STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0398

Lynn Peterson,
Appellant,

vs.

Clark Lake Homes, Inc., et al.,
Respondents,

Shelley Peterson,
Respondent.

Filed November 14, 2022
Affirmed
Frisch, Judge

Crow Wing County District Court
File No. 18-CV-21-2771

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Erik T. Salveson, Brandie Morgenroth, Maria Brekke, Nilan Johnson Lewis PA, Minneapolis, Minnesota (for respondent Shelley Peterson)

Considered and decided by Frisch, Presiding Judge; Segal, Chief Judge; and Connolly, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that the district court erred by dismissing his complaint for failure to state a claim upon which relief can be granted because a mutual release clause in the parties' agreement does not bar his claims or, alternatively, is invalid because of duress or fraud. Because appellant released his claims against respondents and the complaint does not state a defense for duress or fraud, we affirm.

FACTS

In reviewing a motion to dismiss for failure to state a claim under Minn. R. Civ. P. 12.02(e), we accept the facts as alleged in the complaint as true. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014). The complaint contains the following factual allegations.

In 1995, appellant Lynn Peterson (Lynn)[1] incorporated respondent Clark Lake Homes Inc. (CLH), a business providing long-term care for disabled individuals. At that time, Lynn owned approximately 51% of CLH's shares, and his wife, respondent Shelley Peterson (Shelley), owned 49% of CLH's shares. Lynn was the chief executive officer (CEO) of CLH. Lynn and Shelley were also the member-managers of various real-estate-holding entities (the LLCs) that held CLH's office, housing facilities, and cabin, as well as vacant lots next to those properties. By 2020, Lynn had grown CLH into a multi-million-

[1] The parties to this appeal share a last name. For clarity, we refer to the parties using their first names.

dollar business that operated 11 different long-term care facilities and served 45 disabled individuals.

In 2000, Shelley began handling CLH's finances. In 2008, Lynn and Shelley's sons, respondents Adam Peterson (Adam) and Jared Peterson (Jared) began working full-time at CLH. Adam and Jared assumed increasing responsibility for many aspects of CLH's business, including assisting Lynn as requested. In 2017, CLH began operating at its most profitable rate. Lynn had planned to retire and pass CLH to Adam and Jared around this time.

In February 2020, Shelley filed a petition to divorce Lynn.

In March 2020, respondent JJ&A Property Management, LLC (JJ&A) was formed. Adam and Jared are members and managers of JJ&A. Over time, Lynn and Shelley gifted to Adam and Jared ownership shares in CLH. As of March 2020, Lynn owned approximately 33.5% of CLH's shares, Shelley owned approximately 16.5%, and Adam and Jared owned approximately 20% each.

Buyout

In late February or early March 2020, Adam and Jared told Lynn that they planned either to buy or vote him out of CLH. On March 31, Lynn attended a meeting of all of the CLH shareholders, with the CLH accountant attending by phone. During this meeting, Lynn was informed of buyout terms. On April 16, Lynn was presented with documents consummating the buyout, which he understood were to be promptly signed. Shelley, Adam, and Jared required that the buyout close quickly and chose the closing date. The valuation methodology for the buyout was not explained to Lynn, and the process lacked

corporate-governance formalities. Lynn did not have an opportunity to consult with an attorney, fully read the documents, or negotiate the terms.

Lynn nevertheless executed the documents, entitled Business Interest Purchase Agreement (BIPA) and Real Estate Purchase Agreement (REPA). The BIPA contained a mutual release clause:

> As of the Closing Date, each party mutually discharges and releases the other party from any and all claims and demands whatsoever which that party had or has up to and after the date of this Agreement against the other party for or by reason of, or in respect to, the conduct of the business of the Corporation or LP's or SP's ownership of the shares, and each discharges the other party from any and all obligations with respect thereto except for the obligations created under this Agreement.

Shelley signed the BIPA and REPA at the same time as Lynn.

