STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0491

Shamrock Sod & Landscaping, Inc., et al.,
Plaintiffs,

Terry J. O'Brien, et al.,
Appellants,

vs.

Security State Bank of Fergus Falls,
Respondent,

John Leonard Blume,
Respondent,

Paul Stephen Lindholm,
Respondent.

Filed September 23, 2019
Affirmed
Kirk, Judge[*]

Douglas County District Court
File No. 21-CV-15-657

Jane L. Volz, Volz Law firm, Ltd., Lakeville, Minnesota (for appellants)

Matthew C. Berger, Christopher E. Bowler, Gislason & Hunter LLP, New Ulm, Minnesota (for respondent Security State Bank)

Robert G. Manly, Jordan B. Weir, Vogel Law Firm, Fargo, North Dakota (for respondent Blume)

---

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

Kevin K. Stroup, Stoneberg, Giles & Stroup, P.A., Marshall, Minnesota (for respondent Lindholm)

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

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

KIRK, Judge

Appellants challenge the district court's order striking their notice of exemption rights, arguing that the district court erred by concluding that appellants were not entitled to exemptions for a manufactured home and vehicle. We affirm.

FACTS

In 2003, appellants Terry and Vickie O'Brien (the O'Briens) began a banking relationship with respondent Security State Bank of Fergus Falls (the bank) primarily for the benefit of their businesses, Shamrock Sod & Landscaping, Inc. (Shamrock) and Custom Boardwalks, Inc. (Custom). During the course of that relationship, the O'Briens and the bank entered into numerous loan agreements, mortgages, and security agreements. On October 6, 2003, the O'Briens, in their individual capacities, entered into a commercial security agreement granting the bank a security interest in certain property, including "vehicles."

In 2015, the O'Briens, Shamrock, and Custom sued the bank,[1] raising numerous claims including breach of contract, fraud, and unjust enrichment. The bank filed

[1] They also sued respondents bank president Paul Lindholm and bank employee John Blume; both successfully moved for summary judgment.

counterclaims against the O'Briens, which included several counts of breach of contract. In 2018, the district court granted summary judgment in favor of the bank and against the O'Briens for over $1.8 million and determined that the bank was entitled to possession of the collateral pledged by the O'Briens and their businesses in certain security agreements.

Shortly thereafter, the bank moved for an order directing issuance of certain vehicle titles, which included a list of 26 vehicles of which it had taken possession or intended to take possession. The district court granted the bank's motion and directed issuance of the vehicle titles, but stayed the order for seven days to allow the O'Briens "to assert exemption rights relating to the listed vehicles." The district court's order listed the same 26 vehicles as the bank's motion. The O'Brien each individually filed a notice of exemption rights, requesting exemptions for various things including personal goods, household items, and property not related to the list of vehicles. Terry O'Brien's claimed exemptions included a 2003 GMC Sierra Pickup and the "manufactured home"[2] where he resides. Vickie O'Brien's claimed exemptions included a 2006 Honda Pilot (Honda) and the same manufactured home, where she also resides. Notably, neither the manufactured home nor the Honda was on the list of vehicles in the district court's order.

The bank moved to strike the O'Briens' notices of exemption rights and sought sanctions against them. The bank's supporting memorandum specifically addressed

[2] Although described as a manufactured home in the notice of exemption rights, the parties now dispute whether the residence meets the statutory definition of a manufactured home. *See* Minn. Stat. § 327.31, subd. 6 (2018) (defining manufactured home). We do not consider whether it qualifies as a manufactured home under the statute because that argument is not properly before us.

certain vehicles, but not the manufactured home. The O'Briens filed a responsive memorandum opposing the bank's motion and noting that, "The [b]ank does not address or appear to object to the manufactured home."

At the motion hearing, the bank argued it had a security interest in the vehicles pursuant to the 2003 security agreement, and thus, the O'Briens were not entitled to the statutory exemptions. The district court asked the bank about the manufactured home:

> Q: Where does the manufactured home fit in?
>
> A: Your Honor, we don't believe that it is a manufactured home that is on a site. We do not believe it meets the statutory definition of that. I believe at this point they would not have an exemption, but that is likely to be more properly addressed at a confirmation hearing following the foreclosure sale of the real estate.
>
> Q: Okay. That's—you're enforcing that through the foreclosure of the real estate mortgage?
>
> A: Yes, Your Honor. The sale is scheduled on that, I believe, January 31st. And after the sale is completed of the real estate, we would anticipate coming before the Court for a confirmation of that sale. And if there's any issue about that, the manufactured home, I would anticipate it would be addressed at that time.
>
> Q: All right.

