STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2041

Bert Lawrence Pexsa, et al.,
Appellants,

vs.

Disabled American Veterans of Minnesota Foundation,
Respondent.

Filed July 20, 2020
Affirmed
Reyes, Judge

Douglas County District Court
File No. 21-CV-16-1753

Stephen Knudsen, Knudsen Law Firm, LLC, Alexandria, Minnesota (for appellants)

Robert B. Hartley, Jr., Hartley Law Office, Columbia Heights, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Reyes, Judge; and Slieter, Judge.

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

REYES, Judge

In this second appeal from a contract-for-deed dispute, appellants-vendees challenge the district court's grant of summary judgment to respondent-assignee-of-vendor on appellants' breach-of-contract claim, arguing that (1) the district court misinterpreted the contract for deed and (2) if both the district court's and appellants' interpretations are reasonable, then the contract is ambiguous and summary judgment is improper. We affirm.

FACTS

In May 1985, appellants Bert L. Pexsa and Kathryn M. Pexsa[1] (the Pexsas) signed a contract for deed with Bert's parents, Darrel and Marlys Pexsa, for the purchase of farmland that the Pexsa family has operated now for more than 100 years. The contract provides for an initial purchase price of $50,000. No payments were due and no interest accrued in the five years from the May 1985 contract date to the first payment due date in May 1990. The Pexsas then had to make annual payments of $1,500 plus eight percent interest from May 1990 until 2023.

Darrel and Marlys each received an undivided one-half interest in the contract following their divorce in February 1990. Marlys passed away in 2012. Darrel passed away in 2013, and a probate court distributed his one-half interest to respondent Disabled American Veterans of Minnesota Foundation (DAVMN), pursuant to his will. During the probate proceedings for Darrel's estate, Bert claimed that a $1,427 payment he made to Darrel in 1988 resulted in him overpaying on the contract, and he sought a refund from the estate. He asserted that, when he researched the probate of Marlys's estate, he discovered that Darrel had not properly credited the payment. The probate court denied Bert's claim. It found that Bert made a payment to Darrel in 1988 but that he failed to prove it was on the contract. In August 2016, DAVMN served the Pexsas with a notice of contract cancellation that stated that the Pexsas were in default by $22,298.35 due to missed payments in 1997, 1999, 2014, 2015, and 2016.

[1] Because appellants and related individuals have the same last name, we use the first names of individual members of the Pexsa family in subsequent references.

In response, the Pexsas brought the current claim against DAVMN, alleging that DAVMN breached the contract by starting cancellation proceedings when the Pexsas were not in default and after they had paid the contract in full. In addition to the 1988 payment to Darrel, the Pexsas claimed that Bert made a $1,483 payment to Marlys the same year. They argued that these payments were not properly credited and disputed the missed payments in other years. The Pexsas also obtained an ex parte temporary restraining order (TRO) to prevent DAVMN from proceeding with the contract cancellation. DAVMN moved to dismiss the complaint, arguing that res judicata barred the Pexsas' breach-of-contract claim based on the probate court's refusal to credit the 1988 payment to Darrel as a payment on the contract. The district court granted DAVMN's motion to dismiss and vacated the TRO.

The Pexsas appealed, and we reversed the dismissal and vacatur of the TRO and remanded for further proceedings. *See Pexsa v. Disabled Am. Veterans of Minn. Found.*, No. A17-0909, 2017 WL 6418875, at *7 (Minn. App. Dec. 18, 2017). We concluded that res judicata did not bar the Pexsas' action because their breach-of-contract claim involves disputed payments other than the 1988 payment to Darrel, and the Pexsas did not have a full and fair opportunity to litigate their claim in the probate proceeding because the cancellation of the contract implicates substantially different monetary interests.[2] *Id.* at *5.

[2] The Pexsas sought reimbursement of $2,300 in the probate matter, while cancellation of the contract, on which they have paid approximately $100,000, would cause them to lose a one-half interest in property valued between $830,000 and $1,660,000. *Id.* at *4.

On remand, DAVMN filed a motion for summary judgment, arguing that, even if the Pexsas paid $2,910 total to Darrel and Marlys on the contract in 1988, the Pexsas still owe on the contract because the payments were "partial prepayments" subject to paragraph 5 of the contract. Under paragraph 5, the 1988 payments would be credited to the contract's annual installment payments in the inverse order of their maturity, not to the initial principal. The Pexsas argued that paragraph 4 applied, in which "payments" are credited first to any interest and second to principal. The application of paragraph 4 to the 1988 payments would result in the Pexsas having paid the contract in full. The district court granted DAVMN's motion and dismissed the Pexsas' claim, determining that paragraph 5 applied. This appeal follows.

D E C I S I O N

The Pexsas argue that (1) the district court incorrectly determined that the contract allows for prepayments and that the payment order in paragraph 5 applies to prepayments and (2) alternatively, if both the district court's and the Pexsas' interpretations are reasonable, the contract is ambiguous and summary judgment is improper. The Pexsas frame their arguments as involving only legal questions and do not argue that there is a genuine issue of material fact. They concede that their claim has support only if the payment order in paragraph 4 applies.

We review a district court's grant of summary judgment de novo to determine whether it "properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). Summary judgment is "inappropriate when

reasonable persons might draw different conclusions from the evidence presented." *Montemayor v. Sebright Prod., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). We view the evidence in the light most favorable to the nonmoving party. *Id.*

I. The district court properly determined that the contract unambiguously permits prepayments and that the payment order in paragraph 5 applies to prepayments.