In addition to the compensation set forth in the BIPA and the REPA, Lynn assumed a consulting and maintenance role in CLH after the buyout. Lynn received payment for those services until June 2020 when the role was terminated.

Lynn's Post-Buyout Investigation

While Lynn was CEO of CLH, he rarely reviewed bank statements for CLH or the LLCs. He trusted and relied on Shelley, Adam, and Jared to handle this aspect of the business.

After the buyout, Lynn and Shelley continued to engage in proceedings related to their divorce. In April 2021, Lynn and Shelley attended a second divorce mediation. At that mediation, Shelley declined to disclose bank-account statements, which Lynn believed could reveal actionable conduct by Adam and Jared. Shelley later responded to Lynn's

request for bank-account information by stating that "Adam Peterson and Jared Peterson will not release their bank statements. I have not transferred any funds into either Adam's or Jared's account; nor have I requested that either Adam or Jared transfer funds from joint marital accounts into their individual accounts."

After the mediation, Lynn began reviewing statements for business, marital, and personal accounts. By the time Lynn initiated the underlying action, he had reviewed statements from approximately 15 different bank accounts dating back to 2014, and he was continuing his investigation. During this investigation, Lynn learned that accounts he believed were closed remained open.

Lynn served a complaint against Adam, Jared, Shelley, JJ&A, and CLH alleging nine counts: breach of fiduciary duty, conversion, fraud, violation of Minn. Stat. § 302A.251 (2020), violation of Minn. Stat. § 302A.361 (2020), civil theft under Minn. Stat. § 604.14 (2020), unjust enrichment, civil conspiracy, and declaratory relief. Respondents moved to dismiss the complaint for failure to state a claim on which relief can be granted, primarily arguing that the mutual release clause in the BIPA barred all of Lynn's claims. The district court agreed and dismissed the complaint.

This appeal follows.

DECISION

Lynn argues that the district court erred by dismissing his complaint for failure to state a claim because the BIPA (1) does not apply to his claims, (2) was invalidated by duress, and (3) was either induced or invalidated by fraud. We address each argument in turn.

"We review de novo whether a complaint sets forth a legally sufficient claim for relief. We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walsh*, 851 N.W.2d at 606 (citation omitted). However, we are not bound by legal conclusions set forth in a complaint. *Graphic Commc'ns Local 1B Health & Welfare Fund "A" v. CVS Caremark Corp.*, 850 N.W.2d 682, 692 (Minn. 2014). We may also consider documents referenced in the complaint. *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490-91 (Minn. 2004). "A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Walsh,* 851 N.W.2d at 603.

I. The district court did not err by concluding that the release clause in the BIPA bars Lynn's claims.

Lynn argues that the district court erred by concluding that the BIPA release clause was unambiguous and operated to bar his claims. He argues that his claims fall outside of the scope of the BIPA release clause because Shelley, Adam, and Jared were not parties to the BIPA, and the release does not apply to unknown claims. We disagree.

We begin by determining the meaning of the release clause. "Whether a contract is ambiguous is a question of law that we review de novo. The language of a contract is ambiguous if it is susceptible to two or more reasonable interpretations." *Dykes v. Sukup Mfg. Co*., 781 N.W.2d 578, 582 (Minn. 2010) (citation omitted). "A contract's terms are not ambiguous simply because the parties' interpretations differ." *Staffing Specifix, Inc. v.*

TempWorks Mgmt Servs., Inc., 913 N.W.2d. 687, 692 (Minn. 2018). Thus, the question before us is whether the mutual release clause is ambiguous.

The BIPA release clause provides that "each party . . . releases the other party from . . . claims . . . that party had or has . . . against the other party." This language is unambiguous as it is susceptible to only one reasonable interpretation: the parties released each other from claims that any party had or has against any other party. Lynn's arguments to the contrary are not reasonable.

