STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0473

Tuckborough Farm Homeowners Association, Inc.,
Appellant,

vs.

John W. Lang, et al.,
Respondents.

Filed April 4, 2022
Affirmed in part, reversed in part, and remanded
Reyes, Judge

Hennepin County District Court
File No. 27-CV-20-14449

William M. Hart, Julia J. Nierengarten, Meagher & Geer, P.L.L.P., Minneapolis, Minnesota (for appellant)

Kristy A. Fahland, Messerli & Kramer, P.A., Minneapolis, Minnesota (for respondents)

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

NONPRECEDENTIAL OPINION

REYES, Judge

In this appeal from the grant of a motion to dismiss, appellant homeowners association argues that the district court erred by determining appellant's action was time-barred under a commencement-of-suit provision in the association's governing documents. By notice of related appeal, respondents and cross-appellants challenge the district court's

denial of their motion for attorney fees. We affirm the district court's dismissal of the complaint but reverse its denial of cross-appellants' motion for attorney fees and remand.

FACTS

Respondent and cross-appellant property-owners John and Veronica Lang (the Langs) owned a home in the Tuckborough Farms Development which appellant Tuckborough Farms Homeowners Association (the association) regulates. The association and the Langs are governed by an amended and restated declaration (the declaration). Under the declaration, property owners must get approval from the association's Architectural Control Committee (the committee) for "construction of or exterior changes to a dwelling or other improvement."

In July 2020, the Langs requested approval from the committee to make various landscaping changes to their property, including building split-rail fencing along the property line between them and their neighbors. The committee approved most of the Langs' proposed plans except it denied their request for the split-rail fencing. The Langs nevertheless installed the split-rail fencing, with installation complete on August 14, 2020. The committee sent the Langs written notice on August 17, 2020, in October 2020, and November 2020, instructing them to remove the nonconforming fencing. The Langs did not remove the fencing. Meanwhile, the Langs' approved landscaping work continued through mid-September 2020.

On November 13, 2020, the association served the Langs with a complaint alleging breach of the covenants in the declaration and seeking injunctive relief. The Langs filed a motion to dismiss under Minn. R. Civ. P. 12.02(e). The Langs asserted that the association

failed to commence timely the action under paragraph 19g of the declaration, which states that: "[An] action shall be commenced . . . no later than ninety (90) days after the . . . date of completion, in the case of any other improvement [other than a dwelling]." The Langs argued that, under paragraph 19g, the fencing is an improvement separate from the approved improvements, and therefore, the association had 90 days from the completion of the fencing on August 14 to commence a lawsuit. The association argued that the 90-day period commenced in mid-September when the Langs completed their entire landscaping project. The Langs also sought attorney fees under paragraph 35 of the declaration, which grants an owner the right to enforce the terms of the declaration.

The district court agreed with the Langs and dismissed the association's complaint as untimely under the declaration's 90-day commencement-of-suit provision in paragraph 19g. However, the district court denied the Langs' motion for attorney fees. This appeal and cross-appeal follow.

DECISION

I. The district court did not err by dismissing the association's complaint under rule 12.02(e) as time-barred under the declaration.[1]

The association argues that the district court erred by dismissing their complaint as untimely because the declaration's 90-day provision did not begin until mid-September when the Langs completed their entire landscaping project. We are not persuaded.

[1] While we conclude that the association failed to serve its complaint timely, this opinion should not be construed to condone the actions of the Langs, who deliberately installed an unapproved improvement and failed to remove it after being repeatedly told to do so by the association's committee.

A complaint "shall contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought." Minn. R. Civ. P. 8.01. A district court may dismiss a complaint when the plaintiff "fail[s] to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02(e).

When a district court dismisses a case under rule 12.02(e), we review de novo whether the complaint sets forth a legally sufficient claim for relief. *See Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). In doing so, a reviewing court "accept[s] the facts alleged in the complaint as true and construe[s] all reasonable inferences in favor of the nonmoving party." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014).

The district court dismissed the association's amended complaint as untimely by determining that the association commenced suit 91 days after the Langs completed the split-rail fencing, thereby commencing suit "one day too late" under the declaration's 90-day deadline. Therefore, we must interpret the declaration to determine whether the district court erred as a matter of law.

Because we interpret restrictive covenants like contracts, *see Snyder's Drug Stores, Inc. v. Sheehy Props., Inc.*, 266 N.W.2d 882, 884 (Minn. 1978), the primary aim is to determine and enforce the drafter's intent, *Staffing Specifix, Inc. v. Tempworks Mgmt. Servs., Inc.*, 913 N.W.2d 687, 692 (Minn. 2018). If the language is unambiguous, we enforce the agreement as expressed by its plain meaning. *Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). The language of a contract is ambiguous if it is reasonably susceptible to two or more interpretations. *Glacial Plains Coop. v. Chippewa*

Valley Ethanol Co., 912 N.W.2d 233, 236 (Minn. 2018). Contract interpretation is a question of law that we review de novo. *See Storms, Inc.*, 883 N.W.2d at 776.

