STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0410

Mesabi Metallics Company, LLC, et al.,
Appellants,

vs.

Minnesota Department of Natural Resources,
Respondent.

Filed October 3, 2022
Affirmed
Cochran, Judge

Ramsey County District Court
File No. 62-CV-21-3142

Thomas H. Boyd, Brent A. Lorentz, Elizabeth H. Schmiesing, Andrew S. Escher, Winthrop & Weinstine, P.A., Minneapolis, Minnesota (for appellants)

Keith Ellison, Attorney General, Oliver J. Larson, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Cochran, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

This appeal involves a series of mining leases between respondent Minnesota Department of Natural Resources (DNR) and appellants Mesabi Metallics Co. and related entities (collectively, "Mesabi"). In December 2020, the parties entered into an agreement to amend the leases subject to Mesabi meeting certain conditions precedent by

May 1, 2021. At the time, the parties had already amended the leases multiple times, and Mesabi was in material default of the existing terms. The December 2020 agreement provided that if the conditions precedent were not met by the May 1, 2021 deadline, the amendment would not become effective and DNR could terminate the leases based on the existing default. One of the conditions precedent required Mesabi to have $200 million in immediately available funds in a corporate bank account in the United States in Mesabi's name to secure the construction of a taconite ore pellet plant.

After Mesabi failed to fulfill this condition precedent by the May 1, 2021 deadline, DNR terminated the leases. Mesabi then brought an action for breach of contract, among other claims, seeking damages and to enforce the terms of the amendment. DNR counterclaimed seeking declaratory relief that its termination of the leases was effective. DNR also sought damages from Mesabi for past-due payments. The district court granted judgment on the pleadings and summary judgment in DNR's favor on all claims, concluding that DNR was authorized to terminate the leases because of Mesabi's failure to meet the condition precedent.

In this appeal from the judgment, Mesabi argues that the district court erred by (1) determining as a matter of law that Mesabi's failure to satisfy the $200 million condition precedent allowed DNR to terminate the leases; (2) failing to consider alleged breaches of the terms of the 2020 agreement by DNR; and (3) determining that Mesabi's failure to satisfy the condition precedent was not excused by the doctrine of impossibility. Because we conclude that the district court did not err, we affirm.

FACTS

Mesabi was formed in 2003 for the purpose of developing and operating a taconite pellet plant in the Iron Range in northern Minnesota ("the project").[1] Mesabi consists of three limited liability companies located in Nashwauk, Minnesota: Mesabi Metallics Co., Mesabi Holdings, and Mesabi HBI.

The project is expected to "consist of an open-pit iron ore mine, crushing, concentrating, and pelletizing facilities, and a rail line and train loading system." In furtherance of the project, Mesabi entered into mining leases with DNR, which granted Mesabi mineral rights to about 30 separate state-owned parcels. The first of these leases originated in December 2004.

In 2017, after Mesabi entered bankruptcy proceedings, the leases were modified through agreements between Mesabi and DNR. Those agreements ("the bankruptcy amendments") thereafter governed the terms of the leases.

Mesabi continued major infrastructure work on the project after entering into the bankruptcy amendments and invested more than $200 million in the project since 2017, but Mesabi failed to complete work on the taconite pellet plant within the timeframe set forth in the bankruptcy amendments. Mesabi also failed to make payments due to DNR in

[1] Because this case comes before us on appeal from judgment on the pleadings, these facts are taken from Mesabi's complaint, DNR's counterclaim, and the documents referenced in those pleadings, and they are framed in the light most favorable to Mesabi, as the party against whom judgment was granted. *See Burt v. Rackner, Inc.*, 902 N.W.2d 448, 451 (Minn. 2017) (providing that, on appeal from a grant of judgment on the pleadings, appellate courts accept the facts alleged in the complaint as true and draw all reasonable inferences in favor of the nonmoving party).

2019 as required by the bankruptcy amendments. As a result, Mesabi was in material default of the leases by 2020.

The 2020 Amendment

To address Mesabi's default, Mesabi and DNR entered into an agreement on December 4, 2020, to amend the leases ("the 2020 amendment"). The 2020 amendment provided that DNR was "willing to amend the Leases contingent upon" several requirements, including Mesabi's "cure of existing defaults and/or outstanding litigations." The 2020 amendment also expressly provided that its "effectiveness" was "[s]ubject to the fulfillment of all conditions precedent" specified in the amendment. If all of the conditions precedent were met, the modifications to the leases set forth in the 2020 amendment would "supersede[] and replace[]" the terms of the bankruptcy amendments in their entirety. The agreement required each party "to use commercially reasonable efforts . . . to do, or cause to be done, all things necessary to fully reflect, consummate, perform and make effective the terms and provisions of th[e] 2020 Amendment."

Section 4 of the 2020 amendment listed "Actions Necessary as Conditions Precedent to the Effectiveness of this 2020 Amendment." The amendment stated, "As condition precedents to the effectiveness of this 2020 Amendment, unless a different date is specified, the conditions set forth below in this Section must be satisfied *on or before May 1, 2021*." (Emphasis added.) The conditions precedent mostly related to

Mesabi's financing of the project.[2] Relevant to this appeal is the condition precedent in section 4(e):

> (e) Mesabi must secure Pellet Plant Financing with the following elements:
>
> (i) Mesabi must obtain executed, binding, and enforceable equity and debt commitments totaling at least $850 million . . .
>
> . . . .
>
> (iii) At least *$200 million* of the debt or equity financing must have been advanced to Mesabi and such sum be *in immediately available funds in a corporate bank account* held in the United States in the name of Mesabi. . . .

