STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1122

Daniel Smith,
Respondent,

vs.

Ridgeview Homeowner's Association,
Appellant.

Filed May 9, 2011
Reversed and remanded
Ross, Judge

Dakota County District Court
File No. 19AV-CV-10-707

Daniel Smith, Burnsville, Minnesota (pro se respondent)

Karl E. Robinson, David G. Hellmuth, Hellmuth & Johnson, PLLC, Edina, Minnesota (for appellant)

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

U N P U B L I S H E D O P I N I O N

ROSS, Judge

The dispute in this case arose after a condominium homeowners association contracted for the repair of all common patios in the facility and one owner deemed the repairs to the patio adjoined to his unit to be substandard. Unit owner Daniel Smith sued,

alleging that Ridgeview Homeowners Association breached its fiduciary duty to him. The district court conducted a bench trial and awarded Smith damages for loss in property value resulting from the repair. On the association's appeal, we conclude that Smith failed to identify a sufficient basis for his claim. He based his claim on the association directors' statutory duty to act in the best interest of the association and to its members as a group. But that duty does not include an obligation to act in the interest of any unit owner individually. He alternatively based his action on the association's bylaws, which expressly impose no liability on the association for repairs. We therefore reverse and remand.

FACTS

Daniel Smith purchased a residential unit in Burnsville's Ridgeview Condominiums in 2004. The unit is part of a ten-building, 420-unit complex with common areas maintained by Ridgeview Homeowners Association. As unit owner, Smith is an association member. Each unit has an adjoining "patio" (which for some units is a balcony). Although each unit owner has the exclusive right to use the patio adjoined to his unit, the patios are part of the common area to be maintained by the association.

The City of Burnsville deemed the patios substandard and ordered their repair in 2007. The association specially assessed unit owners for the cost of the repair project and planned for its completion by the end of November 2008. It hired Accent Roofing and Remodeling for the project, over Smith's objection.

Smith was not satisfied with the quality of Accent's work on the patio adjoining his unit. Cables that had been enclosed were left exposed, stucco had been damaged and not patched, rotted wood was left in place, and boards that should have been overlapping were not replaced in that fashion and gaps were left between them.

The association fired Accent and hired Clear Choice, which Smith concedes generally "did a very nice job" on the patios it repaired. All patios passed city inspection. Smith was still not entirely satisfied with the work, which he believed had not been uniformly performed. Although his previously substandard patio now passed inspection, he believed that other patios had been improved to a greater degree than his.

Smith sued the association in conciliation court alleging various deficiencies:

> Board not doing th[eir]fiduciary duties—waiting for my patio to be done on construction for over 3 years. Swimming pool not working that we paid $35,000.00 for. No discloser papers at closing. Drop in my property as new. Can't sell because of deck.

The conciliation court found for Smith and ordered the association to pay damages. The association appealed to the district court. The district court vacated the conciliation-court judgment and conducted a bench trial after Smith filed a new complaint. Smith reframed the cause of action as the association's breach of the "duties assigned to it under Minnesota State Statutes Section 515 A & B and its bylaws."

The district court held that by agreeing to repair the patios and by charging each condominium owner an equal assessment, the association "assumed a duty to ensure that each owner received a similar patio" and that it "breached this duty to [Smith's] detriment." This holding rested on the district court's finding that "[t]he continuing

failure of [the association's] agents to recognize and adequately address the unacceptable state of [Smith's] patio proves that they have been unreasonable in their dealings with him." It found the association liable to Smith for $4,000 in damages, reflecting the loss of value to his property from deficient patio repair. It denied the association's request for attorney fees and costs related to Smith's withholding part of his assessment, reasoning that the delays and poor construction entitled Smith to withhold his assessment. But it found that Smith owed the association $1,086, which represented the assessment amount and nonpayment of assessment-related fines. Offsetting the $1,086 from the $4,000, it ordered the association to pay Smith $2,914 plus costs.

The association moved to amend findings or for a new trial. The district court denied the motion, and the association appeals.

D E C I S I O N

The association challenges the district court's entry of judgment following the bench trial. On appeal from a bench trial, we will rely on the district court's factual findings unless they are clearly erroneous. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002). But the district court's purely legal determinations receive no deference and are subject to our de novo review. *Id.* Smith defends the district court's determination that the association has a legal duty, pointing to two sources in his complaint that he asserts created a fiduciary obligation on the association to ensure that his patio was repaired like the others: Minnesota Statutes and the association's bylaws.

Because our decision on the narrow legal issues raised resolves this appeal, we accept without further discussion the district court's findings that repairs to the patio adjoining Smith's unit were completed years later than the association had projected and that the repairs left the patio in inferior condition compared to other patios in the complex. We also accept the finding that the post-repair condition of the patio reduced the unit to a lower market value than it would have enjoyed if the repairs had been completed at the quality level of other repaired patios. Leaving these damages-related findings undisturbed, we answer only the legal question of whether the statutes and bylaws that Smith relies on create the fiduciary duty that he contends the association breached. They do not.

