STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1221

Bridge Investments, LLC,
Respondent,

vs.

Lowry Ridge Townhomes Association, LLP,
Appellant,

Richard W. Stanek, in his official capacity as
Sheriff of Hennepin County, et al.,
Defendants.

Filed April 23, 2018
Reversed and remanded
Kirk, Judge

Hennepin County District Court
File No. 27-CV-16-15225

Steven R. Little, SRL Law, PLLC, Minneapolis, Minnesota (for respondent)

Jack E. Pierce, Matthew S. Greenstein, Bernick Lifson, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Kirk, Judge.

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

KIRK, Judge

In this homeowners-association lien foreclosure dispute under the Minnesota Common Interest Ownership Act (MCIOA), Minn. Stat. §§ 515B.1-101 to .4-118 (2016),

appellant townhome association argues that the district court exceeded the scope of the stipulated issue presented to it by holding that: (1) the association's preexisting assessment lien was invalid and that respondent-purchaser was entitled to the protections of the Minnesota Recording Act (MRA); (2) the association was not entitled to recover its attorney fees and costs related to the assessment lien foreclosure under the MCIOA; and (3) if attorney fees were available, they would be capped at $500. Because the district court misapplied the MRA and MCIOA, and because the court failed to make findings regarding the reasonable amount of attorney fees and costs owed, we reverse and remand.

FACTS

Appellant Lowry Ridge Townhomes Association (the association) is a nonprofit corporation that administers Lowry Ridge Townhomes, a multi-unit condominium and common interest community (the community) first established on February 12, 1998, by the recording of its declaration, which was subsequently amended several times. The association is governed by the MCIOA, its declaration and the amendments thereto, as well as its articles of incorporation and bylaws. *See* Minn. Stat. § 515B.1-102. This matter involves a unit commonly known as 300 Ridgewood Avenue, Unit 1, Minneapolis, MN 55403 (the unit), which was added to the community on May 23, 2000, in the first amendment to the association's declaration.

On June 8, 2016, respondent Bridge Investments, LLC (Bridge Investments), purchased the unit from its prior owner, M.P., via a warranty deed, which was recorded on July 1, 2016. M.P. originally purchased the unit in 2004 and made her last payment for the monthly assessment fees and other fees owed by the unit in August 2015. In November

2015, the association notified M.P. that she was more than 30 days late on her monthly payments and owed the association over $3,500. The association did not record an assessment lien against the unit for the amount owed at that time. In December 2015, M.P.'s bank-mortgagee assignee foreclosed on M.P.'s mortgage and purchased the unit at a sheriff's sale. M.P. later redeemed the unit and recorded the redemption on July 1, 2016, the same day that the deed to Bridge Investments was recorded. Because the association's assessment lien was junior to the bank's mortgage lien, it was not extinguished by M.P.'s redemption, and it remained on the unit when the unit was sold to Bridge Investments.[1]

The association sent a letter dated July 14, 2016, informing Bridge Investments that the unit's account had an outstanding overdue balance, including the preexisting assessment lien left unpaid by M.P., which was now over $9,100. On July 27, the association recorded the assessment lien against the unit for the unpaid assessments and for the related late fees, attorney fees, and costs accrued from August 1, 2015 through July 21, 2016. On July 28, the association recorded a notice of its pendency and power of attorney to foreclose on the assessment lien.

In communications between the parties' attorneys, Bridge Investments challenged the association's ability to charge it for the preexisting assessment lien amount on the unit, arguing that it was a good-faith purchaser without notice. The attorneys discussed the issue, and the association sent an accounting to Bridge Investments for the total amount

[1] Redemption by the owner annuls the sheriff's sale, as if no foreclosure had occurred; accordingly, all liens other than the foreclosing lien are reinstated, and the right to redemption by the junior lien creditor is extinguished. *See* Minn. Stat. § 580.27 (2016); *Clark v. Butts*, 78 Minn. 373, 374, 81 N.W. 11, 11-12 (1899).

owed as of August 3, 2016. The accounting included the preexisting assessment lien amount, the ongoing assessment and delinquency fees of $720 each month, and the accruing attorney fees and costs. On September 8, the association notified Bridge Investments of the assessment lien foreclosure sale on October 26, and provided another increased payoff amount. The association also indicated that it was accelerating payment of all assessments and fees owed by the unit, pursuant to its declaration and bylaws.