(Emphasis added.) Section 4 also stated that "DNR retains the right to terminate the Leases for the defaults [under the bankruptcy amendments] if the conditions of this Section 4 are not satisfied *by May 1, 2021*." (Emphasis added.) Section 4 further provided that, if Mesabi satisfied "some but not all of the conditions precedent to the effectiveness of this 2020 Amendment, the 2020 Amendment *shall not* become effective." (Emphasis added.)

The 2020 amendment stated that one provision—section 23—was not connected to Mesabi's fulfillment of the conditions precedent and instead was "intended to be binding on the date that th[e] agreement [was] executed by the [p]arties." Section 23 provided that the state's right of termination under the bankruptcy amendments was to be extended to

[2] Two of the conditions precedent in section 4 were related to other matters—one required Mesabi's parent company to pay $13 million toward a settlement agreement in a separate matter and another required Mesabi to pay approximately $11.5 million in past-due 2019 rents and royalties. Section 4 also expressly provided that, if Mesabi satisfied some but not all of the conditions precedent to the effectiveness of the 2020 amendment, Mesabi was not entitled to recover any money paid under these two provisions.

one year from the date on which the Minnesota Executive Council approved the 2020 amendment.[3] The provision stated, "The purpose of this provision is to allow the Lessee to fulfill the conditions precedent to the effectiveness of this 2020 Amendment after the [executive council] [a]pproval date, *while preserving* the State's right to terminate the leases for the existing defaults under the existing leases if the 2020 Amendment does not become effective." (Emphasis added.)

On May 1, 2021, Mesabi submitted a certificate to DNR stating that it had satisfied all conditions precedent in the 2020 amendment except for one—the requirement under section 4(e)(iii) to have $200 million in financing advanced to it in immediately available funds in a corporate bank account in the United States in Mesabi's name. Instead, only half of that amount—$100 million—had been advanced to Mesabi's bank account by that date. Mesabi had satisfied the requirement to obtain a total of $850 million in financing; the deficiency was the failure to have the full $200 million immediately available by the May 1, 2021 deadline.

Mesabi explained that the failure to advance the full $200 million in financing was "[d]ue to the extenuating circumstances surrounding the COVID-19 pandemic." Mesabi

[3] The Minnesota Executive Council "consists of the governor, lieutenant governor, secretary of state, state auditor, and attorney general." Minn. Stat. § 9.011, subd. 1 (2020). State law requires the approval of the executive council before the commissioner of natural resources may issue a taconite iron ore mining lease. Minn. Stat. § 93.1925, subd. 1 (2020). Section 22 of the 2020 amendment provided that the amendment was subject to approval by the executive council and that Mesabi would be released from its obligations to satisfy the conditions precedent if the executive council did not approve the amendment. The executive council approved the 2020 amendment at a public meeting on December 2, 2020, which was two days before the parties signed the 2020 amendment.

indicated that it had received a request from its financier for additional time for payment of the $100 million balance. Mesabi also asserted that the $100 million it had already received "would be adequate to fund the company's operations for a few months and as such the schedule for completion of the Project . . . would in no way be affected by this delay."

On May 5, 2021, DNR sent Mesabi a notice stating that the 2020 amendment did not become effective because of Mesabi's failure to comply with all conditions precedent in the amendment. As a result, DNR asserted that Mesabi was subject to the lease terms under the bankruptcy amendments and that DNR was entitled to terminate the leases on account of pre-existing defaults. Also on May 5, 2021, DNR sent a separate notice stating that it was exercising its rights under the bankruptcy amendments to terminate Mesabi's leases, unless Mesabi cured its defaults under the bankruptcy amendments within 20 days.[4] DNR's notice of lease termination listed three of Mesabi's defaults under the bankruptcy amendments: (1) failure to mine at least 1.6 million tons of taconite crude ore in at least two quarters before January 1, 2021; (2) failure to finish construction of a pellet plant by December 31, 2019; and (3) failure to ship three million tons of pellets from the finished

[4] On May 19, 2021, DNR sent Mesabi a letter reiterating its position that the 2020 amendment did not become effective because of Mesabi's failure to secure $200 million in immediately available funds, and also listing additional failures by Mesabi that DNR had identified. Specifically, DNR asserted that Mesabi failed to satisfy other conditions precedent in the 2020 amendment because the loan commitment Mesabi obtained "contain[ed] numerous contingencies" and was "not a credible lender for the project." DNR did not argue before the district court that these alleged failures permitted DNR to terminate the leases based on pre-existing defaults, and the district court's decision was based solely on Mesabi's failure to obtain $200 million in immediately available funds. We therefore need not address other asserted failures listed in DNR's May 19, 2021 letter.

pellet plant in one calendar year by December 31, 2020. Mesabi was unable to cure the defaults.

The Current Action

Mesabi commenced the present action against DNR and filed an amended complaint on June 11, 2021. The complaint alleged that DNR acted unlawfully by purporting to terminate the leases because Mesabi had substantially and materially complied with the conditions precedent in the 2020 amendment. Mesabi brought several claims for relief: (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; (3) declaratory judgment that the 2020 amendment was effective and DNR's notice of termination of the leases was invalid; and (4) injunctive relief to prevent DNR from terminating the leases. Mesabi sought an order from the district court declaring that the 2020 amendment was effective and that DNR could not terminate the leases based on "superseded provisions" of the bankruptcy amendments. Mesabi also sought injunctive relief and damages sustained as a result of DNR's "unlawful conduct."

DNR filed an answer and brought counterclaims. DNR sought declaratory relief that (1) Mesabi failed to meet a condition precedent to the 2020 amendment; (2) the 2020 amendment did not become effective; (3) Mesabi was in default under the bankruptcy amendments; and (4) DNR's notice of termination was effective to terminate the leases. DNR also brought a counterclaim seeking monetary damages in the amount of royalty payments due under the bankruptcy amendments.

