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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-1251**

Grand Central Lofts Phase I Condominiums,  
Respondent,

vs.

Grand Central Lofts Master Association, et al.,  
Appellants,

and

Grand Central Cottages Homeowners Association,  
Co-Appellant.

**Filed May 4, 2020  
Affirmed in part, reversed in part, and remanded  
Larkin, Judge**

Anoka County District Court  
File No. 02-CV-16-4824

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

## UNPUBLISHED OPINION

**LARKIN**, Judge

Appellants challenge the district court's denial of their posttrial motions for amended findings of fact and conclusions of law and grant of respondent's motion for attorney fees, costs, and disbursements. Appellants argue that the district court erred as a matter of law in interpreting the terms of a contract; erred in adopting the jury's award of damages for breach of the duty of good faith and fair dealing; erred in granting declaratory and injunctive relief; and abused its discretion in awarding attorney fees, costs, and disbursements. We affirm the district court's contractual interpretation and grants of declaratory and injunctive relief, reverse the damages award, and reverse and remand in part the district court's award of attorney fees, costs, and disbursements.

### FACTS

This case arises from disputes among homeowners associations over the governance of a common interest community in Anoka County. Appellant Grand Central Lofts Master Association (the Master) is a common interest community governed by the Minnesota Common Interest Ownership Act (MCIOA), Minn. Stat. §§ 515B.1-101 to .4-118 (2018). Respondent Grand Central Lofts Phase I Condominiums (the Condos) and appellant Grand Central Lofts Townhomes Association (the Townhomes) are associations under the MCIOA. Co-appellant Grand Central Cottages Homeowners Association (the Cottages) is exempt from the MCIOA under Minn. Stat. § 515B.1-102(e)(2), because it consists of freestanding residential units.

The Master was legally created in September 2005, when the Master Declaration was recorded in Anoka County. The Condos was legally created on the same day, when its declaration was recorded and it was listed as a neighborhood in the Master Declaration. The Townhomes was legally created when its declaration was recorded in March 2006. The Master Declaration was amended in January 2010 to list the Townhomes as a neighborhood. Both the Condos and the Townhomes are subject to and voting members of the Master.

The Cottages' residential units were constructed on land that was legally severed from the Townhomes. In 2013, the Cottages was formed, and it recorded a declaration subjecting itself to the Master and requiring its members to pay dues to the Master. In May 2015, the Cottages began to act as a voting member of the Master. Under the terms of the Master Declaration, each neighborhood had one vote in the Master.

The Master Declaration required each unit to pay dues to the Master. The declaration provided that dues would be assessed proportionally based on the land area of each neighborhood. Nevertheless, Master dues were assessed on a per-unit basis for years. As a result, each homeowner paid the same amount in Master dues, which meant that the homeowners of the Condos paid more dues than required under the Master Declaration. The incorrect assessments occurred without dispute until May 2015, when the Condos brought the issue to the Master's attention.

For more than one year, the parties disputed and negotiated the assessment of dues and the allocation of operating expenses. On May 1, 2016, the Condos began to make reduced payments based on land area. In June 2016, the Master voted to revise the 2016

budget in light of the reduced payments by the Condos. The revised budget lowered the Condos' dues and implemented several policies to minimize operating expenses, including closing a clubhouse and forgoing contributions to the reserve fund.

On September 19, 2016, the Condos sued the Master, the Townhomes, and the Cottages (collectively appellants). The Condos sued the Master for breach of contract, breach of fiduciary duty, and breach of statutory duty. The Condos alleged three contractual breaches by the Master: (1) the allocation of Master dues based on unit rather than land area, (2) the clubhouse closure, and (3) the failure to maintain an adequate reserve fund. The Condos also sued the Master for breach of the duty of good faith and fair dealing, alleging that the Master “act[ed] dishonestly and unreasonably toward [the Condos] by breaching the terms of the Master Declaration and Bylaws.”

The Condos sued the Townhomes and the Cottages for disgorgement based on its overpayment of dues.<sup>1</sup> The Condos alleged that the Cottages was not a neighborhood under the Master Declaration because the Master never amended the Master Declaration to incorporate the Cottages as a member. The Condos therefore asserted that the Cottages' previous votes on matters relating to the Master were unauthorized.

The Condos sought monetary damages, as well as declaratory and injunctive relief. It requested that the district court, among other things, reallocate Master dues based on the

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<sup>1</sup> Disgorgement is “[t]he act of giving up something (such as profits illegally obtained) on demand or by legal compulsion.” *Black’s Law Dictionary* 568 (10th ed. 2014); *see also Nelson v. Tripp*, 118 N.W.2d 805, 808 (Minn. 1962) (providing that a party may seek “[a]n equitable remedy to compel one unjustly enriched at the expense of another to disgorge”).

land area of each neighborhood, declare that the Cottages was never properly admitted as a member of the Master, and declare that all votes cast by the Cottages were void.

The case was tried to a jury on October 8-12, 2018. The district court submitted a special verdict form to the jury. The special verdict form addressed the Condos' claims for breach of contract and breach of the duty of good faith and fair dealing. The parties agreed to submit the remaining issues to the district court. Those issues included the Cottages' purported status as a neighborhood and inclusion in the Master, the Condos' requests for declaratory and injunctive relief, and the Condos' other claims for relief.

