*This opinion will be unpublished and*
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*Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A11-1023**

Energy Center, LLC,
Appellant,

vs.

The Falls and Pinnacle Owners' Association,
Respondent.

**Filed January 30, 2012**
**Affirmed**
**Minge, Judge**

Hennepin County District Court
File No. 27-CV-09-26427

Howard A. Roston, Rachel R. Myers, Bradley J. Gunn, Malkerson Gunn Martin LLP, Minneapolis, Minnesota (for appellant)

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Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Ross, Judge.

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

**MINGE**, Judge

Appellant challenges the district court's grant of summary judgment in favor of respondent, arguing that the district court erroneously interpreted Minn. Stat. § 515B.3-105(a) (Supp. 2005) to allow cancellation of the service contract between the parties.

Because there are no genuine issues of material fact and because the district court correctly interpreted the statute at issue, we affirm.

## FACTS

Appellant Energy Center, LLC owns and operates a facility that provides heating, cooling, and domestic hot-water utility service for the Riverplace complex on the east side of the Mississippi River near downtown Minneapolis. Until 2005, Sentinel Real Estate Corporation (Sentinel)[1] owned certain buildings in the Riverplace complex, including the Falls and the Pinnacle. Energy Center and Sentinel are affiliate entities.

In March 2005, Sentinel conveyed the Falls, the Pinnacle, and related buildings to a newly formed, nonaffiliate entity named Falls/Pinnacle, LLC. As a condition of this conveyance, Sentinal required Falls/Pinnacle to enter into a Service Agreement with Energy Center for the provision of heating, cooling, and domestic hot-water services until December 31, 2024. The Service Agreement was signed and provided that if the Falls and Pinnacle buildings became condominiums with a common interest community (CIC), the Service Agreement would bind the association for that CIC for its full, almost 20-year term.

Falls/Pinnacle converted the Falls, Pinnacle, and related buildings into condominium ownership; filed a CIC declaration on August 16, 2005, establishing a CIC for the buildings; and sold condominium units. This was done pursuant to the Minnesota Common Interest Ownership Act (MCOIA), Minn. Stat. §§ 515B.1-101 to .4-118 (2004

[1] The record indicates several, apparently affiliated, businesses with the name Sentinel. Although it is not clear which held title to the real estate, that detail is not at issue in this proceeding and does not affect our analysis or result.

& Supp. 2005).[2] At the same time, Falls/Pinnacle created respondent The Falls and Pinnacle Owners' Association (Association). In a document dated January 1, 2007, Falls/Pinnacle transferred, and the Association assumed the obligations under, the Service Agreement. As the developer, Falls/Pinnacle controlled the Association until June 1, 2007, when the threshold for nondeclarant ownership contained in Minn. Stat. § 515B.3-103(c)(iii) (Supp. 2005) was met. In May 2009, the now owner-controlled Association notified Energy Center that the Service Agreement was terminated. Energy Center sued the Association to enforce the Service Agreement. After cross-motions for summary judgment, the district court approved the Association's termination of the Service Agreement. This appeal follows.

**D E C I S I O N**

The issue in this appeal is whether the district court erred in concluding that Minn. Stat. § 515B.3-105(a) allowed the Association to terminate the Service Agreement. This court reviews de novo a district court's decision to grant summary judgment to determine whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76–77 (Minn. 2002).

Because there are no genuine issues of material fact here, we focus our analysis on the application of Minn. Stat. § 515B.3-105(a) to the Association's authority to terminate the Service Agreement. "Interpretation of a statute presents a question of law, which we

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[2] Unless otherwise noted, all references to Minn. Stat. § 515B.3-105(a) are to the Supp. 2005 version, which applied to the transaction at issue. As discussed subsequently, this statute has been amended.

review de novo." *Swenson v. Nickaboine*, 793 N.W.2d 738, 741 (Minn. 2011). Interpretation of a statute begins with consideration of the question of whether the statute is clear and unambiguous. *Taylor v. LSI Corp. of Am.*, 796 N.W.2d 153, 155–56 (Minn. 2011). If the statute is clear and unambiguous, the plain meaning of the statute is given effect. *Id.* at 156. "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotations omitted). If a statute is not clear, we interpret and construe statutory language "to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2010). Legislative intent is to be found by considering "(1) the occasion and necessity for the law; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained; (5) the former law, if any, including other laws upon the same or similar subjects; (6) the consequences of a particular interpretation; [and] (7) the contemporaneous legislative history." *Id.* "Laws uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them." Minn. Stat. § 645.22 (2010).

