STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0007

Trygve Svard,
Appellant,

vs.

Camelot Nine Encore Association,
Respondent.

Filed July 25, 2022
Affirmed in part and reversed in part
Segal, Chief Judge

Hennepin County District Court
File No. 27-CV-20-12810

Patrick B. Steinhoff, Thomas F. DeVincke, Malkerson Gunn Martin LLP, Minneapolis, Minnesota (for appellant)

James R. Magnuson, Mohrman, Kaardal & Erickson, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this appeal from a grant of summary judgment, appellant homeowner challenges the district court's determination that respondent homeowners' association (1) properly denied his application to put solar panels on his roof, (2) validly enacted two association

rules, and (3) is entitled to an award of attorney fees and costs. We affirm the district court's grant of summary judgment for respondent, except we reverse the district court's award of attorney fees and costs because the association bylaws only provide for recovery of such expenses by means of an assessment.

FACTS

Appellant Trygve Svard owns a single-family home within Camelot Nine Encore, a residential development in Plymouth. The lots in the development are all subject to a "declaration of covenants, restrictions and easements" (the declaration). The lot owners are the members of respondent Camelot Nine Encore Association (the association), a nonprofit corporation organized under the Minnesota Nonprofit Corporation Act, Minn. Stat. §§ 317A.001-.909 (2020).[1]

The declaration contains a variety of restrictions on lot uses and the types of changes and alterations that association members can make to their homes. The declaration provides for an architectural control committee (ACC) "to oversee, review and regulate architectural and design matters" within Camelot Nine Encore. The declaration states that the "ACC has authority to approve, conditionally approve or deny" requests for alterations to residential structures "in its sole and absolute discretion," subject to a set of minimum standards.

[1] The declaration states that the association is exempt from the Minnesota Common Interest Ownership Act, Minn. Stat. §§ 515B.1-100–.4-118 (2020), "by reason of Section 515B.1-102(e)(2)" of the act.

The declaration allows for the association's board of directors (the board) to serve as the ACC or to appoint other association members to fulfill that duty.[2] As provided in the declaration, association members must apply to and obtain approval from the ACC before making a "change, replacement or alteration" to a residential structure. The application must include "plans and specifications showing the nature, kind, shape, height, materials, plans, colors and location" of the proposed change. The ACC may require more information if it considers the application insufficient, including "complete sets of plans and specifications . . . prepared by an architect, landscape architect, engineer or other person found to be qualified by the ACC." As further set out in the declaration, the ACC must "approve, conditionally approve or disapprove the application and notify the applicant in writing within forty-five days following the receipt of the application and all other required information."[3] If the ACC fails to so act "within forty-five days, the ACC is deemed to have approved the proposed application."

The dispute in this case arose out of an application by Svard to install two rows of solar panels on the roof of his house. Svard submitted an application to make this alteration to his home on August 14, 2019, and discussed the proposal with the board at a meeting on September 16, 2019. According to the deposition testimony of the board president, the

[2] At all times relevant to this appeal, the board served as the ACC for the association and the board had three members.

[3] We note that the ACC section of the declaration appears to use the words "deny" and "disapprove" interchangeably in connection with applications to make a change, replacement, or alteration of a residential structure. We will also use the term "deny" here as meaning the same as "disapprove" with regard to the ACC section of the declaration.

directors met again two days later, sitting as the ACC, and voted on Svard's application. The board president emailed Svard on September 20, advising him that the ACC "has currently denied the request to install a solar system." The email asked for additional information about the proposal, including a request "to review the contractor specifications [for the solar installation]." The email stated that the ACC would "reconsider" the denial after the requested information was provided.

Svard met with the ACC again on October 23 to discuss his proposal and to provide more information. After that meeting, Svard sent more detailed information to the directors in an email. The ACC then sent Svard a letter, dated October 31, stating that "the [ACC] has reviewed your Architectural Change Application dated October 24th, 2019," and "concludes that Solar Power installations alter the intended [a]esthetic of our community and do not align with the architectural style of our community."

In December 2019, the board adopted two new rules to the association's "rules and regulations." The first rule, Architectural and Exterior Restrictions 4 (rule 4), states that "[n]o mechanical equipment may be installed on the property[;] this includes but is not limited to solar panels, wind turbines and generators. Exception: Generators must be stored in the garage but can be brought outside as required for use."

The second rule, General Use Regulations 11 (rule 11), states that "[n]o soliciting or personal surveys within the Camelot 9 Encore Community are allowed. The resident must present their matter to board members and association members at regular board meetings, special board meetings or annual meetings." According to the board president, this rule was adopted after the association received complaints that Svard was annoying

neighbors while seeking support for his solar application. Svard acknowledges that he spoke with neighbors to seek support for his proposal, but disputes that his conduct was in any way disruptive.

Svard initiated this lawsuit in September 2020, seeking a declaratory judgment that his application was not timely acted on and must be deemed approved; an order directing the association to execute a document approving his application to install solar panels; and an injunction stopping the association from interfering with the installation. He also sought a declaratory judgment that the two new rules adopted by the board were void and sought an injunction to prevent enforcement of the rules. The association counterclaimed, seeking attorney fees and costs pursuant to a provision in the association's bylaws.

The parties brought cross-motions for summary judgment. The district court granted the association's motion for summary judgment, determining that the association had properly denied the application and that the two new rules were validly adopted. The district court also granted summary judgment for the association on its counterclaim and awarded the association $32,874, the full amount of attorney fees and costs claimed by the association. Svard appeals.

DECISION

Svard raises several challenges to the district court's grant of summary judgment. First, Svard argues that the district court erred in concluding that his application for the solar installation was properly denied. He maintains that the ACC failed to follow required procedures to vote on the proposal within the 45 days allowed in the declaration and that, pursuant to the provisions of the declaration, his application should be deemed to have been

approved. Second, Svard maintains that the district court erred in determining that the board acted within its authority in adopting the two new association rules. Finally, Svard challenges the district court's authority to award attorney fees and costs to the association based on the association's bylaws.

A grant of summary judgment is appropriate "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. This court "review[s] the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). In determining whether a genuine issue of material fact exists, we view the evidence in the light most favorable to the nonmoving party. *Id.*

Svard does not claim here that there are genuine issues of material fact. Instead, he maintains that the district court erred in its interpretation and application of provisions in the association's bylaws and declaration.

The bylaws and declaration of a homeowners' association "constitute a contract between the association and its individual members." *See Harkins v. Grant Park Ass'n*, 972 N.W.2d 381, 388 (Minn. 2022) (quotation omitted) (discussing a common-interest association); *see also Swanson v. Parkway Ests. Townhouse Ass'n*, 567 N.W.2d 767, 768 (Minn. App. 1997) (discussing a townhome association). Appellate courts thus construe such documents according to contract interpretation principles. *Harkins*, 972 N.W.2d at 388; *Swanson*, 567 N.W.2d at 768.

"The primary goal of contract interpretation is to determine and enforce the intent of the parties." *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 913 N.W.2d 687, 692 (Minn. 2018) (quotation omitted). "The construction and effect of a contract presents a question of law, unless an ambiguity exists." *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998); *see also Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). Courts give language in a contract its plain meaning, and a contract is ambiguous only "if its language is reasonably susceptible to more than one interpretation." *Brookfield Trade Ctr.*, 584 N.W.2d at 394. Here, neither party claims that the applicable provisions in the bylaws or declaration contain an ambiguity. Because we also discern no ambiguity, we apply the plain meaning of the provisions and a de novo standard of review.

I. The district court did not err in concluding that the ACC properly denied Svard's application to install solar panels.

Svard argues that the board—acting as the ACC—did not follow the correct procedures in denying his application to install solar panels in connection with either the denial in the email from the board president dated September 20 or in the letter dated October 31.[4] Svard maintains that the alleged denials were not effective because the ACC failed to adhere to the association bylaws which he claims require that the ACC can only "act by majority vote at a duly convened meeting."

[4] The parties dispute whether Svard submitted one or two applications to install solar panels. This dispute is not material, however, because it does not impact the result. The ACC provided two denials and we analyze each in determining whether the district court erred in its conclusion that Svard's application was properly denied by the ACC.

Regarding the September 20 denial, the board president testified in his deposition that the board met, sitting in its capacity as the ACC, on September 18 and voted to deny the application. In his September 20 email to Svard, the board president advised Svard that the application was being denied and that more information was needed. The president further stated in the email that the ACC would reconsider the application after receiving the information.