DNR moved for judgment on the pleadings on its declaratory-judgment claim and Mesabi's claims, and for summary judgment on its monetary-damages claim. DNR argued

that it was entitled to judgment as a matter of law because Mesabi's undisputed failure to satisfy a condition precedent prevented the 2020 amendment from becoming effective, and the failure to satisfy the condition could not be excused.

The district court granted DNR's motion for judgment on the pleadings. The district court agreed with DNR that the 2020 amendment did not become effective because Mesabi failed to satisfy the $200 million deposit requirement. The district court also rejected Mesabi's argument that the doctrine of impossibility excused Mesabi's failure to satisfy the condition. The district court further concluded that, because the 2020 amendment did not become effective, Mesabi was in default under the bankruptcy amendments and DNR's termination of the leases was effective. Finally, the district court granted summary judgment to DNR on its claim for monetary damages based on the bankruptcy amendments. Accordingly, the district court entered judgment on both of DNR's claims and dismissed Mesabi's complaint.

Mesabi appeals from the judgment.

DECISION

Mesabi challenges the district court's decision granting judgment on the pleadings for DNR under Minnesota Rule of Civil Procedure 12.03. Mesabi does not separately challenge the district court's grant of summary judgment on DNR's claim for monetary damages.[5]

[5] DNR's claim for monetary damages is based on royalties that Mesabi owed under the bankruptcy amendments, which form the controlling contract between the parties if the 2020 amendment did not become effective.

We review a district court's decision on a motion for judgment on the pleadings de novo. *Burt*, 902 N.W.2d at 451. We determine whether the complaint "sets forth a legally sufficient claim for relief." *Id.* (quotation omitted). In doing so, we accept the facts alleged in the complaint as true and draw all reasonable inferences in favor of the nonmoving party. *Id.* We also may consider documents that are referenced in or are a part of the pleadings that are the subject of the motion. *See N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490-91 (Minn. 2004) (applying this principle when reviewing a motion to dismiss for failure to state a claim upon which relief can be granted); *see also In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995) ("In deciding a motion to dismiss . . . the court may consider the entire written contract when the complaint refers to the contract and the contract is central to the claims alleged.").[6]

The issues in this appeal require us to interpret the provisions of the 2020 amendment. Contract interpretation is a question of law, which we review de novo. *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009). "The

[6] The Minnesota Rules of Civil Procedure provide that, if matters outside the pleadings are presented to the district court on a motion for judgment on the pleadings, the motion is treated as one for summary judgment. Minn. R. Civ. P. 12.03. Mesabi's complaint and DNR's counterclaim referenced multiple documents that were attached to the pleadings, including the 2020 amendment. These are appropriate documents to consider in a motion for judgment on the pleadings. *See N. States Power Co.*, 684 N.W.2d at 490-91. Although the parties later submitted additional documents that were outside the pleadings to support and oppose DNR's motion, the district court relied solely on the pleadings and the documents referenced in the pleadings when it decided DNR's motion. For this reason, we review this matter as an appeal from judgment on the pleadings. *See Hennepin Cnty.*, 540 N.W.2d at 497 (reviewing matter as an appeal from a dismissal for failure to state a claim upon which relief can be granted when the record showed that the district court did not consider documents outside the pleadings).

primary goal of contract interpretation is to ascertain and enforce the intent of the parties." *Id.* When language in a contract is unambiguous, "the contract language must be given its plain and ordinary meaning." *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346-47 (Minn. 2003) (quotation omitted). We will "not rewrite, modify, or limit [the] effect by a strained construction" of unambiguous contractual provisions. *Valspar Refinish*, 764 N.W.2d at 364-65. Judgment on the pleadings is appropriate when the controlling language of a contract is unambiguous and entitles the party to judgment. *See McReavy v. Zeimes*, 9 N.W.2d 924, 927 (Minn. 1943).

The central issue in this appeal is whether DNR is entitled to declaratory judgment that its notice of termination was effective to terminate the leases with Mesabi. Mesabi argues that the district court's decision granting judgment for DNR is erroneous for three reasons: (1) DNR was not authorized to terminate the leases based on Mesabi's failure to satisfy the condition precedent in the 2020 amendment requiring $200 million in immediately available funds to be deposited in Mesabi's bank account; (2) the district court failed to consider alleged breaches of the 2020 amendment by DNR, which would prevent DNR from terminating the leases; and (3) Mesabi's failure to satisfy the condition precedent was excused by the doctrine of impossibility. We address each argument in turn.

I. DNR properly terminated the leases after Mesabi failed to satisfy a condition precedent in the 2020 amendment.

DNR terminated Mesabi's leases under the bankruptcy amendments after Mesabi failed to satisfy the requirement in the 2020 amendment that $200 million in financing be advanced to Mesabi and be immediately available in a corporate bank account in Mesabi's

name in the United States by May 1, 2021. The parties agree that the $200 million deposit requirement is a condition precedent. But the parties dispute the legal effect of Mesabi's failure to satisfy the condition precedent.

The district court determined that Mesabi's failure to satisfy the condition precedent for a $200 million deposit prevented the 2020 amendment from becoming effective altogether, and therefore DNR was permitted to terminate the leases based on preexisting defaults under the bankruptcy amendments. In reaching this conclusion, the district court distinguished two types of conditions precedent: conditions precedent to contract formation and conditions precedent to performance. The district court determined that the $200 million deposit requirement was a condition precedent to contract formation. The district court then concluded that the 2020 amendment did not become effective because "[i]n determining whether a contract is formed, Minnesota courts require strict compliance with terms relating to formation," including "the strict enforcement of terms concerning dates." DNR urges this court to follow the district court's reasoning and conclude that Mesabi failed to satisfy a condition precedent to contract formation, which prevented the 2020 amendment from becoming effective. Mesabi, on the other hand, argues that the $200 million deposit requirement is a condition precedent to performance under the contract. On this basis, Mesabi argues, strict compliance with the condition precedent was *not* necessary for the 2020 amendment to take effect.