Smith directs us to Minnesota law, which we understand from his complaint involves Minnesota Statutes chapters 515A and 515B. Those chapters teach, in relevant part, that condominiums are real property in which individuals share an undivided interest in the common elements, but privately own the interior of their units. *See* Minn. Stat. § 515B.1-103(11) (2010); Minn. Stat. §§ 515B.1-101–515B.4-118 (2010). Condominiums are created by declaration, administered by an association, and governed by common-interest-property law. *See* Minn. Stat. §§ 515B.2-101(a), .3-101. The administrative associations are organized like corporations. Minn. Stat. § 515B.3-101. They are comprised of elected or appointed members and their actions are governed by the condominium-creating declaration, bylaws, and Minnesota Statutes chapter 515B. Minn. Stat. §§ 515B.3-102, .3-103.

The statutory standard of care that Smith relies on indicates that association directors' duties mirror the duties of corporation directors. They direct that, "[i]n the performance of their duties, the officers and directors [of the association] are required to exercise . . . the care required of a director by section 302A.251, 308B.455, or 317A.251, as applicable." Minn. Stat. § 515B.3-103 (a). Sections 302A.251, 308B.455, and 317A.251 require that each director must discharge her duties in good faith, in a manner that she reasonably believes to be in the corporation's best interests, following the care of an ordinarily prudent person in a similar position and under similar circumstances. Corporate directors under these statutes owe a fiduciary obligation to shareholders to act in the best interest *of the cooperative or corporation*. Minn. Stat. §§ 302A.251, 308B.455, 317A.251. Nothing in the letter or spirit of these provisions suggests that corporate directors should instead act in the best interest of any individual shareholder. By analogy, directors in homeowner associations owe a fiduciary obligation to the unit owners to act in the best interest *of the association* and its members as a class, not any individual unit owner.

The district court and Smith cite to *Chapman Place Ass'n v. Prokasky*, 507 N.W.2d 858, 864 (Minn. App. 1993), *review denied* (Minn. Jan. 24, 1994), for the proposition that the association owed a duty to act in Smith's best interests. *Chapman* is instructive but it does not support the district court's conclusion. A jury in *Chapman* had found that a condominium association board member failed to act in the best interest of the condominium owners when he executed a release from liability for a construction company (of which he was part owner). *Id.* Because the director breached his "fiduciary

obligation to act in the best interests *of the Association and its members*," the district court held that the liability release was unenforceable. *Id.* (emphasis added). Although the procedural posture of this case is different (*Chapman* was not a breach-of-fiduciary-duty lawsuit; in fact, the self-interested board member was not a party) it reinforces our reading of the statutory obligation by applying the fiduciary duty to run from the director to the association and all unit owners rather than to serve the unique interest of any individual unit owner.

That a fiduciary duty is owed by directors of the association to unit owners as a class and not to any of them individually is also the approach taken by other states applying similar laws. *See, e.g.*, *Office One, Inc. v. Lopez*, 769 N.E.2d 749, 759 (Mass. 2002) ("The plaintiffs cannot succeed on [its breach-of-fiduciary-duty] claim . . . because, as[a] matter of law, members of a governing board of a condominium association . . . owe no fiduciary duty to individual condominium unit owners."); *Bd. of Managers of Fairways at N. Hills Condo. v Fairway at N. Hills*, 603 N.Y.S.2d 867, 869–70 (App. Div. 1993) (describing the fiduciary duty of board members to unit owners akin to the duty of corporate board members); *see also* Restatement (Third) of Prop.: Servitudes § 6.14 (2000) ("The directors and officers of an association have a duty to act in good faith, to act in compliance with the law and the governing documents, to deal fairly with the association and its members, and to use ordinary care and prudence in performing their functions.").

Because the directors' duties are owed to the association, Smith's claim fails. Conceivably, applying related corporate-law principles, Smith might have considered a

derivative lawsuit to enforce the rights of the association against the allegedly deficient contractor. *Cf. Wessin v. Archives Corp.*, 592 N.W.2d 460, 464 (Minn. 1999) ("Minnesota has long adhered to the general principle that an individual shareholder may not directly assert a cause of action that belongs to the corporation."). We are aware of no Minnesota case directly applying corporate derivative actions to homeowner associations, but the practice is not novel. *See Cigal v. Leader Dev. Corp.*, 557 N.E.2d 1119, 1123 (Mass. 1990) (applying corporate principles and stating that condominium owners must bring action against director of association as a derivative suit because director's duty is to the association); *Caprer v. Nussbaum*, 825 N.Y.S.2d 55, 65-67 (App. Div. 2006) (same); *Myer v. Cuevas*, 119 S.W.3d 830, 836–37 (Tex. App. 2003) (same). Smith clearly did not bring a derivative suit on behalf of the association; he sued the association directly based on his own alleged injury, not the association's or its members' generally. And he does not assert that any individual association director breached her fiduciary duty to act in the association's best interest.

Smith also points to the association's bylaws as creating a duty to him arising from the delayed and deficient repair to his patio. The bylaws create no such duty. Smith correctly notices that the bylaws indicate that the association will make repairs. But they plainly do not create a *duty* to repair the patio, let alone to repair it to any level of quality: "Nothing herein contained shall be construed so as to impose a contractual liability upon the Association for maintenance, repair and replacement, and the Association's liability shall be limited to damages resulting from negligence."

Because neither the cited provisions of the Minnesota Statutes nor the terms of the bylaws impose a fiduciary duty on the association to act in Smith's particular interests in the repair of the patios, the district court erred by finding the association liable on Smith's theory of recovery. We remand for the district court to issue an amended order and judgment consistent with this holding.

Reversed and remanded.