Neither party argues that paragraph 19g of the declaration is ambiguous. Instead, they argue over its application. Paragraph 19g of the declaration provides:

> If construction of or exterior changes to a dwelling or other improvement are commenced without approval of the builder and/or approval of the plans and specifications, or if construction of or exterior changes to a dwelling or other improvement are completed not in accordance with approved plans and specifications, *any Owner of a Lot may bring an action to enjoin further construction and to compel the Owner to conform the dwelling, fence or other improvement with plans and specifications approved by the Architectural Control Committee, provided that such action shall be commenced and a notice of lis pendens shall be filed no later than ninety (90) days after* the date on which the certificate of occupancy is issued by the appropriate municipal authority, in the case of a dwelling, or *the date of completion, in the case of any other improvement.*

(Emphasis added.) Under the plain meaning of paragraph 19g, a fence is an improvement other than a dwelling. An owner can bring an action against another owner regarding an unapproved improvement no later than 90 days after completion of the fence.

Here, the split-rail fencing is an unapproved improvement that the association could seek to enjoin through litigation further construction of no later than 90 days after its completion on August 14, 2020, which would have been November 12, 2020. The association's service of the complaint on November 13, 2020, was therefore untimely.

The association argues that the split-rail fencing is part of a series of installments. However, the association referred to the split-rail fencing as the only nonconforming improvement. Indeed, they do not allege, nor have they ever alleged, that there were other

nonconforming improvements. As a result, under the plain meaning of paragraph 19g, the association had 90 days to bring suit against the Langs after completion of the split-rail fencing.

The association further argues that their complaint refers to the unapproved fence sections as being completed "on or about August 14, 2020," which it contends is a date the district court must construe in their favor. But the association did not raise this argument below. Nor did the association dispute it in opposing the Langs' motion to dismiss. Indeed, both parties and the district court assumed August 14 as the completion date for purposes of the Langs' motion to dismiss. At the motion-to-dismiss hearing, the association's arguments centered on their assertion that the date to commence suit against the Langs did not begin until about mid-September when they completed the entire landscaping project. The association, therefore, forfeits this argument. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only those issues presented to and considered by the district court).

The association further argues that the commencement-of-suit provision in paragraph 19g only applies to individual owners. But the association also failed to raise this issue with the district court. As a result, this argument is likewise forfeited. *Id.*

We conclude that the district court did not err by dismissing the association's complaint as untimely.

II. The district court abused its discretion by denying the Langs' motion for attorney fees.

The Langs argue that they are entitled to attorney fees under paragraph 35 of the declaration because they "sought to enforce the 90-day limitation period, a term provided in Paragraph 19 of the [declaration]," and were successful in obtaining dismissal of the action, they are entitled to "enforce this term of the [declaration]." We agree.

District courts have the discretion to award or deny attorney-fee claims. *Becker v. Alloy Hardfacing & Eng'g Co.*, 401 N.W.2d 655, 661 (Minn. 1987). But attorney fees are generally not recoverable absent a contractual provision or statute. *Kallok v. Medtronic, Inc.*, 573 N.W.2d 356, 363 (Minn. 1998). As noted above, we interpret contracts de novo. *See Storms, Inc.*, 883 N.W.2d at 776.

Here, paragraph 35 of the declaration allows for recovery of attorney fees to those "seeking enforcement of the terms" of the declaration. Paragraph 35 states:

> Enforcement. The Owner of any Lot, including the Declarants, or any of them, and the Association, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations and charges now or hereafter imposed by the provisions of this Amended and Restated Declaration . . . . If successfully [sic], the parties seeking enforcement of the terms hereof shall be entitled to recover from the party violating the terms of this Amended and Restated Declaration reimbursement for all costs and expenses of litigation, including reasonable attorneys fees, witness fees, service of process fees, deposition costs, expert witness fees and any other costs incurred in securing such relief.

As previously noted, our first step is to determine whether the language is unambiguous. The language of paragraph 35 provides any "Owner" the right to enforce "all restrictions, conditions, covenants, reservations and charges . . . imposed by the

provisions of this [declaration]" in any Minnesota court. If successful, "the parties seeking enforcement of the terms hereof shall be entitled to recover from the party violating the terms of this Amended and Restated Declaration reimbursement for all . . . attorney[] fees." Because this language is unambiguous, we apply its plain meaning.

Here, it is undisputed that the Langs are an "Owner." They sought to enforce a condition imposed by the declaration, specifically, the 90-day commencement-of-suit provision of paragraph 19g. They succeeded. As a result, they are entitled to reimbursement of reasonable attorney fees from the association as the party violating that term of the declaration.

We remand to the district court for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.