We begin our analysis of the parties' arguments by discussing the caselaw governing conditions precedent. We note that Minnesota caselaw does not expressly distinguish between conditions precedent to contract formation and conditions precedent

to performance.[7] Although the parties frame the issue in this way, we need not draw this distinction to resolve the case. Instead, as discussed below, we rely on existing caselaw governing conditions precedent. Based on that caselaw, we conclude that Mesabi's failure to satisfy the condition precedent at issue gave DNR the right to terminate the leases, as expressly provided in the 2020 amendment, for preexisting defaults under the bankruptcy amendments.

[7] Our review of Minnesota authorities shows that this distinction has been alluded to in a few nonprecedential authorities and secondary sources. This court alluded to the two types of conditions precedent in an unpublished opinion, *City of Lonsdale v. NewMech Cos.*, No. A07-0105, 2008 WL 186251, at *8 (Minn. App. Jan. 22, 2008) ("[W]hereas a condition precedent to performance presupposes the existence of a contract to be performed, a condition precedent to formation goes to whether there is a contract at all."). We also note that *Minnesota Practice Series* has explained the difference between conditions precedent to contract formation and performance in a way similar to the district court's analysis here:

> General common law recognizes two types of conditions precedent: conditions precedent to *performance under an existing contract* and conditions precedent to the *formation of the contract itself.* The first type describes acts or events which must occur before a party is obliged to perform a promise made pursuant to an existing contract and the second is a condition precedent to the formation or existence of the contract itself. In the latter situation, no contract arises unless and until the condition occurs. Thus, a condition precedent to the formation of a contract prevents the formation of a contract except upon realization of the condition . . . . A condition precedent to an obligation to perform, on the other hand, does not prevent contract formation, but does prevent a duty to perform from arising except upon realization of the condition.

20 Brent A. Olson, *Minnesota Practice* § 7:110 (2021-22 ed. 2021) (quotations omitted).

A. Minnesota caselaw establishes that the failure to fulfill a condition precedent generally discharges the parties' obligations under the contract except in limited circumstances.

The Minnesota Supreme Court has examined when a failure to satisfy a condition precedent discharges the parties' obligations under a contract. A condition precedent is a condition "which is to be performed before the agreement of the parties becomes operative." *Lake Co. v. Molan*, 131 N.W.2d 734, 740 (Minn. 1964) (quoting *Chambers v. Nw. Mut. Life Ins. Co.*, 67 N.W. 367, 368 (Minn. 1896)). The "general rule" under Minnesota law is that conditions precedent "must be literally met or exactly fulfilled, or no liability can arise on the promise qualified by the condition." *Capistrant v. Lifetouch Nat'l Sch. Studios, Inc.*, 916 N.W.2d 23, 27-28 (Minn. 2018) (quoting 13 Richard A. Lord, *Williston on Contracts* § 38.6 (4th ed. 2013)). "[I]f the event required by the condition does not occur, there can be no breach of contract." *451 Corp. v. Pension Sys. for Policemen & Firemen*, 310 N.W.2d 922, 924 (Minn. 1981); *see also Crossroads Church of Prior Lake v. County of Dakota*, 800 N.W.2d 608, 615 (Minn. 2011) (providing that "unfulfilled conditions prevent enforcement of a contract").

The supreme court's decision in *451 Corp.* demonstrates the application of the general rule. In that case, the plaintiffs—a corporation and its owners—sought to obtain long-term financing for an office-warehouse building, and they entered into an agreement to obtain a mortgage loan from a pension system, one of the defendants. *451 Corp.*, 310 N.W.2d at 922-23. The pension board adopted a resolution approving the mortgage loan, with the condition that the loan was "subject to approval of the documents as to legality and form by the Office of the Corporation Counsel." *Id.* at 923. On the date of the

loan closing, the pension board cancelled the loan, and the corporation later sued for breach of contract. *Id.* at 922, 924. The supreme court determined that the corporation's breach-of-contract claim failed because the condition requiring approval of the loan by the Office of the Corporation Counsel never occurred. *Id.* at 924. The supreme court concluded that "no action for breach of contract lies because [the pension board's] contractual obligation to make the loan, if any, was discharged, since the condition to performance of the obligation never occurred." *Id.* at 925. The supreme court's decision in *451 Corp.* reflects the general rule that, if a condition precedent to a contract is not fulfilled, the parties' obligations under the contract are discharged.

Recently, in *Capistrant*, the supreme court recognized a limited exception to the general rule regarding conditions precedent. *See* 916 N.W.2d at 28. The court drew guidance from section 229 of the Restatement (Second) of Contracts, which provides, "To the extent that the non-occurrence of a condition would cause disproportionate forfeiture, a court may excuse the non-occurrence of that condition unless its occurrence was a material part of the agreed exchange." *Id.*; Restatement (Second) of Contracts § 229 (1981). The supreme court declined, however, to decide whether section 229 was applicable "for all purposes" whenever a party failed to meet a condition precedent. *Capistrant*, 916 N.W.2d at 28 n.3. Instead, the supreme court determined that application of section 229 was appropriate in the "unique context" of that case. *Id.* at 28.