The special verdict form addressed the three contractual breaches alleged by the Condos. The jury found that the Master breached the Master Declaration by allocating Master dues on a per-unit basis but that the Condos ratified that breach. The jury also found that the Master breached the Master Declaration by closing the clubhouse but that the closure was justified by hindrance of performance or undue hardship. Lastly, the jury found that the Master did not fail to maintain an adequate reserve fund. Accordingly, the jury did not award any damages to the Condos on its breach-of-contract claims.

The jury determined that the Master breached the duty of good faith and fair dealing and that the Condos suffered damages as a result. But the special verdict form did not include any questions identifying the acts that constituted that breach. The jury awarded \$186,378.10 to "fairly and adequately compensate" the Condos for the "damages directly caused by the breach of duty of good faith and fair dealing."

The district court issued an order on January 7, 2019, reviewing the jury's findings and deciding the issues that were not submitted to the jury. It concluded that the jury's

findings regarding the breach-of-contract claim were supported by the evidence in the record. The district court also determined that the evidence supported the jury's award of damages for breach of the duty of good faith and fair dealing. Specifically, the district court made the following findings of fact:

On the issue of good faith and fair dealing, the jury found that the Master Association's conduct had breached these statutory duties owed to the Condos. The jury awarded the Condos \$186,378.10 in damages, which is supported by the evidence introduced at trial. . . .

Specifically, the Condos made overpayments of \$186,379.20 to the Master Association, from 2013 through 2016. . . . This was during the time period before this action commenced in which the Cottages claimed to be a voting member of the Master Association, which was proven to be an invalid claim.

Additionally, the record supports the Condos claim that the Master Association, acting through the Townhomes and Cottages, took adverse actions to the Condos' detriment; such as, refusing to negotiate the assessment and payment of dues, expenses, and reserve funds. These actions occurred while the Cottages were illegitimately acting as a voting member of the Master Association, which placed the Condos at a severe disadvantage.

The record adequately supports the jury's verdict as to the basis and amount of damages awarded.

The district court ordered that the Condos was entitled to judgment against the Master for \$186,378.10.

The district court also granted the Condos' following requests "for declaratory judgment and injunctive relief": (1) allocating Master dues based on the land area of each neighborhood, in accordance with the Master Declaration; (2) declaring that the Cottages is not a neighborhood, member, or voting member of the Master; (3) declaring that all votes

cast by the Cottages were void; and (4) declaring, prospectively, that a closure of the clubhouse constitutes a breach of contract. The district court concluded that the Condos was the prevailing party and entitled to attorney fees, costs, and disbursements. The district court directed the Condos to request those by motion. Lastly, the district court dismissed all claims not addressed in the order.

On January 23, 2019, the Condos moved for attorney fees. Appellants opposed the motion, arguing that the Condos was not a prevailing party. The Master and the Townhomes also argued that the Condos' claimed attorney fees were excessive and unreasonable. On February 7, 2019, the Master and the Townhomes moved the district court for amended findings of fact and conclusions of law. On February 8, 2019, the district court held a hearing on the Condos' motion for attorney fees. At the hearing, the parties expressed concern that the Master and the Townhomes' posttrial motion could affect the attorney-fees issue. The parties agreed to defer argument regarding attorney fees until the hearing on the posttrial motion.

The Master and the Townhomes filed a memorandum in support of their motion for amended findings of fact and conclusions of law. They argued that the Master was entitled to judgment as a matter of law on the Condos' good-faith-and-fair-dealing claim because the evidence did not support the damages award, that the district court's grant of injunctive and declaratory relief was improper, that the Condos was not entitled to attorney fees against the Townhomes because the Townhomes was a prevailing party, and that the Cottages was a neighborhood subject to the Master. The Cottages joined the motion, but it opposed the argument that the Cottages was a neighborhood subject to the Master. The

Cottages argued that it was not subject to the Master Declaration because the district court determined that it was not a neighborhood and had been legally severed from the Townhomes. The Cottages also argued that the Condos was not a prevailing party over the Cottages.

The district court held a hearing on the posttrial motions on April 23, 2019. When counsel for the Master and the Townhomes attempted to challenge the reasonableness of the requested attorney fees, counsel for the Condos asserted that the parties had agreed at the February 8 hearing that appellants would not contest the reasonableness of attorney fees. Although counsel for the Master and the Townhomes adamantly maintained that the parties had made no such agreement, counsel for the Condos insisted that he was “quite certain” they had. The district court reviewed the court minutes of the February 8 hearing and stated, “I don’t know that I could say that there was an agreement about attorney fees.”

On July 8, 2019, the district court ruled on the posttrial motions. It granted the Condos’ motion for attorney fees and ordered that all appellants were jointly and severally liable for attorney fees, costs, and disbursements. The district court found that the Condos prevailed over all appellants because it “generally succeeded in [its] claims, which all Defendants jointly opposed, and [has] benefitted from the jury’s verdict and Court’s Order.” It reasoned that the Master and the Townhomes “were represented by the same Counsel and took the same positions in this matter against the Condos’ claims.” It also reasoned that the Cottages “should not be allowed to separate [itself] from the responsibility” for attorney fees, costs, and disbursements because it jointly opposed the Condos’ claims with the Master and the Townhomes.



