STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2071

Michelle Alton Bonomo,
Appellant,

vs.

Midtown Partners, LLC,
Respondent

Filed August 28, 2017
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CV-15-17538

George G. Eck, Andrew B. Brantingham, Nicholas J. Bullard, Dorsey & Whitney LLP, Minneapolis, Minnesota (for appellant)

Kevin R. Coan, Kyle A. Eidsness, Hinshaw & Culbertson LLP, Minneapolis, Minnesota (for respondent)

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

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

WORKE, Judge

Appellant challenges the district court's summary-judgment denial of her request for a declaratory judgment that she holds a financial interest in respondent-LLC under the terms of a settlement agreement. We affirm.

FACTS

In 1999, appellant Michelle Alton Bonomo's then-husband, Dean Vlahos, founded Redstone American Grill Inc. to operate Redstone American Grill restaurants. In 2000, Vlahos, Craig Oberlander, and Tom Petters formed Idlewild Properties, LLC[1] with the purpose of acquiring real estate to lease to Redstone for a restaurant. Each member held a one-third interest in the company. Vlahos's contribution to Idlewild was made largely through demand promissory notes.

In 2006, Vlahos, Oberlander, and Petters formed respondent Midtown Partners LLC solely to purchase shares of Redstone preferred stock. In order to purchase the stock, Midtown secured a $5 million loan from Home Federal. The loan accrues interest at a variable rate, payable in monthly installments. Midtown's members agreed to be responsible for paying their proportionate share of Midtown's interest expense on the loan because Midtown does not generate income.

The members agreed that Idlewild would make the interest payments on behalf of the members of Midtown. Effectively, this meant that as long as a member of Midtown was a member of Idlewild, Idlewild would pay that member's share of the interest expense. It also meant that if one of the Midtown members ceased being a member of Idlewild, that Midtown member's portion of the interest expense would be payable directly by that Midtown member.

[1] Idlewild's members were 78th Street Properties LLC (owned by Oberlander), DSV Ventures LLC (owned by Vlahos), and Tom Petters LLC (owned by Petters).

In 2009, Bonomo and Vlahos divorced. Bonomo and Vlahos's divorce decree states: "The parties' 1/3 interest in Midtown . . . shall be divided equally between the parties. To the extent [Bonomo's] interest may be transferred individually into her own name, it shall be so transferred." The parties also agreed to divide equally the one-third interest in Idlewild.

On March 8, 2011, Idlewild's board of governors voted to demand payment of promissory notes due in connection with Vlahos's interest. Idlewild sent a demand letter indicating that Vlahos was required to make payment on his notes. Vlahos failed to make a payment; thus, pursuant to the member control agreement (MCA), Vlahos's membership interest in Idlewild was reduced, resulting in a 0% interest. After losing his interest in Idlewild, Vlahos acknowledged that he was personally responsible for his proportional payment of interest expense to Midtown.

Midtown then gave Vlahos notice that it was making a capital call, pursuant to its MCA, and that all outstanding interest would be due by July 7, 2012. If Vlahos failed to make the payment, his interest in Midtown would be diluted. Before his interest could be diluted, Vlahos filed for Chapter 7 bankruptcy, listing his one-third interest in Midtown as an asset. On August 22, 2013, the Midtown Irrevocable Trust[2] purchased Vlahos's membership interest in Midtown from the bankruptcy trustee. This purchase, in addition to the trust's purchase of Vlahos's interest in Idlewild, was approved by a court in Vlahos's

[2] Oberlander assigned his interest in Midtown to the irrevocable trust created for estate planning. The trust also acquired Petters's interest in Midtown. Midtown Irrevocable Trust is the sole member of Midtown.

bankruptcy proceeding despite Bonomo's objection and claim that she had a one-half interest in Vlahos's interests in Midtown and Idlewild.

In November 2013, Midtown and Idlewild commenced a lawsuit against Bonomo, seeking a declaration that Bonomo held no interest in either company. Bonomo sought a declaratory judgment, seeking recognition of her interests as awarded in the dissolution. The parties moved for summary judgment. Prior to a ruling on the motions, the parties reached an agreement regarding Bonomo's interest in Idlewild. But Bonomo eventually abandoned any interest in Idlewild.

A district court denied the motions for summary judgment. After which, on October 9, 2014, the parties entered into an agreement regarding Midtown. The parties agreed that, if Bonomo fulfilled certain conditions, Midtown would acknowledge that she obtained a one-sixth interest as of the date of the dissolution decree. Bonomo (1) "agree[d] to be bound by Chapter 322B of Minnesota Statutes," (2) "agree[d] to be bound by Midtown's current Member Control and Operating Agreements," (3) "acknowledge[d] that Home Federal has a security interest in the one-sixth financial interest," and (4) "agree[d] to execute all documents necessary to effectuate her personal guarantee of Midtown's loan obligations to Home Federal."

In May 2015, Midtown prepared documents assigning and transferring the one-sixth interest to Bonomo. The document included "Assignee's Share of Interest Expense," which stated: "Because [Bonomo] is not, and will not become, a member of Idlewild, [Bonomo] owes her one-sixth share of the monthly Interest Expense to [Midtown] as of

October 9, 2014. [Midtown's] monthly Interest Expense is currently $28,850.19, and [Bonomo's] share of the monthly Interest Expense is $4,808.37."