The "unique context" at issue in *Capistrant* was a dispute over the provisions of an employment contract as a long-term employee prepared for retirement. *Id.* at 25. The employment contract contained a provision requiring the employee to "immediately"

return all the employer's property in the employee's possession at the end of his employment. *Id.* The employment contract also provided that, if the employee breached certain provisions, including the return-of-property provision, the employer would be entitled to terminate its obligation to pay the employee's residual commission. *Id.* Relying on this provision, the employer asserted that its obligation to pay the employee's unpaid commissions was excused because the employee failed to comply with the condition precedent to return the employer's property immediately. *Id.* at 26. The supreme court determined that it was appropriate to consider whether section 229 could excuse the employee's failure to immediately return the property to the employer. *Id.* at 28. In reaching this conclusion, the supreme court emphasized that "the parties had been performing under the contract for 28 years before the condition became operative, and the condition came into play only as the parties' employment relationship was ending." *Id.* Additionally, the supreme court noted that "the consequence of failing to comply with the return-of-property clause would be the forfeiture of millions of dollars [in commissions]." *Id.*

In reaching this decision, the supreme court in *Capistrant* did not overrule the general rule regarding conditions precedent. Instead, the supreme court's decision was based on its recognition that "the return-of-property clause at issue here operates differently than the conditions at issue in our cases applying the general rule." *Id.*

With these principles in mind, we turn to the specific facts of this case.

B. Section 229, which allows the failure to satisfy a condition precedent to be excused, as recognized by the supreme court in Capistrant*, does not apply here.*

Mesabi argues that the district court erred by failing to apply section 229 to determine whether to excuse its failure to satisfy the condition precedent in the 2020 amendment. Mesabi maintains that this case "fits the 'mold' contemplated by both *Capistrant* and [s]ection 229, and reflects the rationale for which these principles were established." We are not persuaded. Although we need not broadly decide in which contexts section 229 is applicable, we conclude that it is not applicable here.

This case does not present the type of circumstances at issue in *Capistrant*, in which the supreme court found it appropriate to apply section 229. The language of the 2020 amendment and the circumstances as described in the parties' pleadings make clear that the conditions precedent in the 2020 amendment were absolute. The purpose of the 2020 amendment was to give Mesabi an opportunity to cure its existing default under the bankruptcy amendments. Section 4 of the 2020 amendment stated that the conditions precedent went to the "effectiveness" of the 2020 amendment. Section 4 further stated that "DNR retains the right to terminate the Leases for the defaults [under the bankruptcy amendments] *if the conditions of this Section 4 are not satisfied* by May 1, 2021," and that if Mesabi satisfied "*some but not all* of the conditions precedent to the effectiveness of this 2020 Amendment, the 2020 Amendment *shall not become effective*." (Emphasis added.) This language shows that the parties expected to follow the "general rule" that exact compliance with conditions precedent was required. *See Capistrant*, 916 N.W.2d at 27-28. Although Mesabi alleges that it risks suffering a substantial forfeiture if DNR terminates

the leases, Mesabi was fully aware of this risk at the time it entered into the 2020 amendment. At that time, Mesabi was in material default under the bankruptcy amendments, and it expressly agreed to forfeit any payments made under the 2020 amendment if the amendment did not become effective as a result of "a partial satisfaction of the conditions precedent." Moreover, this is not a case where the parties had been operating under the applicable agreement for an extended period of time like in *Capistrant*. For these reasons, the situation here does not present the type of "unique context" requiring the application of section 229.

Instead, the condition precedent at issue in this case is much more akin to the condition precedent at issue in *451 Corp.*, in which the supreme court applied the general rule. As discussed above, *451 Corp.* involved an agreement to obtain a mortgage loan in which the failed condition was the approval of the loan documents by the Office of the Corporation Counsel. 310 N.W.2d at 922-23. Like the agreement at issue in *451 Corp.*, the 2020 amendment required a party to obtain financing for a major project, and fulfillment of the relevant condition was central to the parties' agreement. The supreme court in *451 Corp.* concluded that, because the condition requiring approval never occurred, the parties' obligations under the contract were discharged. *Id.* at 925. We apply the same reasoning here and conclude that the failure of Mesabi to obtain and deposit $200 million in immediately available funds in a United States bank account discharged the parties' obligations under the 2020 amendment.

Mesabi also argues that its failure to satisfy the condition precedent should be excused under the equitable principles articulated in *Trollen v. City of Wabasha*,

287 N.W.2d 645 (Minn. 1979). In that case, a lessee entered into a five-year written lease with a city granting him property rights to shoreline and shoreline water rights. *Trollen*, 287 N.W.2d at 646. The written lease gave the lessee the option of extending the lease for two additional five-year periods, if the lessee provided notice six months before the end of the rental period. *Id.* Toward the end of the first five-year term, the parties entered into a new lease with provisions identical to the old lease except that the new lease included an additional five-year extension at an increased rent. *Id.* at 647. After the parties entered into the new lease, their relations deteriorated. *Id.* Towards the end of the first five-year period under the new lease, the city notified the lessee that he had failed to provide timely notice to extend the new lease for an additional five-year term. *Id.* The lessee then brought an action for declaratory judgment. *Id.* at 646. The district court concluded that equity relieved the lessee from strict compliance with the notice provision. *Id.* The supreme court agreed. *Id.*

In *Trollen*, the supreme court recognized that the "modern rule" permitted "a court of equity to relieve against loss of an option to extend a lease where there has been excusable and inconsequential tardiness." *Id.* at 647. Under the modern rule, "in cases of mere neglect in fulfilling a condition precedent of [renewal of] a lease, . . . equity will relieve when the delay has been slight, the loss to the lessor small," and not granting relief would cause a significant hardship. *Id.* at 648 (quotation omitted). The supreme court held that this principle excused the lessee's failure to provide six months' notice of intent to extend the lease for an additional five-year term, as required by the written lease, because the delay in providing notice was "relatively slight," the city was not prejudiced by the

delay, and the lessee "would suffer sufficient hardship" if the provision were strictly enforced. *Id.*