The district court stated that appellants had not challenged the reasonableness of the Condos' requested attorney fees, costs, or disbursements. It explained:

At the February 8, 2019 hearing, the Court heard argument regarding the issue of attorneys' fees. While Defendants argued as to whether Condos were the prevailing party, Defendants did not argue against the reasonableness of the Condos' asserted fees, costs, and disbursements. The parties all agreed on the record that the Court should reserve the issue of attorney's fees until the post-trial motions could be heard, with the understanding that no additional arguments would be raised regarding attorney's fees except for fees that were additionally incurred in this matter.

Accordingly, the district court concluded, without further analysis, that the Condos' requested attorney fees, costs, and disbursements were reasonable.

The district court denied appellants' posttrial motions. It rejected the argument that the evidence was insufficient to support the jury's award of damages. The district court refused to stay the declaratory and injunctive relief, stating that such relief was "necessary for the parties' compliance with the terms of the Master Declaration" because appellants had continued to dispute the terms of the Master Declaration. The district court declined to consider appellants' requests for declaratory and equitable relief—specifically, the Master and the Townhomes' motion to name the Cottages as a neighborhood and the Cottages' request to declare that it was no longer subject to the Master Declaration—reasoning that appellants had not pleaded such relief.

The Master, the Townhomes, and the Cottages appeal.

## DECISION

### I.

We first address the issues that are specific to the Cottages. The Cottages challenges the district court's determinations regarding its status as a neighborhood under the Master Declaration. The Cottages argues that the district court erred as a matter of law in concluding that it is not a valid neighborhood under the Master Declaration. Alternatively, the Cottages maintains that if it is not a valid neighborhood, then the district court erred by failing to rule that it is not bound by the terms of the Master Declaration. Lastly, the Cottages challenges the district court's failure to rule on its argument that the Condos waived any objection to the Cottages' failure to perfect its neighborhood status.

#### **A. The Cottages is not a valid neighborhood under the Master Declaration.**

The district court found that the Master Declaration is a contract. Absent ambiguity, the interpretation of a contract is a question of law, which we review *de novo*. *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *review denied* (Minn. July 19, 2011). Neither the Cottages nor the Condos argues that the Master Declaration is ambiguous.

The Cottages contends that the district court erred by concluding that it is not a valid neighborhood under the Master Declaration. According to the Cottages, it followed the necessary procedure under the Master Declaration to become a neighborhood. Section 3.3.1 of the Master Declaration provides the following requirements for creation of a neighborhood:

A Neighborhood shall be created by, and the Parcels within a Neighborhood shall be subject to, a recorded declaration containing covenants, conditions, restrictions and easements consistent with the Master Governing Documents. An amendment to this Master Declaration, shall initially identify the Neighborhood or Neighborhoods created by that instrument and legally describe the property on which the Neighborhood is located.

The Cottages argues that the phrase “shall be created by” means that a neighborhood is created when it records its declaration and that the word “shall” in the second sentence requires the Master Declaration to be amended to identify the neighborhood after it records its declaration. The Cottages argues that the phrase “created by that instrument” demonstrates that the declaration itself, and not the amendment to the Master Declaration, creates the neighborhood. The Cottages concludes that, because the Cottages’ land was legally severed from the Townhomes’ property and the Cottages recorded its own declaration incorporating the Master Declaration, it became a neighborhood under the Master Declaration.

The Condos offers a different interpretation of the Master Declaration. It argues that merely recording a declaration is not sufficient to create a neighborhood because if it were, unit owners could create numerous neighborhoods without the Master’s consent simply by recording a declaration. The Condos argues that the phrase “shall be created by” simply means that a neighborhood must record its declaration in order to be created, and not that the recording of a declaration automatically creates a neighborhood. According to the Condos, the creation of a neighborhood requires an amendment to the Master Declaration. It relies on section 3.3.4, which provides, “The Neighborhood

Governing Documents shall be submitted to the Master Declarant and subject to the prior written consent of the Master Declarant prior to adoption or recordation.” It also relies on section 13, which requires 67% of the votes of all members in order to approve amendments to the Master Declaration. The Condos concludes that because the Master Declaration was never amended to add the Cottages as a member of the Master, the district court did not err in determining that the Cottages was not a neighborhood.

For the reasons that follow, we conclude, *de novo*, that the Cottages is not a neighborhood under the Master Declaration. Section 3.3.4 of the Master Declaration requires a proposed neighborhood to submit its declaration to and obtain consent from the Master declarant *before* the declaration is recorded. The Cottages argues that section 3.3.4 is irrelevant here because it references the Master declarant, not the Master board. But under section 1.21 of the Master Declaration, the term “Master Declarant” includes any person who succeeds to any Master declarant rights. The district court found that the Master declarant relinquished control of the Master Declaration in 2010, and the evidence at trial showed that the Master declarant turned over control of the Master board to the Condos and the Townhomes. Thus, the Cottages had to obtain approval from the Master board before it could record its declaration.