Instead of signing the transfer documents, Bonomo initiated a lawsuit against Midtown, claiming that Midtown breached the October 2014 agreement because the agreement did not require her to pay an interest expense. The parties moved for summary judgment. Midtown claimed that Bonomo was not entitled to an interest in Midtown because she failed to satisfy conditions precedent to Midtown's performance. Alternatively, Midtown argued that if Bonomo is entitled to an interest in Midtown, she should be obligated to pay her portion of the interest expense.

Following a hearing on the parties' motions, the district court granted Midtown's motion for summary judgment. The district court concluded that Bonomo's refusal to sign the transfer documents requiring her to pay interest on the loan indicated that she is not willing to be bound by the agreements applicable to members, one of the four requirements of the October 2014 agreement. This appeal followed.

D E C I S I O N

Bonomo argues that the district court erred in granting Midtown's motion for summary judgment. This court "review[s] a district court's summary judgment decision de novo. In doing so, [this court] determine[s] whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with [any]

affidavits . . . show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. The moving party has the burden of showing the absence of a genuine issue of material fact. *Anderson v. State, Dep't of Nat. Res.*, 693 N.W.2d 181, 191 (Minn. 2005). A genuine issue of fact exists when reasonable minds can draw different conclusions from the evidence presented. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

The parties agree that their October 9, 2014 agreement is central to resolving the issue in this matter. The parties also agree that their agreement is unambiguous. "A settlement agreement is a contract." *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 581-82 (Minn. 2010). When the language of a contract is clear and unambiguous, this court enforces the agreement of the parties as expressed in the contract. *Id.* at 582.

Bonomo asserts that the district court erred by requiring "an unwritten fifth condition" that she make interest payments on Midtown's debt. Midtown counters that the district court did not impose a fifth condition; rather, implicit in the four conditions is the requirement that Bonomo make interest payments. We agree with Midtown.

Bonomo agreed "to be bound by Midtown's current Member Control and Operating Agreements, which agreements are identical to those of Idlewild." Bonomo asserts that she "satisfied this requirement by signing the Midtown Agreement and thereby agreeing to be bound by the current Member Control and Operating Agreements." However, signing the agreement does not satisfy a condition that Bonomo be bound by Midtown's control agreement. Bonomo has to abide by the terms of the agreement in order to satisfy this condition.

The MCA addresses involuntary transfers. An involuntary transfer occurs in a marriage-dissolution proceeding. Thus, Bonomo's potential interest in Midtown exists because of an involuntary transfer. The MCA requires an involuntary transferee (Bonomo) to be bound by the MCA and "all other agreements applicable to the [m]embers." One such agreement between the members relates to interest payments on the loan.

Midtown's only purpose was to secure a $5 million loan from Home Federal in order to purchase 2.5 million shares of stock in Redstone. While Midtown does not generate income, it still owes the lender interest on the loan. Thus, when Midtown was formed, its members agreed to be responsible for paying their proportionate share of Midtown's interest expense on the loan. The members agreed that their distributions from Idlewild would be paid to Midtown to pay the interest. The members understood that as long as a member of Midtown was also a member of Idlewild, Idlewild would pay that member's share of the interest expense. But if one of the Midtown members ceased being a member of Idlewild, then that Midtown member's portion of the interest expense would be payable directly by the Midtown member. Midtown has admitted that, if Bonomo had agreed to become a member of Idlewild under certain conditions, Idlewild would be paying Bonomo's portion of the debt on her behalf. But Bonomo abandoned any interest in Idlewild. Because Bonomo claims a membership interest in Midtown and is not a member of Idlewild, based on the members' agreement, she is responsible for the proportionate interest expense.

Bonomo claims that "Footnote 1 [of the October 2014 agreement] waives any obligation on [her] part to pay accrued interest—nothing more. It does not require [her] to

make future interest payments." Footnote 1 states: "Midtown . . . agrees to waive payment by Bonomo of the approximate . . . $207,125.50[] due and owing as to the one-sixth (1/6) interest held by . . . Vlahos that is being transferred to Bonomo consistent with the terms of this [a]greement." Bonomo is correct that this is a waiver and nothing more regarding Bonomo's obligation to pay accrued interest. But Midtown did not need to include an obligation to pay future interest in the footnote because the obligation is included as an "other agreement[] applicable to the [m]embers" referenced in the MCA that Bonomo agreed to be bound to.

Bonomo claims that she is not required to make interest payments because the agreement does not "affirmatively impose" any obligation for her to make interest payments. But the agreement states: "The [p]arties have agreed that Bonomo may obtain a one-sixth financial interest in Midtown, subject to the terms and conditions of this [a]greement." The agreement established what Bonomo must do in order to obtain a one-sixth interest. After she met the conditions and obtained a membership interest, she would have obtained a financial benefit and a financial obligation. As Midtown has argued, Bonomo's position is that she should receive the benefit of being a member without any of the associated financial obligations—"all the upside, none of the downside." Based on this record, the district court did not err in granting Midtown's motion for summary judgment.

Affirmed.