Trollen is inapposite to this case. The supreme court in *Capistrant* acknowledged a similar argument, raised by the employee, that *Trollen* applied to his situation and supported the position that "immaterial delays are excused to the extent necessary to prevent forfeiture." *Capistrant*, 916 N.W.2d at 29-30 n.4. When deciding *Capistrant*, the supreme court characterized *Trollen* narrowly as "excus[ing] the immaterial delay in giving a renewal notice under a lease" and declined to extend that reasoning, noting that it had "not relied on *Trollen* outside of the real property context" and it did not wish "to import forfeiture principles from [a] notice case[] into the context of the contractual employment relationship." *Id.* Although this case, like *Trollen*, centers on real estate leases, this case does not involve delayed notice of the exercise of an option to extend a lease. Moreover, Mesabi's failure to satisfy the condition precedent was not the result of "mere neglect," as in *Trollen*. As explained above, the language of the 2020 amendment stated that the parties' obligations under the amendment would not take effect unless Mesabi satisfied all the conditions precedent. The equitable principles that the supreme court recognized as excusing the lessee's delay in *Trollen* do not apply to the type of condition precedent at issue here.

For these reasons, we reject Mesabi's argument that, under *Capistrant*, the principles of section 229 apply to this case to excuse Mesabi's failure to satisfy the condition precedent in the 2020 amendment requiring a $200 million deposit. Instead, we apply the general rule that Mesabi's failure to satisfy a condition precedent discharges the

parties' obligations under the 2020 amendment. As a result, DNR was authorized to terminate the leases under the terms of the parties' agreement.

C. Application of section 229 of the restatement would not excuse nonperformance of the $200 million deposit requirement because the condition was material to the 2020 amendment.

Although we base our decision on our conclusion that section 229 does not govern this case, our result would be the same even if we were to consider section 229. Section 229 provides: "To the extent that the non-occurrence of a condition would cause disproportionate forfeiture, a court may excuse the non-occurrence of that condition unless its occurrence was a material part of the agreed exchange." Restatement (Second) of Contracts § 229. Section 229 requires consideration of two prongs: (1) whether the occurrence of the condition precedent was material to the agreement, and (2) whether any forfeiture is disproportionate to the risk to be protected. *Capistrant*, 916 N.W.2d at 29. A court reaches the second prong only if the condition precedent was *not* material. *Id.*

We focus our analysis on the first prong because it is determinative. Although our caselaw has not defined what a "material" condition is, we have defined "material," in the context of a material breach, as one that "goes to the root or essence of the contract." *BOB Acres, LLC v. Schumacher Farms, LLC*, 797 N.W.2d 723, 728 (Minn. App. 2011) (quotation omitted), *rev. dismissed* (Minn. Aug. 12, 2011). Here, the district court determined that, even if it considered materiality, the requirement that Mesabi deposit $200 million by May 1, 2021, was material as a matter of law because this provision was "foundational."

Mesabi challenges the district court's determination that the occurrence of the condition precedent was material to the parties' agreement. At oral argument before this court, Mesabi acknowledged that the requirement to have the full $200 million deposited and immediately available was material to the agreement. But it argues that the requirement to satisfy this condition *by the particular date*—May 1, 2021—was not material. We are not persuaded.

Based on the language of the 2020 amendment and the context of the parties' agreement, we conclude that the May 1, 2021 date was integral to the 2020 amendment and cannot be separated from the requirement to have the full $200 million available by that date. Section 4 of the amendment states that, "unless a different date is specified, the conditions set forth . . . must be satisfied *on or before May 1, 2021*."[8] (Emphasis added.) And section 4 includes, among other conditions, the $200 million deposit requirement. Section 4 further states, "DNR retains the right to terminate the Leases . . . if the conditions of this Section 4 are not satisfied *by May 1, 2021*." (Emphasis added.) The plain language of the 2020 amendment demonstrates that the May 1, 2021 deadline was a material part of the $200 million condition precedent. Indeed, the effectiveness of the 2020 amendment was fully dependent upon the completion of this and other conditions precedent by that

[8] Mesabi also argues that the use of the phrase "unless a different date is specified" in section 4 supports a reasonable interpretation that the May 1, 2021 date was not material. But the reference to "a different date" means that the amendment might require certain conditions to be met by a different date. For example, several conditions stated that they needed to be satisfied by December 1, 2020. The language referencing "a different date" does not mean that the parties were free to disregard the May 1, 2021 deadline to satisfy conditions precedent that did not specify a different date.

date.[9] Given this language, it is evident that the parties intended for the date to be an essential part of the agreement. This conclusion is reinforced by the fact that the parties entered into the 2020 amendment for the purpose of addressing Mesabi's material default under the bankruptcy amendments. The 2020 amendment gave Mesabi the opportunity to continue the leases, but only if it satisfied all the conditions precedent by May 1, 2021.

We are not persuaded otherwise by Mesabi's assertions that it was improper for the district court to make a materiality determination as a matter of law, and that the question of whether the condition is material is a highly fact-intensive inquiry that is inappropriate to resolve on the pleadings. We acknowledge that the supreme court in *Capistrant* determined that the materiality of the condition precedent at issue in that case "should not be resolved as a matter of law on appeal," but the court did not say that materiality could *never* be decided as a matter of law. 916 N.W.2d at 31. In fact, the supreme court recognized that it had "resolved cases involving conditions precedent as a matter of law." *Id.* at 29. While factual disputes precluded judgment as a matter of law in *Capistrant*, the same is not true here. Even when we accept the allegations in Mesabi's pleadings as true, the language of the 2020 amendment shows that satisfaction of the conditions precedent by the May 1, 2021 deadline (including the $200 million deposit requirement) was essential

[9] Section 23 of the 2020 amendment, which extended the state's right of termination under the bankruptcy amendments to one year from the date of approval of the 2020 amendment by the Minnesota Executive Council, became effective immediately and was not subject to the May 1, 2021 deadline. The effectiveness of all other sections, however, was tied to the May 1, 2021 deadline.

to the agreement, for the reasons stated above. The parties' intent for the date to be material is clear from the plain language of the contract.