The statutory language at issue is as follows:

> **If entered into prior to termination of the period of declarant control**, (i) any management contract, employment contract, or lease of recreational facilities, or garages or other parking facilities, (ii) **any contract,** lease, or license **binding the association, and to which a declarant** or an affiliate of a declarant **is a party**, or (iii) any contract, lease or license binding the association or any unit owner other than the declarant or an affiliate of the declarant which is not bona fide or which was unconscionable to the unit owners at the time

> entered into under the circumstances then prevailing, **may be terminated without penalty by the association under the procedures described in this section**.

Minn. Stat. § 515B.3-105(a) (emphasis added).[3] Energy Center argues that the plain meaning of the phrase "binding the association, and to which a declarant . . . is a party" limits its application to contracts formed during the time the declarant controls the association and requires that the declarant remain an active party to the contested contract at the time an association seeks to terminate it. Energy Center asserts that Falls/Pinnacle had no relationship to the Service Agreement at termination; only Energy Center and the Association were parties at that time.

By contrast, the Association argues that the plain language of the statute applies to all contracts that are binding on the Association if the declarant or an entity that becomes a declarant was a party to the contract. The Association asserts that Falls/Pinnacle accepted, became bound, and was thus a party to the Service Agreement; then created the CIC with the looming obligation of the Service Agreement, simultaneously becoming the declarant and controlling the Association; and finally, while the declarant, had the Association assume the obligation of the Service Agreement. The Association argues that under Minn. Stat. § 515B.3-105(a), this nexus is sufficient to give it the right to terminate the Service Agreement.

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[3] Here, the Association originally relied on both subsections (a)(ii) and (a)(iii) in terminating the contract, but the district court did not address the conscionability of the contract. As the parties did not address that portion of the statute, we also decline to do so and limit our analysis to (a)(ii).

The statute refers to "any contract . . . binding the association, and to which a declarant or an affiliate of a declarant is a party." Minn. Stat. § 515B.3-105(a)(ii). There is no requirement that the association and the declarant must both be simultaneously parties to the contract. There is also no requirement that the association be a party to the contract at the time the contract is executed, but merely that it bind the association. Because the MCIOA allows the developer of a CIC to unilaterally become the declarant at a time of its choosing, an absurd result would follow if this language was limited to developers who were declarants at the time of contract formation. *See* Minn. Stat. § 515B.2-101 (2010). Moreover, the application of this statute to only contracts to which the declarant continues to be a party when the termination occurs would eliminate the protection that the statute offers to unit-owner-controlled CIC associations from being bound to contracts that they were not able to negotiate. We conclude that the statutory phrase "declarant is a party" includes circumstances in which an entity that is (or becomes) a declarant assumes a contract that ultimately binds an association, even if the declarant is not an initial party to the contract, and that the statute gives the Association the right to terminate the Service Agreement.

This reading of the statute is supported by apparent legislative intent. Section 515B.3-105, and the MCIOA in general, was adapted from the Uniform Common Interest Ownership Act of 1982 (UCIOA). *See* UCIOA § 3-105, 7 pt. 2 U.L.A. 107 (2009). The language of the section of the UCIOA corresponding to section 515B.3-105 differs from the Minnesota statute. Section 3-105 of the UCIOA reads:

> If entered into before the executive board elected by the unit owners pursuant to Section 3-103(f) takes office, . . . (ii) **any other contract or lease between the association and a declarant or an affiliate of a declarant**, . . . may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to Section 3-103(f) takes office upon not less than [90] days' notice to the other party.

UCIOA § 3-105 (emphasis added). The modified language in the Minnesota statute indicates that a different, more extensive, right of termination was intended. Thus, even though we endeavor to interpret Minnesota statutes consistent with the uniform laws and with other states' interpretations of the uniform laws, the Minnesota modification indicates that such uniformity is not required for section .3-105.

Further, we note that Minnesota's statute was amended in 2010 to apply to "any other contract . . . entered into by the association, a declarant or an affiliate of a declarant that is binding on the association." Minn. Stat. § 515B.3-105(a)(ii) (2010). The author of this amendment represented that the change was not an overhaul but a tune-up. H. Floor Deb. on H.F. No. 3393 (Mar. 24, 2010) (statement of Rep. Jackson). With this amendment, the statute clearly supports the Association's interpretation. Given the limited "tune-up" function of the amendment, we conclude it was not intended to change the result but to clarify the proper result under the existing statutory language. *See Rural Am. Bank v. Herickhoff*, 485 N.W.2d 702, 706–07 (Minn. 1992) (noting that while statutes are not generally applied retroactively, amendments clarifying a statute may be applied retroactively).

Because the plain language of the statute allows the Association to terminate the Service Agreement between the parties, we affirm.

**Affirmed.**

Dated: