STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0421

Arch Apartment Management L.L.C.,
Respondent,

vs.

AMTAX Holdings 224, LLC, et al.,
Appellants.

Filed September 30, 2019
Affirmed
Jesson, Judge

Hennepin County District Court
File No. 27-CV-18-1581

David A. Davenport, Quin C. Seiler, Winthrop & Weinstine, P.A., Minneapolis, Minnesota (for respondent)

Marc A. Al, Emily C. Atmore, Stoel Rives LLP, Minneapolis, Minnesota (for appellants)

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Bratvold, Judge.

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

JESSON, Judge

Appellants challenge the district court's grant of judgment on the pleadings, asserting that the district court incorrectly interpreted a limited liability company's operating agreement to give accountants the authority to calculate the option price for the Managing Member to buyout Investor Members' interests. Because the district court

correctly interpreted the operating agreement and did not err by declining to treat the motion for judgment on the pleadings as one for summary judgment, we affirm.

FACTS

Minneapolis Stone Arch Partners, L.L.C. (the company) was formed in 2000 to develop a housing project (the project). Part of the project includes low-income housing, which qualifies for federal tax credits, subject to a 15-year compliance period mandated by federal law. Appellants AMTAX Holdings 224, LLC and AMTX Fund XVII SLP, Inc. are the investor members in the company (Investor Members), and respondent Arch Apartment Management, L.L.C. is the managing member of the company (Managing Member).

In 2002, the parties entered into an operating agreement, which all parties agree governs their rights and obligations. Included in the operating agreement is a provision dictating the process for Managing Member to purchase Investor Members' interests in the company. That provision provides that Managing Member could buyout Investor Members' interests in the company after the tax credits from the low-income housing units were fully allocated and the 15-year compliance period expired. Additionally, the operating agreement set out a formula for calculating the option price that Managing Member must pay Investor Members for their interests in the company.

Over the 15-year period, Managing Member operated the company, and Investor Members received tax credits exceeding $4 million and over $3.5 million in tax losses, which provided an income tax benefit of about 35% of that amount. On December 5, 2017, Managing Member informed Investor Members that it intended to exercise the buyout

option under the operating agreement, effective January 1, because the 15-year compliance period would end on December 31, 2017. Managing Member informed Investor Members that it was in the process of selecting an appraiser to value the project pursuant to the operating agreement and requested that Investor Members select their appraiser within three weeks. In response, Investor Members stated that they could not select an appraiser until a variety of other assessments, including a forensic accounting, were completed. Managing Member selected an appraiser, but Investor Members still had not selected an appraiser by late January 2018. As a result, Managing Member filed a complaint with the district court, alleging that Investor Members breached the operating agreement and seeking a declaratory judgment.

As litigation proceeded, Investor Members selected an appraiser, and the appraisers eventually agreed that the value of the project was $34.1 million.[1] The company's accountants used this valuation to calculate the option price. After performing the calculations outlined in the operating agreement, the accountants determined that Investor Members were not entitled to any proceeds from the project based on its value. But because the minimum amount of the option price under the operating agreement must be equal to Investor Members' tax liability, the accountants determined that the option price was $44,911.

After the accountants calculated the option price, Managing Member sent Investor Members $44,911 and requested the transfer of their interests in the company. Investor

[1] The parties agree that the $34.1 million valuation is binding and that this number was provided to the company's accountants.

Members stated that they wanted to review the accountants' calculations. To date, Investor Members have not transferred their interests in the company to Managing Member.

Because Investor Members failed to transfer their interests, Managing Member filed an amended complaint. Managing Member alleged that Investor Members breached their duty of good faith and fair dealing and sought a declaratory judgment requiring Investor Members to transfer their interests in the company to Managing Member for the option price of $44,911. In response, Investor Members filed counterclaims, alleging that Managing Member breached its duties of loyalty and good faith and fair dealing and seeking a declaratory judgment in their favor. According to Investor Members, the accountants erroneously applied the formula in the operating agreement, resulting in an option price that shorted Investor Members over a million dollars.

Managing Member moved for judgment on the pleadings, and Investor Members sought to have the motion treated as one for summary judgment. The district court declined to do so, reasoning that the pleadings and documents incorporated within the pleadings were sufficient to rule on the motion for judgment on the pleadings. In ruling on the motion, the district court interpreted the operating agreement, concluding that it gives the accountants the sole responsibility to determine the option price. Accordingly, the district court granted Managing Member's request for a declaratory judgment that the option price

of $44,911 as determined by the accountants was binding and that Investor Members must transfer their interests to Managing Member for that price.[2] Investor Members appeal.