For these reasons, we conclude that the requirement to have $200 million advanced in immediately available funds by May 1, 2021, was a material part of the 2020 amendment. Accordingly, even if we were to consider section 229, Mesabi's failure to satisfy that condition precedent would not be excused.[10]

II. Mesabi's complaint fails to show that DNR did not satisfy its contractual obligations under the 2020 amendment.

Mesabi next argues that the district court's decision is erroneous because, in determining that DNR was authorized to terminate the leases, the district court ignored "DNR's failure to satisfy its contractual obligations with respect to effectuating the terms of the 2020 Amendment." Mesabi asserts that DNR failed to fulfill its own obligations under sections 4 and 29 of the 2020 amendment and that DNR's actions hindered Mesabi's ability to satisfy the $200 million deposit requirement in a timely manner. We are not persuaded.

Section 29 of the 2020 amendment states, "Each of the parties agrees to use commercially reasonable efforts to take, or cause to be taken, all appropriate action, and to do, or cause to be done, all things necessary to fully reflect, consummate, perform and make effective the terms and provisions of this 2020 Amendment . . . ." Section 4 provides, in relevant part, that "DNR agrees not to terminate the Leases . . . pending the

[10] Because we conclude that the first prong of section 229 is not satisfied because the condition precedent was material, we need not address the second prong regarding the proportionality analysis.

efforts of . . . Mesabi to satisfy the[] conditions precedent," including the $200 million deposit requirement. Mesabi argues that DNR breached its duty to act in a commercially reasonable manner based on allegations in its complaint that DNR refused to grant a limited extension of the May 1, 2021 deadline to give Mesabi additional time to transfer and deposit the other $100 million.

Mesabi mischaracterizes the "commercially reasonable efforts" language in section 29. That provision refers to the parties' obligations to make reasonable efforts to fulfill obligations that are within *their* control. Nothing in section 29 requires DNR to provide Mesabi with an extension to fulfill the conditions precedent, which had a clear deadline. "A party to a contract does not act in bad faith by asserting or enforcing its legal and contractual rights." *Sterling Cap. Advisors, Inc. v. Herzog*, 575 N.W.2d 121, 125 (Minn. App. 1998) (quotation omitted). Moreover, the language in section 4 provides that DNR "agrees not to terminate" the leases *before* the May 1, 2021 deadline. But it expressly allows DNR to terminate the leases "if the conditions . . . are not satisfied by May 1, 2021." Mesabi's allegations cannot support a conclusion that DNR breached its obligation to use commercially reasonable efforts and was therefore prevented from exercising its rights under the 2020 amendment and terminating the leases. Accordingly, these allegations do not preclude judgment on the pleadings.

III. Mesabi's complaint did not plead sufficient facts to support application of the doctrine of impossibility.

Finally, Mesabi argues that the district court erroneously rejected Mesabi's argument that the doctrine of impossibility excuses its failure to satisfy the condition

precedent. Mesabi contends that it was impossible to satisfy the $200 million deposit requirement by the May 1, 2021 deadline because of difficulties caused by the COVID-19 pandemic. The district court rejected Mesabi's argument because the allegations in Mesabi's complaint were legally insufficient to support its impossibility defense.

The supreme court has defined the doctrine of impossibility as allowing for performance of a contractual duty to be excused "due to the existence of a fact or circumstance of which the promisor at the time of the making of the contract neither knew nor had reason to know." *Powers v. Siats*, 70 N.W.2d 344, 348 (Minn. 1955). Under such circumstances, "performance becomes impossible, or becomes impracticable in the sense that performance would cast upon the promisor an excessive or unreasonably burdensome hardship, loss, expense, or injury." *Id.* (footnote omitted). The supreme court in *Powers* recognized that "[t]he distinction between objective and subjective impossibility is not to be overlooked." *Id.* The Restatement (First) of Contracts explains this distinction between the two types of impossibility: "Impossibility of performing a promise that is not due to the nature of the performance, but wholly to the inability of the individual promisor, neither prevents the formation of a contract nor discharges a duty created by a contract." Restatement (First) of Contracts § 455 (1932). In other words, performance may be excused for objective impossibility (meaning that no one could perform the obligation), but not for subjective impossibility (meaning that a particular party was unable to perform the obligation).

On appeal, Mesabi contends that the effects of the COVID-19 pandemic made it impossible for Mesabi to satisfy the $200 million deposit requirement. To support this

argument, Mesabi relies on allegations in its complaint relating to the COVID-19 pandemic. Mesabi's complaint alleges that "[s]ince early 2020," the world has been "victim to the immense impact of the COVID-19 pandemic and ensuing restrictions." Mesabi's complaint further alleges that nationwide lockdowns occurred in India and the United Kingdom (two places where its parent company has significant operations) during 2020. These lockdowns restricted "the operation of public and private offices" as well as travel. And, according to the complaint, these restrictions "severely impaired the ability of senior management and others to travel to the Project site and meet with financial partners. This, in turn, imposed additional burdens and impracticalities on financing related activities given the need to coordinate efforts across 3-4 separate time zones, rather than during in-person meetings." The complaint further alleges that, in May 2021, Mesabi's financier asked for additional time to transfer the remaining $100 million into a United States bank account "[d]ue to the extenuating circumstances surrounding the COVID-19 pandemic[,] which ha[d] recently accentuated at a global scale particularly in India." On this basis, Mesabi alleges that its "inability to deposit the additional $100 million . . . was the result of issues arising out of the pandemic."[11]