Lynn first contends that the BIPA release clause does not apply to claims against Shelley, Adam, and Jared as individuals because they were not "other parties" to the BIPA. Lynn specifically argues that he and Shelley were considered one party for purposes of the BIPA. Lynn did not raise this argument before the district court and therefore forfeited this argument. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Even so, the language in the BIPA provides otherwise. The introductory clause of the BIPA identifies and defines Shelley separately from Lynn. Shelley is referenced individually as "SP" throughout the BIPA, and certain provisions refer only to her. And Shelley and Lynn each separately executed the BIPA. Lynn also contends that Adam and Jared were not parties to the agreement in their individual capacities. But as with Shelley, the BIPA introductory clause identifies Adam and Jared separately as individuals. Because Shelley, Adam, and Jared are each separately identified as parties to the agreement, Lynn's argument that Shelley, Adam, and Jared are not individual parties as defined in the BIPA is contrary to the express language of the contract and is not reasonable.

Lynn next argues that the plain language of the BIPA does not release unknown claims. We disagree.

Language that clearly expresses an intent to release known and unknown claims will be enforced—no specific language is required. *Curtis v. Altria Grp., Inc.*, 813 N.W.2d 891, 901-02 (Minn. 2012). The BIPA release broadly includes "any and all claims . . . whatsoever." Lynn cites to no language in the agreement or any applicable authority to support his reading of the agreement that the mutual release excepts unknown claims, and the plain language of the BIPA is not limited by its terms only to known claims. Accordingly, Lynn's interpretation of the BIPA is not reasonable.

Lynn argues that public policy compels the conclusion that a release of unknown claims is unenforceable. In support of this argument, Lynn relies on authority in the personal-injury context, where courts have invalidated a release of claims related to unknown personal injuries because the parties did not contemplate an unknown injury at the time of execution of the release. But these authorities are inapposite, as they are grounded on specifically identified policy considerations arising in the personal-injury context, such as the injured party's financial position in light of their physical condition. These policy concerns are not present in a business transaction between sophisticated parties. Lynn describes himself in his complaint as a sophisticated party, having founded and operated a multi-million-dollar, multi-faceted business venture. When he signed the BIPA, Lynn had been responsible for CLH's continued expansion through the acquisition of existing businesses as its CEO for over 20 years. Lynn cites to no authority identifying a public-policy concern in enforcing a mutual release clause between sophisticated parties

to bar unknown claims. We are unwilling to disturb the unambiguous language of a commercial contract in this context. *See Metro. Sports Facilities Comm'n v. Gen. Mills, Inc.*, 470 N.W.2d 118, 125 (Minn. 1991) (reasoning that "sophisticated parties . . . are accountable for the product of their negotiations").

Accordingly, the district court did not err in determining that the BIPA applied to Lynn's claims against Shelley, Adam, and Jared, and that the release clause covered unknown claims. The BIPA therefore bars Lynn's action as stated in the complaint.

II. The complaint does not state a defense that the BIPA was invalidated by duress.

Lynn argues that the district court erred by concluding that facts alleged in the complaint did not meet the legal definition of duress. We disagree.

Duress is a defense to enforcement of a contract. *Bond v. Charlson*, 374 N.W.2d 423, 428 (Minn. 1985). Under Minnesota law, duress occurs "only when agreement is coerced by physical force or unlawful threats." *Id*. A threat to enforce a legal right is unlawful if it is made without good faith that the right is viable, or for the purpose of using the legal process to cause oppression or unnecessary hardship. *Wise v. Midtown Motors*, 42 N.W.2d 404, 407-08 (Minn. 1950).

The complaint contains no allegation that Adam and Jared made unlawful threats to induce Lynn to sign the BIPA. The complaint instead contains allegations that Adam and Jared told Lynn that they would use their voting power to remove him from CLH if Lynn did not agree to a buyout. But the complaint does not contain any allegation that this threat was unlawful. For example, the complaint does not contain any allegation that Adam and

Jared did not have or believe in good faith that they had a lawful right to vote Lynn out of CLH. Because the complaint does not state a defense of duress, we see no error by the district court in its dismissal order.