D E C I S I O N

Investor Members challenge the district court's grant of judgment on the pleadings in favor of Managing Member on two grounds. First, Investor Members argue that the district court erred in its interpretation of the operating agreement, alleging that the district court's conclusions regarding the accountants' scope of authority and the deference given to the accountants' calculations were erroneous, and that the accountants improperly calculated the option price based on the operating agreement. Second, Investor Members contend that the district court should have treated the motion for judgment on the pleadings as a motion for summary judgment under rule 12.03 of the Minnesota Rules of Civil Procedure. Treating the motion as one for summary judgment, Investor Members contend, would have allowed the district court to consider an affidavit from Investor Members' expert detailing alleged errors in the accountants' calculations.

When considering an appeal from a district court's grant of a motion for judgment on the pleadings under Minnesota Rule of Civil Procedure 12.03, we evaluate a district court's decision de novo "to determine whether the complaint sets forth a legally sufficient claim for relief." *Burt v. Rackner, Inc.*, 902 N.W.2d 448, 451 (Minn. 2017) (quotation omitted). In doing so, we review "the allegations contained in the pleadings and any

[2] The district court denied Managing Member's request for judgment on the pleadings with respect to the other claims against Investor Members and denied Investor Members' requests for judgment in their favor.

documents or statements incorporated by reference into the pleadings." *Greer v. Prof'l Fiduciary, Inc.*, 792 N.W.2d 120, 131 (Minn. App. 2011). And all reasonable inferences are drawn in favor of the nonmoving party. *Zutz v. Nelson*, 788 N.W.2d 58, 61 (Minn. 2010).

I. The district court correctly interpreted the operating agreement.

Investor Members argue that the district court erred in its interpretation of the operating agreement. Specifically, they take issue with the district court's conclusions regarding the scope of the accountants' role and the amount of deference to be given to the accountants' calculations.

All parties agree that the language of the operating agreement is unambiguous. When there is no ambiguity in a contract, we "construe contract terms consistent with their plain, ordinary, and popular sense, so as to give effect to the intention of the parties as it appears from the entire contract." *Quade v. Secura Ins.*, 814 N.W.2d 703, 705 (Minn. 2012). And when a contract provision is clear and unambiguous, "courts should not rewrite, modify, or limit its effect by a strained construction." *Savela v. City of Duluth*, 806 N.W.2d 793, 797 (Minn. 2011).

To determine whether the district court correctly interpreted the operating agreement, we examine the language of the operating agreement itself. Two provisions are relevant here. First, section 7.4J of the operating agreement discusses calculation of the option price. It states:

> The Option Price shall equal the amount necessary to place the Investor Member in the same after-tax cash position as would result if the Company sold the Project for an amount equal to

> 100% of the fair market value of the Project, appraised as partial low-income housing to the extent continuation of such use is required under the Use Restrictions . . . . In no event shall the Option Price be less than *the amount determined by the Company Accountants* sufficient to enable the Investor Member to pay, on an after tax basis, any taxes projected to be imposed on the Investor Member as a result of the sale pursuant to the Option.

(Emphasis added.) Under this provision, the option price results from comparing two calculations: (1) the amount of the distribution Investor Members would receive if the project was sold for its fair-market value and (2) Investor Members' tax liability. And it is clear that the language of this provision expressly gives the accountants authority to determine Investor Members' tax liability.

But section 7.4J does not discuss the accountants' authority with respect to the first calculation: the amount Investor Members would receive if the project was sold. In order to evaluate whether the operating agreement gives the accountants that authority, we turn to section 6.2B of the operating agreement. Section 6.2B governs the distribution of any cash proceeds Investor Members would receive in the event of a sale. In doing so, it provides what the parties refer to as a "waterfall": a series of eight tiered calculations to be performed in order to determine how proceeds are to be distributed in the event of a sale. Distributions to Investor Members occur at the fourth and eighth levels of the waterfall.[3] The eighth level of the waterfall calculation provides:

> Eighth, the balance of such proceeds shall be distributed (i) to the Investor Member, 20% of the amount *of such proceeds*

[3] It is undisputed that the accountants have the authority to determine the calculation at the fourth level, which involves the Investor Members' tax liability.

> *determined by the Accountants* to be attributable to the Low Income Units, and (ii) the remainder 1% to the Managing Member and 99% to the Special Limited Members as a class, to be shared in accordance with the pro rata percentages shown on Schedule A.

