statements. This is not to say that the Kremerses certainly did not reasonably rely on the Dahls' alleged misrepresentations. But in this preliminary injunction setting, the district court could recognize the difficulty the Kremerses would have convincing a jury of this. We hold that it was not an abuse of discretion for the district court to conclude that the Kremerses were unlikely to prevail on this claim.

B. Septic System

The district court also did not wrongly conclude that the Kremerses were unlikely to prevail on their claims that the Dahls breached their contract to deliver the septic system in compliance with regulations and the escrow agreement. A breach-of-contract claim requires showing that the parties formed a contract, that the plaintiff performed the required conditions, and that the defendant breached in some respect. *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008), *review denied* (Minn. Jan. 20, 2009). We interpret contract language to give effect to the parties' intent. *Valspar*, 764 N.W.2d at 364. And we give terms in the contract their plain, ordinary meaning, read in light of the contract as a whole. *Baker v. Best Buy Stores, LP*, 812 N.W.2d 177, 180 (Minn. App. 2012).

Chapter 7080 of the Minnesota Administrative Rules and the relevant local requirements establish the compliance framework for septic systems and the compliance criteria for certifying septic systems. Minn. R. 7080.1500, .2150–2400 (2011);

7080.0060, subp. 3 (2005); *JEM Acres, LLC v. Bruno*, 764 N.W.2d 77, 81–82 (Minn. App. 2009). A septic system that does not satisfy the framework is not in compliance even if it has received a certificate of compliance. *JEM Acres*, 764 N.W.2d at 82.

The Kremerses' argument fails based on their septic-system agreement with the Dahls. The agreement required the Dahls to "comply with all conditions necessary to bring the property into compliance." It states that the Dahls must "[b]ring Septic System into compliance and obtain Certificate of Compliance from appropriate zoning authority." The parties also agreed to disburse the escrow funds "upon receipt of Agent's written inspection that the septic system is up to code [and] a Certificate of Compliance." The Kremerses focus on the distinction between a system that is "in compliance" (a term that appears throughout both contracts) and one that is "up to code" (a term that appears only once in the escrow agreement). There is no material distinction. The focus overlooks the relevant code, Chapter 7080 of the Minnesota Rules, which outlines the compliance criteria. A septic system that is "in compliance" with Chapter 7080 is, by definition, "up to code." It appears that the Dahls met their obligation, leaving it unlikely for the Kremerses to prevail on this claim.

The Kremerses accurately observe that a real distinction exists between delivering a certificate of compliance for a septic system and delivering a septic system that fully complies with the law. But they could prevail under that theory only if they could show that the Dahls sold them a system that was not in compliance at the time of closing. They cannot make this showing. The Dahls had the system inspected the day after the closing, and it was certified as compliant. The Kremerses obtained a second inspection the

following year, and that inspection also certified the system as compliant. Septic systems can deteriorate over time, so it is of little significance to this claim that, four years after the closing, in 2011, a third inspector concluded that the system was faulty. We have upheld findings of fraud against the seller when the buyer discovered problems with the septic system a few months after closing and filed suit immediately. *JEM Acres*, 764 N.W.2d at 82–83. But this is not such a case. The certificate satisfied the contract obligation at the time of closing, and it had already expired by the time of the third inspection. The Kremerses did not provide the district court with evidence that the system they received in 2007 was noncompliant.

C. Purchase Agreement

The Kremerses contend that the district court erred by finding their claims under the purchase agreement barred. The doctrine of merger extinguishes the right to sue under the provisions of a purchase agreement once the parties execute a subsequent closing agreement. *Peters v. Fenner*, 294 Minn. 488, 489, 199 N.W.2d 795, 796 (1972). Elements of the contract that must, by their nature, occur after the parties execute the agreement do not merge into the subsequent agreement. *Bruggeman v. Jerry's Enters., Inc.*, 591 N.W.2d 705, 708–10 (Minn. 1999). And in cases of fraud, merger does not occur when the parties execute the deed. *JEM Acres*, 764 N.W.2d at 83. But fraud and misrepresentation claims based on a cancelled purchase agreement are barred if the specificity of the purchase agreement made it "akin to a contract." *Hollywood Dairy, Inc. v. Timmer*, 411 N.W.2d 258, 259 (Minn. App. 1987).

The Kremerses allege that the Dahls violated several provisions of the purchase agreement by giving them title to land that will accommodate less than 98 campsites and by failing to remedy all health and environmental regulations related to obtaining a food-service license. They argue that the language of the closing agreement did not cause the purchase agreement to merge into the closing agreement and, alternatively, that the language is ambiguous. They point to a clause stating, "Sellers . . . hereby warrant to Buyers that this Closing Agreement shall not violate, constitute, or breach . . . any agreement." But the larger context of the paragraph addresses competing mortgages, liens, encumbrances, and other interests. The unambiguous language indicates that the Dahls promise that the sale will not "violate, constitute, or breach" any other agreement relating to the ownership of or interest in the resort land. It does not conflict with the final line of the agreement, which states simply that it "supercede[s] any and all prior verbal or written agreements between the parties."