On September 21, the association sent Bridge Investments a detailed accounting for the preexisting assessment lien amount against the unit. The association also advised that the August 3, 2016 payoff amount was no longer valid, and that Bridge Investments should contact the association for an updated amount. In an email to Bridge Investments' attorney, the association indicated that it would seek the attorney fees and costs that it incurred collecting and foreclosing on the assessment lien. Bridge Investments did not challenge the association's ability to do so but questioned the amount owed.

On October 18, the association sent Bridge Investments another increased payoff amount. That same day, Bridge Investments filed a complaint in district court, seeking to quiet title, a declaratory judgment, and an injunction to prevent the foreclosure sale until the total amount to satisfy the assessment lien could be determined. Bridge Investments also moved for a temporary restraining order (TRO) to prevent the foreclosure sale. But at the October 25 TRO hearing, the parties agreed, and the court ordered, that the foreclosure sale could proceed as scheduled. The association foreclosed on its lien and purchased the unit for the amount then owed by the unit. The certificate of sheriff's sale was recorded on October 31, 2016. Bridge Investments was given until April 26, 2017 to redeem.

Following the sheriff's sale, the association sent Bridge Investments updated statements for the increased legal fees, costs, and payoff amount in October 2016 and in February 2017. In March 2017, the parties agreed to a written stipulation for entry of an order, which the district court approved and adopted. Bridge Investments also moved for a judicial determination of the redemption amount owed, and hearing on the motion was held on April 14. The association later represented to the court that Bridge Investments redeemed the unit on April 26, 2017, for the amount then owed, and sold it to another buyer in early June 2017, before the court issued its July 2017 written order.

The July 2017 order held that Bridge Investments was a good-faith purchaser under the MRA, and that it was only liable for the unpaid amounts owed after July 1, 2016, and not for the preexisting assessment amounts, attorney fees, delinquency fees, or costs related to the assessment lien foreclosure sale. The association filed a request to move for reconsideration with the district court, arguing, in part, that the court's order was moot given Bridge Investments' redemption of the unit and purchase by another buyer. The court did not respond to the request, but had its law clerk email the attorneys to ask if the parties intended to stipulate to a dismissal. The parties did not reply. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion in considering the issues raised in the motion for judicial determination of the redemption amount.

"The decision to vacate a stipulation 'rests largely in the discretion of the [district] court, and its action will not be reversed absent a showing that the court acted so arbitrarily as to constitute an abuse of that discretion.'" *In re Commitment of Rannow*, 749 N.W.2d

393, 396 (Minn. App. 2008) (quoting *Anderson v. Anderson*, 303 Minn. 26, 32, 225 N.W.2d 837, 840 (1975)).

The record shows that at the October 25, 2016 TRO hearing, Bridge Investments' attorney stated, "My client's not disputing that he's liable for the previous owner's [a]ssociation dues." The parties agreed on the record that the only issue would be the reasonable amount of late fees, penalties, attorney fees, costs and disbursements owed to the association (the attorney fees and costs). Accordingly, Bridge Investments withdrew its request for a TRO, and the foreclosure and sheriff's sale proceeded as scheduled. The parties further agreed that Bridge Investments would have six months to redeem and that it would make the requisite deposit with the sheriff to preserve the right to do so. In the March 2017 written stipulation for entry of an order, which was adopted and approved by the district court, the parties memorialized their oral agreement, agreed to waive discovery, and agreed to hold a hearing for the court to determine the attorney fees and costs owed.

Despite this agreement, in moving for a judicial determination of the redemption amount, Bridge Investments argued that the preexisting assessment lien amount and the attorney fees and costs related to the foreclosure should not be included because the association acted in bad faith and failed to comply with the MCIOA and due-process requirements, and as such, the assessment lien and foreclosure sale were void. At the April 14 hearing, the association responded by denying any bad faith and by arguing that Bridge Investments' arguments were beyond the scope of the parties' stipulation. The association maintained that Bridge Investments' failure to do its due diligence was the real issue. The

district court noted the association's concerns at the hearing but did not substantively address the issues raised by Bridge Investments until its July 2017 written order.