The district court found that there was no evidence that the Cottages obtained prior written consent from the Master board before it recorded its declaration. The Cottages does not challenge that finding of fact on appeal and instead argues that the district court erred as a matter of law in determining that section 3.3.4 is applicable. Because section 3.3.4 is applicable and there is no evidence that the Cottages complied with its

prerecording-consent requirement, we conclude that the Cottages is not a valid neighborhood under the Master Declaration.

**B. The district court did not err by declining to rule that the Cottages is not subject to the Master Declaration if it is not a valid neighborhood.**

The Cottages contends that if it is not a valid neighborhood, then it is not subject to the Master Declaration and does not have to pay dues to the Master. The Condos counters that the Cottages waived this argument by not including it in its pleading or proving it at trial.

The Cottages raised the issue of its obligations to the Master as a non-neighborhood for the first time in its reply memorandum supporting its posttrial motion for amended findings of fact and conclusions of law. The district court treated the argument as a request for declaratory and injunctive relief. The district court denied that request because it was “raised without having been pleaded through counterclaims, amended pleadings, or tried by the Condos’ consent.” The district court did not err in doing so because an issue raised for the first time in a posttrial motion is untimely. *Grigsby v. Grigsby*, 648 N.W.2d 716, 726 (Minn. App. 2002), *review denied* (Minn. Oct. 15, 2002).

The Cottages argues that the Condos consented to litigate its obligations to the Master because “the Condos’ requested relief throughout this litigation was to have the Cottages removed from the Master, and the Cottages no longer being bound by the terms of the Master Declaration is an obvious consequence of the Cottages being removed from the Master.”

Although the Cottages' argument may have superficial appeal, our review of the record, including the Master Declaration, reveals that the Cottages' posttrial obligations to the Master are not as obvious as the Cottages contends. The Master Declaration could be read to suggest that the Cottages may be subject to the Master Declaration even if it is not a neighborhood. Although the Cottages' land was severed from the Townhomes, it is not clear that the land was severed from the Master. Moreover, the Cottages' main contention is that it should not have to pay dues to the Master if it is not a neighborhood. But under the Master Declaration, unit owners pay the share of any assessment allocated to their parcels directly to the Master.<sup>2</sup> Thus, it is not clear that the Cottages itself has any obligation to pay dues to the Master.

In sum, the district court did not rule, and its judgment therefore does not state, that the Cottages is subject to the Master or that it must pay dues to the Master. The district court's refusal to consider and determine that issue does not resolve the issue in either party's favor. Because the scope of the Cottages' obligations to the Master as a non-neighborhood was not timely raised or decided in the district court, we do not resolve that issue for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it." (quotation omitted)).

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<sup>2</sup> We note that no individual unit owner is a party to the underlying litigation.

**C. The district court did not err by failing to address the Cottages' waiver argument.**

The Cottages contends that the district court erred by failing to address its argument “that the Condos, through its course of conduct, waived its right to object to the Cottages’ addition to the Master.” The Cottages raised that argument in a summary-judgment motion. The district court denied summary judgment because there were “genuine issues of material facts regarding the process in which Cottages became a voting member” that were relevant to the issue of waiver.

Throughout trial, counsel for the Cottages elicited testimony from witnesses that the Condos did not initially object to the Cottages’ participation on the Master, and she relied on that testimony during the closing argument. But the jury was not asked to decide whether the Condos waived the right to object to the Cottages’ neighborhood status on the Master. And the district court did not address that issue in its January 7 order.

When a district court fails to make a requested finding, the requesting party has the burden of notifying the district court through a motion for amended findings. *Frank v. Ill. Farmers Ins. Co.*, 336 N.W.2d 307, 311 (Minn. 1983); see Minn. R. Civ. P. 52.02. If a party does not bring an omitted finding to the district court’s attention, then there is nothing for an appellate court to review on that issue. *Frank*, 336 N.W.2d at 311.

In its posttrial motions, the Cottages did not raise the district court’s failure to address the Cottages’ waiver argument. Instead, the Cottages argued only that the Condos did not prevail over the Cottages. A posttrial motion for amended findings regarding the Cottages’ waiver argument would have prompted the district court to address the issue in

its posttrial order and would have enabled appellate review of the issue. Given the Cottages' posttrial failure to request a ruling on its waiver argument, the district court did not err by failing to address the issue, and we decline to address the merits of the issue. *See Pac. Mut. Door Co. v. James*, 465 N.W.2d 696, 701 (Minn. App. 1991) ("Where there are neither findings of fact nor a conclusion of law as to an issue and the claimed omission is not brought to the attention of the [district] court by motion for amended facts, this court will not review the issue.").

## II.

The Master contends that the district court erred by upholding the jury's damages award of \$186,378.10. The Master argues that there was no evidence at trial regarding the amount of damages stemming from the Master's breach of the duty of good faith and fair dealing or establishing a causal connection between the breach and damages. The Master alternatively argues that there was no evidence that the Master unjustifiably hindered the Condos' performance of the contract. Under either theory, the Master maintains that it is entitled to judgment as a matter of law on the good-faith-and-fair-dealing claim.