Svard contests that the September 18 vote qualifies as a bona fide denial because he claims the September 18 ACC meeting was not a properly noticed meeting. Svard argues that the ACC did not adhere to the bylaws' notice requirements for a board meeting when it convened its September 18 meeting. He asserts that because the September 18 meeting was not a regular board meeting, the ACC needed to follow the procedures in the bylaws for convening a special board meeting. These procedures require that each director must be personally given five days' notice of the "date, time, place and purpose of the meeting" and that no such notice was provided.

The association argues that the notice provisions cited by Svard govern the board, not the ACC. Even if we were to assume, however, that the bylaw provisions for notice of special board meetings apply to the ACC, the bylaws expressly allow directors to waive the five-day notice requirement. The bylaws state that a "waiver may be given [by a director of the board] before, at or after a meeting and may be made orally or in writing or implied from attendance at the meeting without objection." And the record here contains affidavits from all three of the directors stating that they all waived notice of the meeting and attended the meeting without objection. Thus, regardless of whether the five-day

notice requirement applies to ACC meetings, it is undisputed that the notice requirement was waived in accordance with the bylaws. We therefore reject Svard's argument regarding the first denial.

Svard argues that the second denial, communicated to him in the October 31 letter, was not effective because the ACC never met and conducted a vote. We note that the record does not establish that the ACC held a meeting where a "vote" was taken prior to the issuance of the October 31 denial letter. The record contains inconsistent testimony and sworn statements from the directors on that point. We therefore must assume, viewing the evidence in the light most favorable to Svard, that no such meeting occurred.

We, nevertheless, remain unpersuaded by Svard's argument that the process was so defective that his application must be considered approved. The declaration contains no such specific procedural requirements. The declaration provides that

> [t]he Board may, from time to time, establish, by resolution, procedures governing the meetings of the ACC including, but not limited to, a schedule of meetings of the ACC, the notice, if any, that must be given to members of the ACC of regular or special meetings of the ACC and whether meetings of the ACC are open to the Members.

It is undisputed that the board has not yet enacted any such procedures. Moreover, the association submitted sworn statements from the three board directors that they each reviewed and approved the October 31 letter denying Svard's application for the second time. Thus, the three members of the ACC reached a unanimous decision, whether or not it was "voted" on in a meeting, and communicated that decision to Svard, within the 45-day timeline provided in the declaration.

The undisputed evidence shows that Svard had the opportunity to discuss his proposal at two different in-person meetings. The ACC also twice unanimously denied his application. The first denial was because Svard submitted incomplete information. After Svard submitted additional information, the ACC reconsidered his application but denied it a second time based on the "aesthetic" and "architectural style" of the community. Both "denials" were communicated within the 45-day timeline provided in the declaration. We therefore discern no error in the district court's conclusion that Svard's application was properly denied.

II. The board enacted rules that were within its authority under the declaration and bylaws.

In addition to challenging the denial of his application, Svard challenges the board's adoption of rule 4 and rule 11. He argues that the rules were outside the scope of the board's rulemaking authority. The board's rulemaking authority is set out in the bylaws, which authorize the board to

> adopt, amend and revoke rules and regulations not inconsistent with the Articles of Incorporation, these Bylaws and the Declaration as follows: (i) regulating the use of the Lots, and conduct of Lot occupants, which may jeopardize the health, safety or welfare of other occupants, or which involves noise or other disturbing activity, or which may damage other Lots; and (ii) implementing the Articles of Incorporation, the Declaration and these Bylaws.

The first rule, rule 4, bars the installation of "mechanical equipment" within Camelot Nine Encore, including "solar panels, wind turbines and generators." Svard argues that this rule is beyond the board's rulemaking authority because "[s]olar panels do not jeopardize the health, safety or welfare of any occupant[,] . . . do not generate noise or

other disturbing activity, and there is no possibility that they will damage other lots." He also asserts that the rule "does nothing to implement" the association's governing documents.

Svard's argument, however, ignores the broad scope of the board's rulemaking authority. That authority includes the power to adopt rules to implement the declaration. The declaration sets out the "intent to create a residential community of high quality and harmonious Residential Structures." It also grants the power to the ACC to "in its sole discretion, establish written standards and policies regarding the design, appearance, construction, development and modification of Residential Structures that are in addition to those" specifically set out in the declaration.