On appeal, the association argues that the district court addressed issues beyond what was presented to it by the parties' stipulation. The association argues that it reasonably anticipated that the only issue would be the reasonable amount of attorney fees and costs owed. Although this may have been the association's assumption, our review of the record, the parties' written stipulation, and the court's order adopting and approving the stipulation, does not expressly establish that the only issue for judicial determination would be the reasonable amount of attorney fees and costs owed. The plain language of the stipulation can be read as an agreement between the parties to bring one issue before the court, and not as an absolute agreement to exclude all other issues from judicial review.

On this record, the district court did not exceed the scope of, or vacate, the parties' stipulation, and we cannot conclude that the court abused its discretion by addressing the other issues raised by Bridge Investments in its July 2017 order.

II. The district court misapplied the MRA and the MCIOA.

Statutory interpretation is a legal question, which we review de novo. *Reider v. Anoka–Hennepin Sch. Dist. No. 11*, 728 N.W.2d 246, 249 (Minn. 2007). "If the plain language of a statute is clear and free from ambiguity, the court's role is to enforce the language of the statute and not explore the spirit or purpose of the law." *Nelson v. Nelson*, 866 N.W.2d 901, 903 (Minn. 2015) (quotation omitted).

The MCIOA provides that, subject to the declaration and bylaws of an association, an association may assess payments for "the common elements," and may "impose interest

and late charges for late payment of assessments." Minn. Stat. § 515B.3-102(a)(10), (11). "[An] association has a lien on a unit [for the full amount of] any assessment levied against that unit from the time the assessment becomes due . . . [or] from the time [that] the first assessment becomes due." Minn. Stat. § 515B.3-116(a). "Recording of the declaration constitutes record notice and perfection of any assessment lien under this section, and no further recording of any notice of or claim for the lien is required." *Id.* Section 6 of the association's declaration also stated these principles.

Here, the district court held that Bridge Investments did not have actual or constructive notice of the preexisting assessment lien against the unit because Bridge Investments was not the owner of the unit when it went into delinquency, had no reason to know of the unit's delinquency at the time of the purchase, and was not informed of the delinquency prior to the purchase. The court said that because the preexisting assessment lien was not recorded at the time the unit was purchased from M.P., Bridge Investments had no reason to know that the lien existed against the unit. The court concluded that Bridge Investments was a good-faith purchaser entitled to the protections of the MRA.

On appeal, the association asks this court to reverse the district court's order based on the clear and unambiguous language of the MCIOA and the association's declaration, which provide constructive notice of a preexisting assessment lien against a unit, without the lien being recorded and without additional notice, if the association recorded its declaration. The association asserts that Bridge Investments had constructive notice of the preexisting assessment lien, and that the MRA does not change its obligation to pay the

outstanding amount owed by the unit. The association adds that Bridge Investments failed to properly pursue other possible protections under the MCIOA.

The district court erred in interpreting the MCIOA's record-notice provision and by applying the MRA here. Bridge Investments concedes on appeal that the district court may have misapplied the MRA. Minnesota is a race-notice state, meaning that under Minn. Stat. § 507.34 (2016), a subsequent good-faith purchaser of real property who first records, takes priority over a prior purchaser who failed to record. *See Anderson v. Graham Inv. Co.*, 263 N.W.2d 382, 384 (Minn. 1978). But here, there was no dispute that Bridge Investments took title in good faith when it purchased the unit from M.P. The warranty deed was properly recorded on July 1, 2016, and there was no priority-of-title dispute. The MRA does not apply to the facts presented here.

Further, the district court erred as a matter of law in concluding that Bridge Investments did not have record notice of the preexisting assessment lien against the unit. Under the plain language of Minn. Stat. § 515B.3-116(a) and the association's declaration, by recording the association's declaration in February 1998, and by recording its subsequent amendments, the association put current and future unit owners on record notice of its ability to impose, collect, and foreclose on assessment liens against a unit, as well as its ability to accelerate any payments owed by a unit, to be paid by the unit's owner. The association was not required to record its preexisting assessment lien against the unit or to provide additional notice to Bridge Investments to perfect its lien here.