The O'Briens did not mention the manufactured home at all during the hearing. Instead, they argued that they were entitled to the statutory exemptions for the vehicles because the vehicles were not specifically identified in the security agreement.[3]

[3] The O'Briens also argued that the bank did not have a security interest in the vehicles because the vehicles were previously subject to a purchase money security interest (PMSI). The district court rejected that argument, stating that, "The fact that the purchase money

The district court granted the motion to strike, denied the motion for sanctions, and determined that the security agreement's general descriptions of the collateral were sufficient for a security interest to attach. The district court's order did not mention the manufactured home, but stated that "the remaining property identified in the Notices cannot qualify for exemptions because it is subject to a valid, enforceable security interest." The O'Briens appeal, challenging only whether the manufactured home and the Honda qualify for statutory exemption.

D E C I S I O N

First, the O'Briens' argument about the manufactured home is not properly before us. An appellate court generally will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). The O'Briens argue that the district court erred by denying the exemption for the manufactured home because the manufactured home meets the definition under Minn. Stat. § 327.31, subd. 6. But the O'Briens did not present this argument or any evidence that the manufactured home meets the statutory definition to the district court. As debtors, the O'Briens had the burden of proving entitlement to such an exemption. *See Savig v. First Nat. Bank of Omaha*, 781 N.W.2d 335, 343 (Minn. 2010) (noting that "the burden of proving entitlement to an exemption is on the debtor").

---

loans were paid off does not preclude enforcement of other agreements that grant the bank a separate and distinct security interest in the vehicles." The O'Briens do not challenge this on appeal.

Moreover, when reviewed in context, it is clear that the district court did not consider the argument about the manufactured home in its order. The bank's motion to strike the exemption rights did not address the manufactured home, and, during the motion hearing, the bank indicated that it would address its interest in the manufactured home at a later hearing unrelated to its motion to strike. The O'Briens presented no argument or evidence about the manufactured home. Accordingly, the district court's order striking the exemption rights did not mention the manufactured home and its reference to "remaining property" cannot be interpreted now to include the manufactured home when neither party expressed any intent to address the manufactured home during the proceeding. Because the argument about the manufactured home was not presented to or considered by the district court, we decline to consider it. *See Thiele*, 425 N.W.2d at 582.

Next, the O'Briens argue that the Honda is exempt from garnishment under the exemption statute. *See* Minn. Stat. § 550.37, subd. 1 (2018) ("The property mentioned in this section is not liable to attachment, garnishment, or sale on any final process, issued from any court."). The exemption statute "provides a list of property that a debtor can claim as exempt from garnishment," including one motor vehicle with a value not exceeding $4,800. *Savig*, 781 N.W.2d at 343; *see* Minn. Stat. § 550.37, subd. 12a (2018). Vickie O'Brien claimed an exemption for the Honda as her one motor vehicle. The O'Briens claim the Honda is valued at $2,400, which the bank does not dispute.

Nevertheless, the bank argues that it has a security interest in the Honda pursuant to the 2003 security agreement, which is enforceable despite the Honda's exempt status. "[T]he mere inclusion of property within the exemption statute does not necessarily

interfere with a debtor's express grant of a security interest in that property." *Schultz v. First Edina Nat'l Bank*, 409 N.W.2d 281, 283 (Minn. App. 1987). The exemption statute "does not forbid a debtor to mortgage exempt property and to create a lien against identified property which can be foreclosed despite the property's exempt status." *Moyer v. Int'l State Bank of Int'l Falls, Minn.*, 404 N.W.2d 274, 275 (Minn. 1987); *see Georgens v. Fed. Deposit Ins. Corp.*, 406 N.W.2d 95, 99 (Minn. App. 1987) (stating that, under *Moyer*, the exemption statute "does not deprive a debtor, who holds a perfected security interest, of any of the ordinary incidents of ownership of exempted property" and "does not restrict the debtor's freedom to dispose of exempted possessions as desired"). Thus, we must determine whether the bank has an enforceable security interest in the Honda. Whether the security agreement granted the bank a security interest in the Honda is a question of law, which we review de novo. *See First Minn. Bank v. Overby Dev., Inc.*, 783 N.W.2d 405, 413 (Minn. App. 2010) (stating that whether the contract and the law governing secured transactions granted appellant a security interest in the surplus was a question of law reviewed de novo).

Because the 2003 commercial security agreement is a commercial transaction, this dispute is subject to the Uniform Commercial Code (UCC), which Minnesota has adopted. *See Allete, Inc. v. GEC Eng'g, Inc.*, 726 N.W.2d 520, 522 (Minn. App. 2007) (stating that a commercial-transaction dispute is subject to the UCC, which Minnesota has adopted). Under the UCC, a security interest is enforceable against the debtor if (1) value has been given; (2) the debtor has the power to transfer rights in the collateral; and if one of several conditions is met, including that (3) the debtor has authenticated a security agreement that

provides a description of the collateral. Minn. Stat. § 336.9-203(b)(1)-(2),(3)(A) (2018). The first two conditions have been met here.

The parties dispute only whether the security agreement described the Honda as collateral. Generally "a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described." Minn. Stat. § 336.9-108 (2018). A description of collateral by category reasonably identifies the collateral. Minn. Stat. § 336.9-108(b)(2). We "liberally construe descriptions in the security agreement and financing statement because their essential purpose is to provide notice, not to definitively describe each item of collateral." *Border State Bank of Greenbush v. Bagley Livestock Exch., Inc.*, 690 N.W.2d 326, 331 (Minn. App. 2004), *review denied* (Minn. Feb. 23, 2005). The 2003 security agreement describes the property being pledged in relevant part as "[a]ll equipment including, but not limited to . . . vehicles." Because the Honda is a vehicle, the security agreement reasonably identified it as collateral.

But the O'Briens argue that the security agreement did not reasonably identify the Honda because Minn. Stat. § 336.9-108(e)(2) requires consumer goods to be *specifically* identified. *See* Minn. Stat. § 336.9-108(e) ("A description only by type of collateral . . . is an insufficient description of . . . (2) in a consumer transaction, consumer goods . . ."). The O'Briens did not present this argument to the district court, but contend that classifying the Honda as a consumer good on appeal is merely a refinement of their argument that the bank needed to specifically identify the property in the security agreement. *See Jacobson v. $55,900 in U.S. Currency*, 728 N.W.2d 510, 523 (Minn. 2007) ("While [appellant] has

refined the argument he made to the district court, we conclude that he is not raising a new argument on appeal."). We are not persuaded.

At the district court, the O'Briens argued that *Moyer* applies only in cases where the collateral was specifically identified in the security agreement. This is distinguishable from their appellate argument that the Honda is a consumer good that must be specifically identified in the security agreement under Minn. Stat. § 336.9-108(e)(2). Because this consumer-goods argument was neither presented to nor considered by the district court, we decline to consider it.[4] *See Thiele*, 425 N.W.2d at 582 (noting that an appellate court generally will not consider matters not argued to and considered by the district court).

Finally, the O'Briens argue that the security agreement did not create a security interest in the Honda because the agreement did not apply to personal property. This is an issue of contract interpretation. When interpreting a contract, we "look to the language of the contract to determine the parties' intent." *Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). "When the language is clear and unambiguous, we enforce the agreement of the parties as expressed in the language of the contract." *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). We construe a contract as a whole and attempt to harmonize all of its clauses. *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525 (Minn. 1990).

---

[4] We also note that this argument would likely fail on the merits because Minn. Stat. § 336.9-108(e)(2) applies only to consumer transactions and the parties agree that the 2003 security agreement was a commercial transaction. *See* Minn. Stat. § 336.9-108(e)(2) ("A description only by type of collateral . . . is an insufficient description of . . . (2) *in a consumer transaction*, consumer goods, a security entitlement, a securities account, or a commodity account." (emphasis added)).

The first page of the security agreement provides that the property will be used for "business" and "agricultural purposes," but not "personal" purposes. The O'Briens contend this provision was intended to limit the collateral pledged to business or agricultural property. But the second page of the security agreement provides, "The Debtor will keep the Property in good repair and use the Property only for purposes specified on page 1." When reading the contract as a whole, it is clear the provision on the first page was intended to limit the O'Briens' use of the property, not the type of collateral being pledged.

In sum, we conclude that the security agreement reasonably identified the Honda and the bank's security interest attached to it. Because the O'Briens granted the bank a security interest in the Honda, the bank may foreclose on its interest regardless of the Honda's exempt status. *See Moyer*, 404 N.W.2d at 275 (stating that the exemption "statute does not forbid a debtor to mortgage exempt property and to create a lien against identified property which can be foreclosed despite the property's exempt status."); *Schultz*, 409 N.W.2d at 283 ("[T]he mere inclusion of property within the exemption statute does not necessarily interfere with a debtor's express grant of a security interest in that property.").

Affirmed.