The Kremerses' argument that the purchase agreement contains conditions that could not, by their nature, be fulfilled before execution also fails. The purchase agreement and closing agreement both specify that the Dahls will deliver clear title at some later date, after they unclouded the title. And it was not impossible for the Dahls to resolve the issues relating to securing a food-service license before the closing agreement. Merger therefore occurred unless an exception applies. The Kremerses assert a basis for an exception—fraudulent inducement to enter the contract, including by misrepresenting these facts. But we have held claims for fraud based on a cancelled purchase agreement to be barred. *Hollywood Dairy*, 411 N.W.2d at 259. And the merger

exception would apply only if the Kremerses had received the deed to Fish Lake rather than a contract for deed. The claim is barred.

D. Contract for Deed

The Kremerses contend that the Dahls breached the contract for deed by delivering title that was not identical to the legal description given in the contract. The alleged breach stems from the registration proceeding. Registration permanently defines the property being registered and is binding on all parties with any interest in the land. Minn. Stat. § 508.22 (2012). A party with any right, title, or interest in the land may consent to registration if they do so in the same manner required to execute a deed. Minn. Stat. § 508.06 (2012). The party may also file an answer in the registration proceeding. Minn. Stat. § 508.17 (2012). But the registration judgment is not binding on a party with an interest in the land whom the registrant knowingly fails to serve with notice of the proceeding. *Henry v. White*, 123 Minn. 182, 184–85, 143 N.W. 324, 325 (1913).

The Kremerses do not persuasively contend that the parcel described in the deed differs from the parcel as described in the certificate of title issued after the registration proceeding. The legal description did change on registration. But the Kremerses offered only weak evidence to support their assertion that this discrepancy affects the number of campsites available. They claim the Dahls' attorney told them they would lose 50 feet on one side of the property but they do not demonstrate any effect this might have, using any of the numerous maps, legal descriptions, and survey documents they provide. They do not establish that the registration changed the resort's footprint or that they lost usable area. If they did not purchase essentially what they bargained for with only

inconsequential border discrepancies, they failed to provide evidence of it. And equally dispositive, the record indicates that they assented in writing to the registration without filing any answer or otherwise participating in the registration proceeding. The Kremerses now contend that Jeffery Kremers objected to registering the land, but they point us to nothing in the record to contradict his signed, notarized assent. Because the Kremerses expressly consented to registering the title and give no evidence to the contrary, they do not convincingly complain that the property's modified legal description affected the contract for deed. We are persuaded that it was not an abuse of discretion to conclude that they are unlikely to prevail on this claim.

3. Public Policy

The Kremerses finally contend that public policy favors granting the injunction. We ask whether any aspect of the facts requires us to consider public policy as expressed in the statutes. *Dahlberg*, 272 Minn. at 275, 137 N.W.2d at 321–22. Public policy favors upholding valid contracts. *Medtronic*, 630 N.W.2d at 456. The Kremerses urge us to hold that public policy favors granting an injunction here because an injunction will discourage consumer fraud and promote compliance with septic regulations. Granting an injunction will not promote compliance with septic regulations because it will not force the Dahls to correct any deficiencies in Fish Lake's septic system. And according to the relevant inspections, the system was in compliance. Similarly, an injunction would not discourage consumer fraud since the Kremerses have not shown any likelihood of success on their fraud claim.

Contracts for deed can be cancelled, and public policy favors the right to cancel except in exceptional circumstances. The Kremerses have not demonstrated that public policy favors enjoining cancellation.

Affirmed.

MINGE, Judge (concurring specially)

I concur in the result. I write separately to emphasize several points: I would conclude that with respect to the *Dahlberg* factors that when, as here, the contract for deed embodies the sale of an operating business, the relationship between the parties is more pervasive and tends to favor granting injunctive relief. I would also conclude that the balance-of-harms and public-policy considerations in a cancellation-of-contract-for-deed setting should recognize the draconian impact of cancellation on the buyer and when, as here, the buyer has invested significantly in improvements to the premises and in payments, the combined considerations favor granting injunctive relief.

Next, I would conclude that the administrative burdens incident to judicial oversight of an ongoing business like a resort are apt to be significant and do not support granting injunctive relief. I would conclude that the district court did not abuse its discretion in determining that the alleged violations by the Dahls were not sufficiently established by the Kremerses to demonstrate likelihood of success to warrant injunctive relief. On balance, I would defer to the district court and affirm.

I note that we are not asked to review whether a bond or the Kremerses' equity in the premises would adequately protect the Dahls' interest.

Because this is an unpublished opinion, I do not further address the foregoing matters.