Instead, the MCIOA required M.P. to ensure that Bridge Investments had notice of the preexisting assessment lien against the unit and to ensure that Bridge Investments

received the necessary documents. *See* Minn. Stat. § 515B.4-107(a), (b). Under the MCIOA, unless otherwise exempt, the unit owner selling his or her unit "shall furnish" several documents to a purchaser before executing a purchase agreement, including a copy of the declaration, articles of incorporation, bylaws, rules and regulations, and any amendments thereto.[2] *Id.* at (a)(1). The seller must also provide a purchaser with a resale-disclosure certificate, as provided by the seller's association, which gives notice of the assessment amounts that will be imposed, and which lists any outstanding unpaid assessments, fines, or other charges against the unit. *Id.* at (a)(3), (b). An association must provide the resale certificate to the seller "within ten days after a request by a unit owner." *Id.* at (d). Thus, M.P. as the seller of a unit, was required to request a resale-disclosure certificate from the association, and thereafter, to provide it, as well as the association's other governing documents, to Bridge Investments.

At the district court, the association made the argument that it was M.P.'s obligation, not the association's, to provide notice to Bridge Investments. The district court acknowledged that the association raised this issue, but did not substantively consider it in its July 2017 order. The record is unclear as to what documentation M.P. provided to Bridge Investments before or at the time of closing. Bridge Investments maintained that it never received the association's bylaws and never received a billing statement for the preexisting and accruing amounts owed. Bridge Investments did not expressly indicate whether it received the association's declaration, a resale-disclosure certificate, or other

[2] There is no evidence in the record that M.P. was exempt from this requirement.

required documents for the unit. The association denied that it was asked to prepare a resale certificate, and there is no evidence in the record that M.P. made such a request.

The association also maintained that it was not aware of M.P.'s sale of the unit to Bridge Investments until after the closing. The district court found in a footnote that, given the circumstances surrounding M.P.'s ownership, it was unlikely that the association knew nothing about the sale until after the closing. On appeal, Bridge Investments argues that because the association acted in bad faith, the court had discretion not to award attorney fees and costs to the association. Bridge Investments asks this court to affirm the district court's order based on principles of equity. However, as discussed, the court's order was not based on equitable principles but on its misapplication of the MRA and the MCIOA. Further, even if the association was aware of the sale to Bridge Investments prior to the closing, this would not have altered the association's obligations under the plain language of the MCIOA and its declaration. The record shows that the association met its record-notice obligation by recording its declaration and the amendments thereto.

The district court focused on the fact that the association failed to provide monthly billing statements to Bridge Investments for the existing and ongoing monthly assessments owed by the unit. We are unaware of any provision in the MCIOA or the association's declaration that required the association to do this. Minn. Stat. § 515B.3-116(g) provides that upon the written request of a unit owner, an association shall provide a "statement setting forth the amount of unpaid assessments currently levied against the owner's unit." Bridge Investments argues that the association failed to provide an updated or final payoff

amount for the unpaid assessments despite repeated requests. But our review indicates that the evidence in the record does not support this claim.

The record shows that the association contacted Bridge Investments shortly after its purchase of the unit to advise them of the preexisting assessment lien against the unit, and thereafter, recorded the lien against the unit, even though it was not required to do so. The association also provided Bridge Investments with updated payoff amounts and accountings for the assessments, attorney fees, and costs on several occasions, leading up to, and after, the foreclosure sale. The record shows that the association clearly stated in its communications that the payoff amount was only accurate as of the date sent because assessments, attorney fees, and costs continued to accrue against the unit.

On this record, we cannot conclude that the association failed in its notice obligations under the MCIOA and its declaration. Because the record shows that Bridge Investments had record notice as a matter of law, the district court erred by concluding that Bridge Investments was not liable for the preexisting assessment lien against the unit. While the MCIOA and the association's declaration may have provided other relief to Bridge Investments for M.P.'s failure to provide the required documentation, the record does not indicate that such relief was sought, and that issue is not before this court on appeal. We remand to the district court to include the preexisting assessment lien amount in the redemption amount, as allowed under the MCIOA and the association's declaration.

III. The district court erred in denying reasonable attorney fees and costs.

"We review the district court's award of attorney fees or costs for abuse of discretion." *Brickner v. One Land Dev. Co.*, 742 N.W.2d 706, 711 (Minn. App. 2007),

review denied (Minn. Mar. 18, 2008). "Attorney fees are recoverable if specifically authorized by contract or statute." *Horodenski v. Lyndale Green Townhome Ass'n, Inc.*, 804 N.W.2d 366, 371 (Minn. App. 2011) (quoting *Van Vickle v. C.W. Scheurer & Sons, Inc.*, 556 N.W.2d 238, 242 (Minn. App. 1996), *review denied* (Minn. March 18, 1997)).