III. The complaint does not state a defense that the BIPA was invalidated by fraud.

Lynn argues that the district court erred in concluding that the BIPA was not invalidated by fraud. At oral argument, Lynn asserted that the complaint contains fraud allegations that fall into two categories, either of which, he claims, would invalidate the BIPA. Lynn first asserts that Shelley, Jared, and Adam represented that Shelley was selling her CLH shares on equal terms to Lynn, but that they hatched and concealed a plan from Lynn whereby Jared and Adam would allow Shelley to re-purchase her shares in CLH after the conclusion of the divorce proceeding so as to hide their financial misdeeds and Shelley's true assets. Separately, Lynn asserts that Shelley, Adam, and Jared stole or withheld money from CLH, concealed bank accounts from Lynn, and engaged in other financial misdeeds that were not disclosed at the time he signed the BIPA. We address each circumstance in turn.

A contract is voidable if a party's assent to the agreement was induced by a fraudulent or material misrepresentation upon which the party was justified in relying. *Carpenter v. Vreeman*, 409 N.W.2d 258, 260-61 (Minn. App. 1987). A party claiming fraud must plead the circumstances constituting fraud with particularity. Minn. R. Civ. P. 9.02. Particularity requires that the party must plead the "ultimate facts." *Hardin Cnty. Sav. Bank v. Hous. & Redevelopment Auth. of Brainerd*, 821 N.W.2d 184, 191 (Minn. 2012) (quotation omitted). The "ultimate facts" requires particularized factual allegations

underlying each element of fraud. *Id.*; Minn. R. Civ. P. 9.02; *see, e.g.*, *Baker v. Best Buy Stores, LP*, 812 N.W.2d 177, 183-84 (Minn. App. 2012) (reasoning that, like Fed. R. Civ. P. 9(b), Minn. R. Civ. P. 9.02 requires identification of the "who, what, when, where, and how" of the fraud), *rev. denied* (Minn. Apr. 25, 2012).

The elements of fraud are as follows: (1) a false representation of a past or existing material fact susceptible of knowledge; (2) made with knowledge of the falsity of the representation or made without knowing whether it was true or false; (3) with the intention to induce a party to act in reliance on that representation; (4) that the representation caused such party to act in reliance on that representation; and (5) that such party suffered pecuniary damages as a result. *Valspar Refinish, Inc. v. Gaylord's Inc*., 764 N.W.2d 359, 368 (Minn. 2009). An omission or concealment of a fact may amount to fraud where (1) the fact is material and (2) there exists an obligation to communicate the fact to the other party. *See CVS Caremark Corp.*, 850 N.W.2d at 695 (discussing the common-law definition of fraud in Minnesota). A concealed fact is material to a transaction if a party would have relied on the concealed fact had the information been available. *See U.S. Bank N.A. v. Cold Spring Granite Co.*, 802 N.W.2d 363, 373-74 (Minn. 2011) (stating that allegedly concealed information was immaterial where testimony revealed that the information would not have been relied on even if it were available). For the reasons set forth below, regardless of how Lynn characterizes the alleged fraud, as by misrepresentation, omission, or concealment, the complaint fails to state a fraud that would invalidate the BIPA.

A. Shelley's CLH Shares

Lynn first alleges that Shelley, Adam, Jared, CLH and JJ&A affirmatively misrepresented that Shelley was selling her CLH shares on equal terms as Lynn, and that this representation was false because she actually retained her CLH shares or had hatched and concealed a plan to buy back into CLH after the divorce from Lynn was finalized. These allegations do not set forth a particularized fraud defense.

First, to the extent that Lynn alleges that Shelley did not actually sell her CLH shares, the executed BIPA belies those allegations. Lynn does not contest that the BIPA was executed by Shelley.

Second, the complaint contains no allegation that in executing the BIPA, Lynn relied, reasonably or otherwise, on any representation that Shelley was selling her shares on same or equal terms as him. Likewise, the complaint contains no allegation that Lynn would not have executed the BIPA had he known of a plan for Shelley to buy back CLH shares at a later date.