Appellate courts review a district court's denial of judgment as a matter of law *de novo*. *In re Estate of Butler*, 803 N.W.2d 393, 398-99 (Minn. 2011). In doing so, they "apply the same standard as the district court and view the evidence in the light most favorable to the nonmoving party." *Id.* at 399. Judgment as a matter of law is proper when the jury's verdict "has no reasonable support in fact or is contrary to law." *Kidwell v. Sybaritic, Inc.*, 749 N.W.2d 855, 861 (Minn. App. 2008), *aff'd*, 784 N.W.2d 220 (Minn. 2010); *see* Minn. R. Civ. P. 50.02. In reviewing the jury's verdict, "a special verdict form



is to be liberally construed to give effect to the intention of the jury and on appellate review it is the court's responsibility to harmonize all findings if at all possible." *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 662 (Minn. 1999). The jury's verdict must be upheld if the answers to the questions submitted to the jury "can be reconciled in any reasonable manner consistent with the evidence and its fair inferences." *Id.* (quotation omitted).

**A. The record evidence did not support the jury's damages award.**

"Under Minnesota law, every contract includes an implied covenant of good faith and fair dealing requiring that one party not unjustifiably hinder the other party's performance of the contract." *In re Hennepin Cty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 502 (Minn. 1995) (quotation omitted). "Liability for breach of contract requires proof that damages resulted from or were caused by the breach." *Border State Bank of Greenbush v. Bagley Livestock Exch., Inc.*, 690 N.W.2d 326, 336 (Minn. App. 2004), *review denied* (Minn. Feb. 23, 2005). A claim for breach of contract fails if the plaintiff cannot show that he or she has been damaged by the breach. *Jensen v. Duluth Area YMCA*, 688 N.W.2d 574, 578-79 (Minn. App. 2004); *see Cox v. Mortg. Elec. Registration Sys., Inc.*, 685 F.3d 663, 671 (8th Cir. 2012) ("Minnesota law requires a claim for breach of the duty of good faith and fair dealing to allege a causal link between the alleged breach and the party's claimed damages." (quotation omitted)). "As a general rule, damages which are speculative, remote, or conjectural are not recoverable." *Hornblower & Weeks-Hemphill Noyes v. Lazere*, 222 N.W.2d 799, 803 (Minn. 1974).

The Master argues that the trial record contains no evidence of two necessary elements of the Condos' claim for breach of the duty of good faith and fair dealing:

damages and causation. The Master therefore concludes that the jury's damages award was impermissibly based on speculation.

Our review of the record reveals only one possible basis for the jury's award of \$186,378.10 in damages: overpayment of Master dues from 2013 to 2016. The Condos submitted an exhibit setting forth the annual amount of Master dues that the Condos overpaid from 2010 to 2016. In arriving at the damages award of \$186,378.10, the jury appears to have added the overpayments from 2013 to 2016, which equals \$186,379.20.

The district court determined that the evidence at trial supported the damages award because the overpayments, as well as other "adverse actions to the Condos' detriment," occurred at the same time that the Cottages was "illegitimately acting as a voting member of the Master." The district court reasoned that the jury's finding that the Master breached the duty of good faith and fair dealing was based on the fact that the Cottages was allowed to vote as a member of the Master even though it was not a valid neighborhood. But the district court found, and the evidence showed, that the Cottages did not begin to vote on the Master until 2015. Thus, the jury's damages award cannot be justified by the evidence showing the Condos' overpayment of dues in 2013 and 2014.

Moreover, there is no evidence showing a connection between any conduct resulting in a breach of the duty of good faith and fair dealing and the damages that were awarded. At trial, the Condos did not assign a dollar amount to the harm resulting from that breach or explain how the jury could calculate the monetary value of such harm. Indeed, during closing argument, counsel for the Condos did not argue that the jury should award monetary damages for any breach of the duty of good faith and fair dealing. Instead,

counsel told the jury that the Cottages' invalid status on the Master was a "nonmonetary" issue.

The Condos argues that evidence regarding the overpaid dues supports the award of damages on its good-faith-and-fair-dealing claim because it pleaded that claim as an alternative to its breach-of-contract claim against the Master. That argument is unavailing because a damages award based on overpaid dues cannot be reconciled with the jury's finding that although the Master breached its express contractual obligation to the Condos by allocating Master dues on a per-unit basis, the Condos ratified that breach and was therefore not entitled to damages. We fail to discern why the Condos' ratification of the overpaid dues prevents the Condos from recovering those dues as damages for the express breach, but does not prevent such recovery for the implied breach. Although the conduct constituting the implied breach may have been different than the conduct constituting the express breach, the improper calculation of dues was easily discernible from the Master Declaration. It was not concealed by any conduct that may have supported the jury's finding of a breach of the duty of good faith and fair dealing. Thus, the jury's finding that the Condos ratified the Master's improper assessment of dues is inconsistent with an award of damages for overpaid dues for both the express and implied breaches.

In sum, the trial evidence does not reveal a connection between any conduct constituting a breach of the duty of good faith and fair dealing and the jury's damages award. Nor does the evidence support the dollar amount of the award. On this record, the damages award is speculative and cannot be sustained. *See id.* at 803, 807 (reversing because "the evidence, viewed in the light most favorable to the verdict, [was] too

speculative to afford a reasonable basis for that portion of the verdict granting damages to defendant”). We therefore conclude that the Master is entitled to judgment as a matter of law on the Condos’ claim for breach of the duty of good faith and fair dealing without addressing the Master’s alternative argument that it is entitled to judgment as a matter of law because there is no evidence of unjustifiable hindrance.

### III.

The Master, the Townhomes, and the Cottages contend that the district court erred by granting declaratory and injunctive relief as follows: (1) ordering that Master dues be allocated based on the land area of each neighborhood, (2) declaring that the Cottages is not a neighborhood or member of the Master, (3) declaring that all votes cast by the Cottages on the Master are void, and (4) prospectively declaring that the closure of the clubhouse is a breach of contract.

#### A. **The district court did not err by granting declaratory relief.**

The Minnesota Declaratory Judgments Act enables courts “to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Minn. Stat. § 555.01 (2018). Declaratory-judgment actions serve a preventative purpose and allow parties to resolve uncertainties regarding their legal rights before those rights are actually invaded. *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 339 (Minn. 2011). “The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.” Minn. R. Civ. P. 57. When reviewing a declaratory-judgment action, appellate courts review the district court’s findings of fact for clear error

and its legal determinations de novo. *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 615 (Minn. 2007).

The Declaratory Judgments Act provides that an interested party under a written contract may seek a declaratory judgment to determine questions of construction arising under the contract. Minn. Stat. § 555.02 (2018); *see also Myhre v. Severson*, 300 N.W. 605, 606 (Minn. 1941) (noting that a previous version of the declaratory-judgment statute was “very broad and seems to give to any party to a written instrument the right to have it construed”). That is precisely what the Condos did in bringing this action. The district court issued appropriate declaratory relief by construing the Master Declaration and declaring the parties’ rights under it. In doing so, the district court correctly interpreted the Master Declaration and clarified the proper method for assessing Master dues, the Cottages’ status as a neighborhood and voting member, and whether a closure of the clubhouse would constitute a breach of contract. The district court did not err by issuing declaratory relief in accordance.

The Master and the Townhomes contend that the declaratory relief was inappropriate because it was duplicative of the Condos’ other claims. Again, a party may receive declaratory relief even if it can obtain another adequate remedy. Minn. Stat. § 555.01; Minn. R. Civ. P. 57. The cases that the Master and the Townhomes cite regarding duplicative claims involve the Federal Declaratory Judgments Act, and not Minnesota’s statute.

Appellants also argue that the district court’s grant of declaratory relief was improper because declaratory relief must be prospective and cannot “announce past

injuries.” But “[a] contract may be construed either before or after there has been a breach thereof.” Minn. Stat. § 555.03 (2018). Because the Master previously breached the contract by allowing the Cottages to vote even though it was not a valid neighborhood, the district court did not err by declaring the breach and that the Cottages’ votes were invalid.

The Master and the Townhomes further argue that declaratory relief regarding the assessment of Master dues based on land area was improper because there was no longer a controversy regarding this issue when the underlying lawsuit began. But the Declaratory Judgments Act is to be “liberally construed and administered.” Minn. Stat. § 555.12 (2018). In its July 8 order regarding posttrial motions, the district court declined to stay the declaratory relief because such relief was “necessary for the parties’ compliance with the terms of the Master Declaration,” so that appellants could not continue to dispute those terms. Indeed, the incorrect assessment of dues was the catalyst that initiated the current dispute among the homeowners associations. The declaratory relief was appropriate to clarify the correct dues-assessment method under the Master Declaration and to ensure that the Master did not assess dues incorrectly in the future.

In sum, the district court did not err in granting declaratory relief to the Condos.

**B. The district court did not abuse its discretion in granting injunctive relief.**

“[T]o be granted a permanent injunction, a party must show that any remedy at law would be inadequate and that an injunction is necessary to prevent great and irreparable injury.” *St. Jude Med., Inc. v. Carter*, 913 N.W.2d 678, 683 (Minn. 2018) (quotation omitted). Appellate courts review the grant of a permanent injunction for an abuse of

discretion. *Id.* at 684. “[W]here a [district] court has determined that the prevailing party is entitled to relief, it may fashion such remedies, legal and equitable, as are necessary to effectuate such relief.” *Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979).

Appellants contend that the district court abused its discretion by granting injunctive relief because an injunction was not necessary to prevent irreparable harm. They assert that there was no possibility of irreparable harm because Master dues were already being assessed based on land area prior to the commencement of this lawsuit. According to appellants, injunctive relief was improper because they were no longer engaged in the conduct to be enjoined.

We are not persuaded. The district court’s orders for injunctive relief are consistent with its conclusions regarding the Condos’ claims. Even though the Master had begun to assess dues based on land area before trial, the entire dispute between the parties stemmed from the improper assessment of dues. It therefore was appropriate for the district court to address that issue through injunctive relief. Again, once the district court has determined that a party is entitled to relief, it has broad discretion to issue injunctive relief. *Id.* The district court did not abuse its discretion by doing so here.

