This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0288

City Bella Commercial, L.L.C., et al.,
Respondents,

vs.

City Bella on Lyndale,
Appellant.

Filed November 7, 2022
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-CV-20-14021

Mark W. Vyvyan, Devin T. Driscoll, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for respondents)

Karl J. Yeager, Julia J. Nierengarten, Meagher + Geer, P.L.L.P., Minneapolis, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant, a residential condominium association, challenges the district court's grant of summary judgment to respondents, owners of commercial units in one of appellant's buildings. Appellant argues that the district court erred in determining that: (1) the two-year statute of limitations in the Minnesota Common Interest Ownership Act

(MCIOA) bars its challenge to the Amended Declaration, (2) respondents are not obligated to pay a share of common expenses, and (3) the contracts between the parties preclude appellant's equitable claims. Because we see no error in these determinations, we affirm.

FACTS

In August 2004, appellant City Bella on Lyndale (the Cooperative) filed a declaration on a piece of property legally described as "Lot 1, Block 1, City Bella," that created Minnesota Common Interest Community No. 1174 (the CIC), a mixed-use residential and commercial entity. The property includes two buildings: one is called The Plaza and has four stories; the other is called the Tower and has 15 stories. Together, the buildings have 144 residential units and three commercial units.

In October 2004, the property was replatted into four tracts, A, B, C, and D, by Registered Land Survey No. 1745. The Cooperative continued to own Tract A, the residential tract, but transferred Tracts B, C, and D, the commercial tracts, to respondents City Bella Commercial, L.L.C.; Briarcliff Apartments, L.L.C.; G&B Properties, L.L.C.; and Ronald Mills, by warranty deed. The Cooperative's president testified that a tax issue arose over members being able to deduct their proportionate share of mortgage and real estate taxes and that, in 2004, the "issue was resolved by transferring the commercial space out of the project."

Also in October 2004, the Cooperative and respondents entered into two easement agreements providing that respondents would pay "2/15ths of the cost of normal maintenance expenses for the garage area, driveways, and doors available for [their] use" and 20% of the maintenance costs of the easement area. Over the years, respondents

occasionally negotiated and made payments on an ad hoc basis to the Cooperative, but there was never a comprehensive cost-sharing agreement.

According to its president's testimony, the Cooperative believed that the replatting severed the commercial tracts from the CIC, and respondents, owners of those tracts, had no involvement with the CIC Board. In 2007, the Cooperative recorded an Amended Declaration that superseded the original declaration. It did not mention Tracts B, C, and D or respondents' sharing of the Cooperative's expenses. Rather, it described the Cooperative's property as "Tract A, Registered Land Survey No. 1745, Hennepin County, Minnesota," and it provided that "[a]ll common expenses of [the Cooperative] shall be allocated eighty-five percent (85%) to Building I, which contains 117 units, and fifteen percent (15%) to Building II, which contains 27 units." "Unit" was defined to mean "residential housing unit . . . intended for use as living quarters for an individual, family, or other persons living together." The Cooperative's president answered "Correct" when asked if "the Cooperative's belief up until spring of 2020 was that the commercial tracts had been severed from the association."

In 2019, the Cooperative undertook the Plaza Repair Project, which included necessary extensive repairs to the property's exterior at a cost of over $2 million. Respondents were not involved in the decisions about the repair project because they were not members of the Cooperative and were not represented on the Cooperative Board. In January 2020, the Cooperative told respondents that they were responsible for contributing $166,339.63 to the project, an amount calculated by the Cooperative as 7.8% of the $2,132,760.02 cost, based on the fact that the commercial space owned by respondents was

7.8% of the total space. Respondents had not paid and had not been asked to pay 7.8% of any expense prior to March 2021.

Respondents brought this action against the Cooperative, seeking a declaratory judgment that they were not required to contribute to the Plaza Repair Project, and the Cooperative counterclaimed for a declaratory judgment that respondents were liable in part for the cost of the Plaza Repair Project and for unjust enrichment. Following a hearing, the district court denied the Cooperative's motion and granted respondents' motion, having concluded that: (1) under the relevant statute of limitations, any right the Cooperative had to challenge the validity of the amended declaration expired two years after it was recorded, on January 31, 2009; (2) because respondents were not members of the Cooperative, the contracts between respondents and the Cooperative did not require respondents to share common expenses other than those specified in the contract; and (3) the contracts between the parties precluded an unjust-enrichment claim. Appellant challenges these conclusions.

DECISION

This court reviews "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).

1. The MCIOA Statute of Limitations

"No action to challenge the validity of an amendment or a supplemental declaration may be brought more than two years after the amendment or a supplemental declaration is recorded." Minn. Stat. § 515B.2-.118(b) (2020). The Cooperative's right to challenge the

Amended Declaration therefore ended on January 31, 2009, two years after it filed the Amended Declaration. "[T]he fundamental purposes of statutes of limitations . . . [are] 'to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost.'" *Weavewood, Inc. v. S&P Home Inv., LLC*, 821 N.W.2d 576, 580 (Minn. 2012) (quoting *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945). The district court reasoned: "If [the Cooperative] had wished to challenge [respondents'] removal from the Common Interest Community, they should have commenced their challenge within two years of the filing of the Amended Declaration. This is the very purpose of statutes of limitations."