We observe that the complaint contains affirmative allegations that Lynn was motivated by the financial benefit *to him* in executing the BIPA as opposed to the alternative option, that Jared and Adam would vote Lynn out of CLH. Lynn specifically alleged in the complaint that the reason that he executed the BIPA was to put *himself* in a better financial position than if he were voted out of CLH, not because he thought Shelley was selling her shares on equal terms or would never be a shareholder of CLH again. We must accept this allegation as true. *Walsh*, 851 N.W.2d at 606. In light of this allegation,

it would not be reasonable to infer that Lynn relied on any financial implications for *Shelley* in executing the BIPA.

Third, Lynn does not allege that the plan for Shelley to repurchase her CLH shares has materialized. He only alleges the existence of a secret plan. A fraudulent plan that has not materialized cannot result in damage. *See Strouth v. Wilkison*, 224 N.W.2d 511, 514 (Minn. 1974) (applying the rule that damages are limited to "actual out-of-pocket loss"). At oral argument, Lynn conceded that because the plan has not materialized, Lynn has suffered no damage. Accordingly, the allegations in the complaint related to any claimed fraud involving an unmaterialized plan with no resulting damages does not state the existence of a fraud.

B. Financial Dealings

Lynn alleges that Shelley, Adam, and Jared both concealed and affirmatively misrepresented financial information adversely affecting the accuracy of the valuation of Lynn's CLH shares. Specifically, Lynn alleges that Shelley, Adam, and Jared represented that the CLH accounting was accurate, but that they stole or withheld money from CLH, and that certain bank accounts had been closed, but Lynn later learned that certain bank accounts remained open. Lynn also alleges that certain bank statements were redirected to Jared's home address. These allegations of fraudulent representation, omission, and/or concealment are insufficient to state a fraud defense.

First, Lynn does not allege with particularity that he relied on any representation by Shelley, Adam, or Jared regarding the valuation of his CLH shares in executing the BIPA. The complaint contains allegations that the CLH accountant prepared a valuation of the

company and that the methodology was not explained to Lynn. But the mere existence of a valuation does not equate to Lynn's reliance on any representation as to that valuation. Separately, we note that the complaint contains allegations that valuation was prepared by the *accountant*, not by Shelley, Adam, or Jared. A misrepresentation by a non-party does not, in the absence of particularized allegations, amount to fraud by a party. Lynn also alleges generally that he relied on Shelley, Adam, and Jared with respect to reviewing the LLCs and CLH bank-account statements and the reinvestment of profits. But Lynn makes no allegation that his reliance on bank statements, accounts, or past financial dealings of the company relates to the BIPA. For fraud to invalidate an agreement, the fraud must relate to that agreement. *Sorenson v. Coast-to-Coast Stores (Cent. Org.), Inc.*, 353 N.W.2d 666, 670 (Minn. App. 1984), *rev. denied* (Minn. Nov. 7, 1984). The complaint therefore fails to state a fraud defense because it lacks particular allegations that Lynn relied on a fraudulent misrepresentation by any party in executing the BIPA.

Second, the complaint does not contain any allegation that the fact that any account may have remained open or that bank statements were rerouted to a new address induced Lynn to sign the BIPA or otherwise amounted to fraud of some nature. To that end, the complaint contains no allegation that, had Lynn been aware of this information at the time he was presented with the BIPA, he would not have executed the agreement. And, as noted above, the allegations in the complaint demonstrate that Lynn's sole motivation in executing the BIPA was that he would yield a better financial outcome than the alternative whereby Adam and Jared would vote him out of the company. Accordingly, the fraud allegations in the complaint with respect to the financial dealings of respondents fail to

state a defense of fraudulent inducement because there is no allegation that Lynn relied on any representations, material omissions, or material concealed facts when he signed the BIPA. Thus, the fraud allegations in the complaint are not sufficiently particular to invalidate the BIPA.

Affirmed.