#### IV.

The Master, the Townhomes, and the Cottages challenge the district court’s award of attorney fees, costs, and disbursements to the Condos. They take issue with the district court’s determinations that there was a basis to award attorney fees against the Cottages, that the Condos prevailed over all appellants, that all appellants were jointly and severally

liable for the fees and costs, and that appellants waived the right to contest the reasonableness of the requested attorney fees. This court reviews the district court's decision on an award of attorney fees for an abuse of discretion. *Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 331 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). Appellate courts "generally review a district court's award of costs and disbursements for an abuse of discretion." *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 155 (Minn. 2014).

**A. The district court abused its discretion by awarding attorney fees against the Cottages.**

The Cottages contends that the district court erred by awarding attorney fees against it because there was no statutory or contractual basis for the award. A party cannot recover attorney fees unless such fees are authorized by statute or contract. *Bolander v. Bolander*, 703 N.W.2d 529, 548 (Minn. App. 2005), *review dismissed* (Minn. Oct. 28, 2005). Here, the district court awarded attorney fees to the Condos under Minn. Stat. § 515B.4-116(b) and section 6.4.3 of the Master Declaration. The Cottages argues that those statutory and contractual provisions are inapplicable.

Minn. Stat. § 515B.4-116 provides that anyone who is adversely affected by a violation of the MCIOA may bring a claim for appropriate relief. Minn. Stat. § 515B.4-116(a). The district court "may award reasonable attorney's fees and costs of litigation to the prevailing party." *Id.* (b). The Cottages argues that this provision is inapplicable because the district court did not find that the Cottages violated the MCIOA. In response,



the Condos maintains that the statute does not limit recovery of attorney fees to parties that are subject to the MCIOA.

The Cottages has the stronger argument. The district court found that the Cottages is exempt from the MCIOA because it consists of freestanding residential units, and the Condos does not challenge that finding. Furthermore, the Condos did not allege that the Cottages violated the MCIOA. The only claims based on alleged violations of the MCIOA were the Condos' claims against the Master. Thus, Minn. Stat. § 515B.4-116 did not provide a basis for an attorney-fee award against the Cottages.

Moreover, the Master Declaration does not provide a basis for attorney fees against the Cottages. Indeed, the Condos does not assert that it does. Section 6.4.3 enables the Master to recover reasonable attorney fees that it incurs in collecting assessments or enforcing the Master Declaration. As such, only the Master, and not a neighborhood like the Condos, can collect attorney fees under that provision. Thus, section 6.4.3 did not provide a basis for an attorney-fee award against the Cottages.

In sum, the district court abused its discretion by awarding attorney fees against the Cottages absent legal authority for such an award.

**B. The district court abused its discretion by determining that the Condos prevailed over the Townhomes, but it correctly ruled that the Condos prevailed over the Cottages.**

When awarding costs and disbursements, the district court has discretion to determine both the amount of the award and who qualifies as the prevailing party. *Posey v. Fossen*, 707 N.W.2d 712, 714 (Minn. App. 2006). When determining the prevailing party, “the general result should be considered, and inquiry made as to who has, in the view

of the law, succeeded in the action.” *Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn. 1998) (quotation omitted). “The prevailing party in any action is the one in whose favor the decision or verdict is rendered and judgment entered.” *Id.* “We review a district court’s determination of a prevailing party for an abuse of discretion.” *Elsenpeter v. St. Michael Mall, Inc.*, 794 N.W.2d 667, 673 (Minn. App. 2011). A district court abuses its discretion when its decision is “against logic and facts on the record.” *Posey*, 707 N.W.2d at 714.

The district court determined that the Condos was the prevailing party over all appellants because the Condos “generally succeeded on [its] claims” and has “benefitted from the jury’s verdict.” Accordingly, it assessed attorney fees, costs, and disbursements against all appellants. The Townhomes and the Cottages contend that they prevailed over the Condos.

#### *1. The Townhomes*

The Townhomes argues that the Condos did not prevail over it because the Condos’ only cause of action against the Townhomes was dismissed. We agree. The Condos brought only one claim against the Townhomes: disgorgement of wrongfully received dues. That claim was not dismissed prior to trial. However, the special verdict form did not address disgorgement. Nor did the district court’s January 7 order. Instead, the district court ordered that any claims not addressed in that order were dismissed. Lastly, the district court did not issue declaratory or injunctive relief against the Townhomes.

In sum, the Condos was not the prevailing party on its only claim against the Townhomes. The district court abused its discretion by concluding otherwise. Because the Townhomes successfully defended the only claim against it, we reverse the district

court's determination that the Condos prevailed over the Townhomes and remand for the district court to enter judgment indicating that the Townhomes prevailed over the Condos.