The Cooperative argues that the district court's application of Minn. Stat. § 518B.2-.118(b) was an error of law because the Amended Declaration "does not 'remove' the Commercial Tracts from the CIC, it merely contains a different and erroneous recitation of the legal description of the property," and it "did not sever property from or convey property out of the CIC." But regardless of whether the Amended Declaration severed the commercial tracts from the CIC, the Cooperative's right to challenge the Amended Declaration terminated two years after it was recorded, as the district court correctly concluded.

2. Respondents' Status and Liability

The district court concluded that:

> [t]he Amended Declaration removed [respondents'] tracts (B, C, and D) from the Cooperative, thereby ending any obligation or responsibility for common expenses and assessments

> [respondents] may have had or have been required to have under the Original Declaration.
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> . . . [The Cooperative] has benefitted from [respondents'] exclusion from the Cooperative for the last 14 years. [Respondents] have had neither voice nor vote on any initiative contemplated by [the Cooperative] during this time period. [The Cooperative] now seeks to bind [respondents] by challenging the very document [i.e., the Amended Declaration] that permitted [the Cooperative] to proceed in such [a] manner.
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> . . . .
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> The court finds that [respondents] are not members of the Cooperative and therefore have no obligation or responsibility to share any common expenses or assessments of the Cooperative, absent those expenses that have already been expressly enumerated by written contracts or agreements, including the Plaza Repair Project.

To argue that respondents are members of the CIC, the Cooperative relies on Minn. Stat. § 515B.2-.124 (a) (2020), providing that a "severance shall be approved in a written severance agreement complying with this section," and argues that "[t]here can be no dispute that the strict requirements of Minn. Stat. § 515B.2-.124 were not followed here because there is no evidence showing those requirements were met." But an absence of evidence that a statute was complied with does not prove lack of compliance: it may simply demonstrate that evidence of compliance is unavailable. Here, the absence of evidence that severance had occurred did not prevent the Cooperative from behaving as if severance had occurred from at least 2007, when it filed the Amended Declaration defining its property as "Tract A," until 2020, when it attempted to collect payment for the Plaza Repair

Project from respondents, who had no vote in the incurring of those expenses or any representation on the Cooperative's Board.

The Cooperative also argues that, although the Amended Declaration does not mention Tracts B, C, or D, it "does not purport to sever those tracts from [appellant]" and "does not reflect—or effectuate—any intent by the Cooperative to sever those tracts at that time." But the Cooperative's president testified that, after the transfer of Tracts B, C, and D to respondents in 2004 and the Amended Declaration in 2007, the Cooperative itself believed that respondents were not part of it, gave respondents no voice in its operation, and did not expect respondents to pay any part of its expenses.

The Cooperative's argument that the omission of Tracts B, C, and D from the Amended Declaration does not indicate that they were excluded from the Cooperative ignores the legal canon of construction *expressio unius est exclusio alterius*: the expression of one thing is the exclusion of others. By stating that the legal description of the Cooperative's property was Tract A, the Amended Declaration implied that the property did not include Tracts B, C, and D. The district court did not err in concluding as a matter of law that Tracts B, C, and D had not been part of the Cooperative since 2007, when the Amended Declaration was filed, and that therefore the Cooperative could not compel respondents' contribution to the Plaza Repair Project.

3. Unjust Enrichment

The district court concluded that "the Amended Declaration and both Easement Agreements comprise contracts for expense sharing between [respondents] and [the Cooperative], therefore precluding [the Cooperative's] equitable counterclaims," relying

on *Soderbeck v. Ctr. For Diagnostic Imaging, Inc.*, 793 N.W.2d 437, 444 (Minn. App. 2010) ("[W]here there is an express contract, there can be no contract implied in fact or quasi contractual liability with respect to the same subject matter.") (quotation omitted).

The Cooperative argues that "while it is generally true that equitable principles do not apply where there is a contract between the parties, recovery in equity *is* available if the contract was not a full agreement concerning compensation between the parties or there was much confusion concerning details of compensation," (citation and quotation omitted). But here, the 2004 easement agreements explained in detail what respondents would pay while they were part of the Cooperative, and the Amended Declaration in 2007 specified that the Cooperative's expenses would be divided proportionately among residents of the two buildings, in line with the Cooperative's belief at that time that respondents had been severed from the Cooperative. Any confusion results from the Cooperative changing its opinion of respondents' status as members of the Cooperative in 2020 when it wished to compel their payment of part of the Plaza Repair Project.

After benefitting for 14 years from respondents' non-membership, which occurred because of the tax benefits the Cooperative's members would derive and presumably have derived from it, the Cooperative cannot now simply decide that respondents have always been and are still members, liable for a share of the Cooperative's expenses. The district court did not err in concluding that there were no genuine issues of material fact and that respondents were entitled to summary judgment as a matter of law.

Affirmed.