The MCIOA provides that "reasonable attorney's fees and costs incurred by the association" in collecting and enforcing the assessment provisions "may be assessed against the unit owner's unit." Minn. Stat. § 515B.3-115(e)(4). "Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charges pursuant to section 515B.3-102(a)(10), (11) and (12) are liens, and are enforceable as assessments . . . ." Minn. Stat. §§ 515B.3-116(a), .3-115(e)(5). The association may foreclose on its lien, including these amounts, as provided under chapter 580. Minn. Stat. § 515B.3-116(h). "[I]n a foreclosure . . . under chapter 580, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys fees authorized by the declaration or bylaws, notwithstanding the provisions of section 582.01, subdivisions 1 and 1a." Minn. Stat. § 515B.3-116(h)(4)(ii). Sections 6 and 12 of the association's declaration include similar provisions to the MCIOA.

The association asserts that under the MCIOA and the association's declaration, it had a perfected lien not only for the preexisting and accrued assessment amounts but also for the reasonable attorney fees and costs incurred by collecting and foreclosing on the lien. Bridge Investments argues that the district court acted within its discretion in light of the association's bad faith in declining to award the association its attorney fees and costs. The district court said that the decision was within its discretion under Minn. Stat.

§ 515B.4-116(b), which provides that "[t]he court may award reasonable attorney's fees and costs of litigation to the prevailing party." We agree with the association that the court misapplied Minn. Stat. § 515B.4-116(b) to the association's demand for attorney fees and costs here.

Here, the association foreclosed on its assessment lien against the unit under chapter 580. The plain language of the MCIOA and the association's declaration entitled the association to include its attorney fees and costs related to collecting and foreclosing on its assessment lien in its assessment lien amount. Minn. Stat. §§ 515B.3-115(e)(4), .3-116(h)(4)(ii). We made this clear in *Horodenski*, when we held that under section 515B.3-115(e)(4), an association can include its attorney fees and costs in its assessment lien without bringing an action in district court, unless prohibited by the association's declaration. 804 N.W.2d at 371-72. We further held that the only remaining issue was whether the amount of attorney fees and costs included were reasonable. *Id.* at 372. Under the MCIOA, the association's declaration, and *Horodenski*, the district court abused its discretion in denying the association its reasonable attorney fees and costs here.

In a footnote, the district court also said that even if it awarded attorney fees and costs to the association, the maximum amount allowed would be $500, based on Minn. Stat. § 582.01, subds. 1, 1a (1994), as discussed in *In re Smoots*, 230 B.R. 140, 142-43 (Bankr. D. Minn. 1996). But *Smoots* addressed an earlier version of the MCIOA. The amended MCIOA explicitly provides that Minn. Stat. § 582.01, subds. 1, 1a (2016), does not apply to a foreclosing party's request for costs and disbursements as allowed under section 515B.3-115(e)(4) and the association's declaration. Minn. Stat.

§ 515B.3-116(h)(4)(ii). Accordingly, the district court erred in finding that if it awarded attorney fees and costs that the maximum amount allowed would have been $500.

The only inquiry for the district court was whether the amount of the attorney fees and costs included by the association in its lien for collecting and foreclosing on its assessment lien were reasonable. In determining the reasonableness of statutory attorney fees, Minnesota courts generally employ the lodestar method and consider the reasonableness of the legal hours expended, the hourly rate charged, and all other relevant circumstances. *See Green v. BMW of N. Am., LLC*, 826 N.W.2d 530, 535-36 (Minn. 2013). Because the district court failed to perform a reasonableness analysis of the attorney fees and costs sought by the association, we remand to the district court to perform this analysis and to include a reasonable amount of attorney fees and costs in the redemption amount, as allowed by the MCIOA and by the association's declaration.

We note that because Bridge Investments redeemed the property, and then sold it to another buyer, the practical impact of the district court's decision on remand will be to determine if the redemption amount paid by Bridge Investments was appropriate.

Reversed and remanded.