Given these broad grants of authority to the board and ACC to regulate design and appearance of residential structures, rule 4's prohibition on the installation of certain mechanical equipment, including solar panels, easily falls within the rulemaking authority of the board to implement the provisions of the declaration. While it may be debatable whether solar panels should be seen as incompatible with the design and appearance of homes in the development, Svard delegated his power to make that decision to the board when he bought a home in Camelot Nine Encore. Thus, we discern no error in the district court's determination that rule 4 comes within the scope of the board's rulemaking authority.

The second rule challenged by Svard, rule 11, prohibits "soliciting or personal surveys" within the Camelot Nine Encore community and requires association members to "present their matter" at board meetings or annual meetings. The association cites as its

authority for this rule a provision in the declaration stating that "nothing may be done upon any Lot that may be or become an annoyance to the neighborhood." The association claims that the rule was passed because several members had complained about Svard's efforts to lobby support for his solar-panel application. Svard argues that the board was without authority to pass this rule because "[p]ersonal surveys (*i.e.*, speaking to one's neighbors) do not jeopardize" any occupant's health, safety, or welfare.

Because rule 11 governs conduct and speech, instead of consistency with design and appearance, the authority for enacting the rule is not as clear cut. And we note that, depending on how the rule is administered, it could infringe on rights of association members. For example, the bylaws expressly state that association members can compel the president to call a special meeting of the members upon "the president's receipt of a written demand for a special meeting from not less than ten percent (10%) of the Members." It is hard to imagine how members could readily exercise this right without soliciting support among neighbors. As the association represented at oral argument, however, the association might interpret the rule narrowly and never apply it so as to interfere with members' rights.

Given the very broad grant of rulemaking authority accorded the board in the bylaws, and that concerns about the rule relate to hypothetical future applications, we conclude that the district court did not err in denying Svard's claim to declare rule 11 invalid.

III. The district court lacked authority to award attorney fees and costs under the association's bylaws.

Svard challenges the district court's award of attorney fees and costs to the association on two grounds. Svard argues, first, that the association's bylaws do not entitle the association to attorney fees because the association is organized under the Minnesota Nonprofit Corporation Act, Minn. Stat. §§ 317A.001-.909, and that act does not include a provision allowing for an award of attorney fees. While that may be true, the association's counterclaim was premised on the bylaws, not the nonprofit act, and the bylaws authorize the association to recover attorney fees under certain circumstances. We thus reject this argument.

Svard also argues, however, that the award should be reversed because the bylaws do not authorize an award of attorney fees and costs based on the association's counterclaim. We agree. The award of attorney fees and costs in this case was pursuant to the grant of summary judgment to the association on its counterclaim. The counterclaim alleged that the association was entitled to a recovery of its attorney fees and costs "[u]nder the terms of the Bylaws."[5] The only section in the bylaws that provides for the recovery of attorney fees or costs is in the section of the bylaws titled "Assessment Roll Preparation." That section provides that the board "may assess against a Lot any Association expenses, including attorney's fees and court costs, incurred . . . in connection with the enforcement

[5] Counsel for the association represented at oral argument that the counterclaim merely sought a declaration that the association was entitled to assess attorney fees against Svard under the facts of this case. That is not accurate.

of the provisions of the Declaration, Bylaws or Association rules and regulations against that Lot or an Owner or occupant of that Lot." The bylaws make no provision for the recovery of attorney fees or costs under any other method than by assessment. The bylaws do not provide for recovery of attorney fees and costs through the association's counterclaim.

Since the sole authority for the association's claim for attorney fees and costs is the assessment provision in the bylaws, the district court erred in granting summary judgment on the counterclaim to the association and entering a money judgment against Svard. We thus reverse the summary judgment in favor of the association on its counterclaim.[6]

Affirmed in part and reversed in part.

[6] Because we conclude that the bylaws do not authorize a court award of attorney fees and costs, we decline to address Svard's other argument—that such an award is improper because the litigation was initiated by Svard for a declaratory judgment and was not an action by the association for "enforcement of the provisions" of the association's governing documents.