(Emphasis added.) Under this provision, Investor Members are entitled to 20% of the amount determined by accountants to be attributable to the low-income housing units in the case of the project's sale. And again, the language of this provision allows the accountants to calculate what this amount is.

Reading these two provisions, the district court concluded that the operating agreement gives the accountants the "sole responsibility" to determine the option price under section 7.4J of the operating agreement. Further, the district court found that there was no language in the operating agreement that would permit the district court to either independently calculate the option price or to "second-guess" the work done by the accountants. In reaching this conclusion, the district court determined that a reading of the operating agreement allowing the district court discretion to determine the amount of the distributable proceeds would negate the language in the operating agreement stating that the amounts were to be "determined by the Accountants." We agree with the solid reasoning of the district court.

The language of the operating agreement provides that the option price is determined after two specific calculations are made. And the operating agreement expressly delegates authority to make each of the calculations to the accountants. No provision in the operating agreement provides for judicial review of the accountants' calculations. Accordingly, the district court's interpretation that the operating agreement

gives the accountants sole authority to calculate the option price, which a court cannot later recalculate, is consistent with the plain language of the operating agreement.[4] *See Telex Corp. v. Data Prod. Corp.*, 135 N.W.2d 681, 687 (Minn. 1965) (stating that "it is not for this court to create or add exceptions to the contract or to remake it [on] behalf of either of the contracting parties"); *see also Equitable Holding Co. v. Equitable Bldg. & Loan Ass'n*, 279 N.W. 736, 740 (Minn. 1938) (noting that "[c]ourts should not, nor do they, look for excuses or loopholes to avoid contracts fairly and deliberately made whether such be by individuals or corporations"). As such, we conclude that the district court did not err in its interpretation of the operating agreement.

II. The district court did not err by failing to treat Managing Member's motion for judgment on the pleadings as a summary judgment motion.

Investor Members contend that the district court improperly failed to covert Managing Member's motion for judgment on the pleadings to a motion for summary judgment. Treating the motion as one for summary judgment, Investor Members allege, would have allowed the district court to consider an affidavit from Investor Members' expert explaining how the accountants allegedly incorrectly calculated the option price.

[4] Investor Members argued that under section 6.2B(1) of the operating agreement, Managing Member must determine the amount of capital proceeds available to be applied to the subsequent waterfall calculations, shifting some responsibility for calculating the option price to the Managing Member rather than the accountants. But section 6.2B(1) states only that Managing Member is responsible for calculating the capital proceeds from an actual capital transaction to be applied to the waterfall calculations. And contrary to language vesting express authority with the accountants for making calculations to determine the option price, section 6.2B(1) does not vest that same authority with the Managing Member.

Rule 12.03 of the Minnesota Rules of Civil Procedure provides that any party may move for judgment on the pleadings after pleadings are closed but within a reasonable time so as to not delay a trial. When considering such a motion, if "matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided for in Rule 56." Minn. R. Civ. P. 12.03. But in cases where facts are not disputed, the pleadings clearly set out the issues, and the language of a disputed contract is unambiguous, a district court may properly grant judgment on the pleadings. *See McReavy v. Zeimes*, 9 N.W.2d 924, 927 (Minn. 1943); *see also Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011) (noting that the interpretation of an unambiguous contract is a question of law), *review denied* (Minn. July 19, 2011).

Here, all parties agreed on the facts of the case and that the unambiguous operating agreement governed the case. And the pleadings incorporated the operating agreement for the district court's review. Because the dispute focused on interpreting the agreement and because there were no factual disputes, the district court did not err by failing to convert the motion for judgment on the pleadings to a motion for summary judgment.[5] *See McReavy*, 9 N.W.2d at 927 (affirming a district court's grant of judgment on the pleadings where the interpretation of an unambiguous contract provision was at issue).

[5] Investor Members argue that the motion should have been treated as one for summary judgment to allow the district court to consider an expert declaration that "show[ed] how wrong the [a]ccountants' calculation is." But Investor Members' expert's declaration was unnecessary to resolve the threshold dispute: the authority of the accountants under the operating agreement.

Finally, we observe that Investor Members argue, in detail, about *how* the accountants' calculations are erroneous. But because we conclude that the district court correctly interpreted the operating agreement as giving the accountants the authority to determine the option price, we do not address Investor Members' argument related to alleged incorrect calculations. Accordingly, because the district court correctly interpreted the operating agreement and did not err by declining to treat the motion for judgment on the pleadings as one for summary judgment, we affirm.

Affirmed.