[11] Mesabi also relies on an affidavit submitted to the district court by the managing director of Mesabi's parent company, Essar Global. In the affidavit, the managing director asserted that the company was delayed in receiving additional funds from third parties because of the impact of the pandemic and that it was "prepared to advance the additional funds upon receipt of the third-party funds, but it needed additional time to account for the unexpected and unforeseeable impact" of the pandemic on those third parties. Because the affidavit is outside the pleadings, we do not consider it when deciding judgment on the pleadings. *See* Minn. R. Civ. P. 12.03 (providing that matters outside the pleadings are not to be considered on a motion for judgment on the pleadings unless the motion is treated as one for summary judgment); *N. States Power Co.*, 684 N.W.2d at 490-91 (recognizing, in

We reject Mesabi's impossibility argument for two reasons. First, accepting the facts alleged in the complaint as true and drawing all reasonable inferences in favor of Mesabi, Mesabi's failure to meet the $200 million deposit condition by the May 1, 2021 deadline was not "due to the existence of a fact or circumstance of which the promisor . . . neither knew nor had reason to know" as required by *Powers*. 70 N.W.2d at 348. Mesabi's complaint reflects that Mesabi was fully aware of the severe effects that the pandemic was having on business operations when it entered into the 2020 amendment on December 4, 2020. As discussed above, the complaint alleges that "[s]ince *early 2020*," the pandemic was having an "immense impact." (Emphasis added.) The complaint further alleges that, "[i]n India and the United Kingdom particularly, *2020* saw nationwide lockdowns and restrictions on . . . the operation of public and private offices and travel (including domestic and international). This severely impaired the ability of senior management and others to travel to the Project site and meet with financial partners." (Emphasis added.) These allegations reflect that, when Mesabi entered into the 2020 amendment, it knew that the pandemic was severely affecting business operations, including financing. Although Mesabi may not have anticipated the extent to which the pandemic might affect business operations in India after it entered into the 2020 amendment, it certainly *had reason to know* that the pandemic could substantially affect

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context of motion for failure to state a claim upon which relief can be granted, that court may consider only documents that are referenced in the pleadings that are the subject of the motion). We note, however, that even if we were to consider the managing director's affidavit, we would not reach a different result because the facts in the affidavit are legally insufficient to support an impossibility defense, for the same reasons Mesabi's complaint is insufficient.

business operations in India and elsewhere. Accordingly, Mesabi's factual allegations are insufficient and its impossibility defense fails as a matter of law. *See id.*

Second, Mesabi's complaint is also legally insufficient to support an impossibility defense because its complaint supports a theory of *subjective* impossibility, not objective impossibility. As noted above, the complaint alleges that the pandemic caused nationwide lockdowns, travel bans, and restrictions on business operations in India and the United Kingdom—where Mesabi's parent company has significant operations. Mesabi's allegations further refer to the impact of these restrictions on the ability of "senior management" to travel to "the Project site," as well as Mesabi's "inability to deposit the additional $100 million." These allegations, if true, show that *Mesabi* was unable to meet the condition precedent. They do not show that the nature of the performance was impossible for *anyone* to achieve. Moreover, Mesabi's complaint does not allege that it was impossible for *anyone* to satisfy the $200 million condition precedent. Because Mesabi's theory (as set forth in its complaint) is based on subjective impossibility, Mesabi's failure to satisfy the condition precedent cannot be excused based on the impossibility doctrine. *See id.* (noting that the doctrine of impossibility does not apply where nonperformance is based on subjective impossibility); Restatement (First) of Contracts § 455.

In sum, the allegations in Mesabi's complaint are legally insufficient to support an impossibility defense.[12] Therefore, the district court did not err by rejecting Mesabi's

[12] While our analysis is based on *Powers* and the Restatement (First) of Contracts, our conclusion is also consistent with sections 261 and 271 of the Restatement (Second) of

argument that its failure to satisfy the $200 million deposit requirement can be excused based on the doctrine of impossibility.[13]

Conclusion

Because Mesabi failed to satisfy the condition precedent in the 2020 amendment requiring Mesabi to have $200 million advanced to it and deposited in its corporate bank account in the United States by May 1, 2021, the 2020 amendment did not become effective and DNR was authorized to terminate the leases. Under *Capistrant*, the principles of section 229 of the restatement do not apply to the circumstances of this case, and even if they did apply, Mesabi's failure to satisfy the condition precedent would not be excused because the condition precedent is material to the parties' agreement. Also, Mesabi's allegations that DNR failed to satisfy its obligations under the 2020 amendment are without

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Contracts—a more recent version of the Restatement of Contracts than the one cited in *Powers*. Section 261 provides that when "a party's performance is made impracticable without his fault by the occurrence of *an event the non-occurrence of which was a basic assumption on which the contract was made*, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary." Restatement (Second) of Contracts § 261 (1981) (emphasis added). Because the complaint reflects that Mesabi had reason to know that the pandemic could impact business operations, the impact on business operations caused by the pandemic was not "an event the non-occurrence of which was a basic assumption" upon which the 2020 amendment was conditioned. Similarly, section 271 states that "[i]mpracticability excuses the non-occurrence of a condition if the occurrence of the condition is not a material part of the agreed exchange and forfeiture would otherwise result." *Id.* § 271 (emphasis added) As discussed supra in section I.C, the $200 million condition is a material part of the 2020 amendment. Accordingly, under section 271, Mesabi's failure to satisfy the $200 million condition precedent cannot be excused even if compliance with the condition was impracticable.

[13] As discussed above, our conclusion is based on the facts alleged in the complaint at issue in this case. We express no opinion as to whether the effects of the pandemic could support an impossibility defense in a case involving different factual allegations.

merit given the language of the amendment. Finally, Mesabi's factual allegations do not support a determination that its failure to satisfy the condition precedent was excused by the doctrine of impossibility. Accordingly, the district court did not err by determining that DNR's termination of the leases was effective, and it properly granted judgment on the pleadings for DNR on all claims.

Affirmed.