The Pexsas initially argue that the contract is unambiguous and that (1) it prohibits prepayments and (2) if it allows prepayments, the payment order in paragraph 4 supersedes the prepayment order in paragraph 5, resulting in their having paid the contract in full. We disagree with both arguments.

Contract interpretation is a question of law that we review de novo. *See Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). We determine the parties' intent based on the contract's language. *See id.* If the language is unambiguous, we enforce the plain language of the contract. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). If the language is ambiguous, then summary judgment is inappropriate. *Minn. Teamsters Pub. & Law Enf't Emps. Union, Local 320 v. County of St. Louis*, 726 N.W.2d 843, 847 (Minn. App. 2007), *review denied* (Minn. Apr. 25, 2007). A contract's language is ambiguous only "if it is susceptible to two or more reasonable interpretations." *Dykes*, 781 N.W.2d at 582. In interpreting the contract, we construe it "as a whole," "attempt to harmonize all [of its] clauses," and seek to avoid interpretations that "render a provision meaningless." *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525-26 (Minn. 1990).

Only paragraphs 4 and 5 of the contract are at issue here. Paragraph 4 provides the following payment terms:

> *There shall be no payments of interest or principal for the first five (5) years*;
> The first payment shall be made on May 25, 1990 – said payment shall be in the amount of $1500.00 plus 8% interest for one year;
> Annual payments shall be made on May 25, 1991, and each and every year thereafter, on the same date, in the amount of $1500.00 plus 8% interest until the principal is paid in full.
> *Payments shall be credited first to interest and remainder to principal.*

(Emphases added.) Paragraph 5 then provides terms for prepayments:

> *Unless otherwise provided in this contract*, [the Pexsas] shall have the right to fully or partially prepay this contract at any time without penalty. *Any partial prepayment shall be applied first to payment of amounts then due under this contract, including unpaid accrued interest, and the balance shall be applied to the principal installments to be paid in the inverse order of their maturity*. Partial prepayment shall not postpone the due date of the installments to be paid pursuant to this contract or change the amount of such installments.

(Emphases added.)

A. The contract permits prepayments.

First, the Pexsas argue that the language in paragraph 4 that "[t]here shall be no payments of interest or principal for the first five [] years" is a bar on prepayments that triggers the "[u]nless otherwise provided" language in paragraph 5. We disagree.

The language of paragraphs 4 and 5 is unambiguous. Paragraph 4's plain language that the contract amount "shall be paid as follows," that "[t]here shall be no payments of interest or principal for the first five [] years," and that "[a]nnual payments shall be made," requires annual payments in accordance with its terms, but it does not prohibit prepayments. Rather, paragraph 4 provides unambiguously that the Pexsas are not required

to make annual payments for the first five years of the contract. Annual payments, when due, are credited based on the order in paragraph 4. Nowhere does paragraph 4, or any part of the contract aside from paragraph 5, refer to prepayments. Further, the references in paragraph 5 to "installments" are to the annual installment payments under paragraph 4, which supports a consistent reading of these paragraphs together. Because paragraph 4 neither prohibits nor addresses prepayments, it does not trigger the "[u]nless otherwise provided" language in paragraph 5.

B. The payment order in paragraph 5 applies to prepayments.

Second, the Pexsas argue that, even if paragraph 4 does not bar all prepayments, the specific term in paragraph 4 regarding "payments" supersedes that in paragraph 5 regarding "prepayments," and the payment order in paragraph 4 therefore applies to prepayments. We are not persuaded.

As an initial matter, DAVMN argues that we should not consider this argument because the Pexsas did not raise it to the district court and the district court did not decide it. But the district court addressed this argument in an order denying a motion in limine brought by DAVMN. The Pexsas also raised the issue of which payment order applies in a request for permission to file a motion for reconsideration of that order and an order denying another motion in limine brought by DAVMN. In denying the Pexsas' request for reconsideration, the district court noted that it addressed the issue previously. The Pexsas therefore did not forfeit this argument. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

The plain language of paragraph 5 states that the Pexsas "shall have the right to fully or partially prepay this contract at any time" and that these prepayments apply based on the prepayment order within paragraph 5. The plain language of paragraph 4 applies its payment order to annual payments due under the contract. These payment-order provisions can be read together and are not in conflict.

The Pexsas argue that the payment order in paragraph 4 supersedes that in paragraph 5 because specific terms about a subject control over general provisions, citing to *Weiss v. City of St. Paul*, 300 N.W. 795, 797 (Minn. 1941) (interpreting city charter). But this rule of construction does not support the contract interpretation the Pexsas advance. Under it, the specific term in paragraph 5 regarding prepayments, as a subset of payments, controls over the general payment order in paragraph 4. Further, even if we were to assume that the two payment-order provisions could conflict with each other, "it is the court's duty to find harmony between them and to reconcile them if possible." *Oster v. Medtronic, Inc.*, 428 N.W.2d 116, 119 (Minn. App. 1988) (declining to interpret contract in manner that would "render nugatory" one of two apparently conflicting provisions). Applying the payment-order provision in paragraph 4 to annual payments and that in paragraph 5 to prepayments achieves this harmony and avoids rendering the provision in paragraph 5 meaningless, which is contrary to the basic principles of contract interpretation. *See Chergosky*, 463 N.W.2d at 525-26. Because the plain language of the contract allows for prepayments and the payment order in paragraph 5 applies to prepayments, the district court properly granted summary judgment to DAVMN.

II. The Pexsas' interpretation of the contract is not a reasonable alternative.

The Pexsas argue in the alternative that summary judgment is inappropriate because both the district court's and their interpretations of the contract are reasonable. But, as already discussed, the Pexsas' interpretation is not reasonable. The Pexsas' alternative argument fails.

Affirmed.