## 2. *The Cottages*

As was the case with the Townhomes, disgorgement was the only claim that the Condos brought against the Cottages, and that claim was dismissed. But the district court granted declaratory and injunctive relief against the Cottages, declaring that the Cottages was not a neighborhood and that all the votes it had cast were void. The Cottages argues that the Condos did not prevail over it because the declaratory and injunctive relief did not benefit the Condos. But the caselaw that the Cottages cites in support of that proposition regards the federal standard for determining a prevailing party, and not the Minnesota standard. Under the Minnesota standard, the prevailing party is the one “in whose favor the decision or verdict is rendered and judgment entered.” *Borchert*, 581 N.W.2d at 840. Here, the Condos obtained declaratory and injunctive relief against the Cottages. The district court did not abuse its discretion in determining that, under those circumstances, the Condos prevailed over the Cottages.

### **C. The district court abused its discretion by imposing joint and several liability for attorney fees, costs, and disbursements on the Townhomes.**

The Townhomes challenges the district court's imposition of joint and several liability for attorney fees, costs, and disbursements. The district court concluded that the Townhomes was jointly and severally liable because “[t]he Master and the Townhomes were represented by the same Counsel and took the same positions in this matter against the Condos' claims.”

The district court did not cite, and we are not aware of, any caselaw supporting the proposition that parties who were not found to be liable at trial may nonetheless be jointly and severally liable for attorney fees simply because they were represented by the same counsel or took the same position in the case. In fact, “[i]t is not logically possible . . . to be jointly and severally liable without being severally liable.” *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 74 n.3 (Minn. 2012). Because the Condos did not prevail over the Townhomes and the Townhomes do not have any liability to the Condos, we reverse the district court’s imposition of joint and several liability for attorney fees, costs, and disbursements against the Townhomes.

**D. The district court abused its discretion in determining that appellants did not contest the reasonableness of the requested attorney fees.**

“Generally, Minnesota courts have used the lodestar method for determining the reasonableness of statutory attorney fees.” *Green v. BMW of N. Am., LLC*, 826 N.W.2d 530, 535 (Minn. 2013). “Under the lodestar method, the district court determines the number of hours reasonably expended on the litigation and multiplies that number by a reasonable hourly rate.” *650 N. Main Ass’n v. Frauenshuh, Inc.*, 885 N.W.2d 478, 495 (Minn. App. 2016), *review denied* (Minn. Nov. 23, 2016); *see also Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 621 (Minn. 2008) (listing factors to consider when determining reasonableness under the lodestar method).

The Master, the Townhomes, and the Cottages challenge the district court’s determination that appellants did not challenge the reasonableness of the Condos’ requested attorney fees at the February 8 hearing and its refusal to consider appellants’

argument regarding that issue.<sup>3</sup> For the reasons that follow, the district court erred in doing so.

The Master and the Townhomes specifically objected to the reasonableness of the requested attorney fees in their memorandum opposing the attorney fees, which was submitted to the district court on February 1. Six pages of that memorandum were devoted to an argument that the Condos' requested attorney fees were unreasonable under the lodestar method of calculating attorney fees. Moreover, at the February 8 hearing, counsel for the Cottages expressly stated, "That's what I wanted to clarify, Your Honor, to the extent that we're not going to argue about whether or not they were reasonable or hit lodestar or anything like that. I just wanted to make sure we weren't waiving those arguments by postponing it." Our review of the transcript of the February 8 hearing satisfies us that, although the parties agreed to postpone arguments regarding the attorney-fees request and that appellants could not raise any new arguments regarding attorney fees, appellants did not waive any issues that they had already raised.

The Condos asserts that appellants waived their reasonableness argument in their memoranda opposing attorney fees because they challenged only the district court's prevailing-party determination, made conclusory allegations without analysis, and did not challenge any specific time entry or task as unreasonable. The Master and the Townhomes' February 1 memorandum belies that contention. That memorandum applied the lodestar

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<sup>3</sup> A description of the relevant procedural posture begins on page seven of this opinion and is not repeated here.

method and specifically challenged the Condos' requested hourly rate for partner time, associate time, and paralegal time as excessive and unreasonable.

In sum, appellants contested the reasonableness of the Condos' requested attorney fees and did not waive their argument regarding that issue. The district court therefore erred by refusing to consider that argument before awarding attorney fees. We remand for a determination of the Master's challenge to the Condos' requested attorney fees using the lodestar method.<sup>4</sup> On remand, the district court should consider the amount of the Condos' recovery, given our reversal of the damages award. *See Milner*, 748 N.W.2d at 621 (listing "the amount involved and the results obtained" as a factor to consider when determining reasonableness under the lodestar method (quotation omitted)).

In conclusion, we affirm the district court's determination that the Cottages is not a neighborhood under the Master Declaration, its grants of declaratory and injunctive relief, and its determination that the Condos is a prevailing party over the Cottages. We reverse the damages award against the Master, the award of attorney fees against the Cottages, and the award of attorney fees, costs, and disbursements against the Townhomes, and remand for the district court to designate the Townhomes as the prevailing party over the Condos. Lastly, we reverse and remand the award of attorney fees against the Master, with instructions that the district court determine the reasonableness of the attorney fees using the lodestar method.

**Affirmed in part, reversed in part, and remanded.**

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<sup>4</sup> Our decision in this appeal precludes an attorney-fee award against the Cottages and the Townhomes.