STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2076
A09-0276

Mercy Finance Group, LLC,
Appellant,

vs.

George A. Hormel II Trust, et al.,
Respondents.

Filed November 24, 2009
Affirmed
Larkin, Judge

Crow Wing County District Court
File No. 18-CV-08-4486

Richard G. Jensen, Fabyanske, Westra, Hart & Thomson, P.A., 800 LaSalle Avenue, Suite 1900, Minneapolis, MN 55402 (for appellant)

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Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Johnson, Judge.

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

LARKIN, Judge

Appellant challenges the district court's order denying its request for a temporary injunction. Appellant also assigns error to the district court's refusal to reconsider its

order, stay enforcement of the order, and set a supersedeas bond. Because the district court did not abuse its discretion by denying appellant's request for a temporary injunction, we affirm.

FACTS

This case arises from a dispute concerning a vacant-land purchase agreement. In October 2006, appellant Mercy Finance Group, LLC's predecessor-in-interest, Antony Elfelt, entered into a vacant-land purchase agreement with respondents George A. Hormel II Trust and Jamie R. Hormel (jointly, Hormel). Elfelt agreed to pay $700,000 for a 319-acre parcel of property in Garrison, which is owned by Hormel. The purchase agreement called for closing on or before January 31, 2007, and noted that Elfelt had not received a vacant-land disclosure statement or a seller's disclosure-alternatives form. The purchase agreement also stated, "Buyer acknowledges that no oral representations have been made regarding the property."

After signing the purchase agreement, Elfelt requested that Hormel complete a vacant-land disclosure statement. Hormel completed the disclosure with the assistance of George Post, Jr., who was the property's caretaker. The disclosure notes Hormel's reliance on Post, stating, "[t]his form was completed with the assistance of George Post, Jr., who is currently employed as a caretaker of the vacant land. Prior to his responsibility as a caretaker, his father, George Post Sr. was the caretaker."

The disclosure did not indicate whether there were any encroachments on the property; the relevant line on the disclosure was left blank. The disclosure indicated that there were not any buried storage tanks, debris, or waste on the property. Finally, the

disclosure indicated that there was an abandoned landfill or waste disposal site on the north side of the property. The disclosure also contained the following instructions and advisories:

> INSTRUCTIONS TO BUYER: Buyers are encouraged to thoroughly inspect the property personally or have it inspected by a third party, and to inquire about any specific areas of concern. NOTE: If seller answers "NO" to any of the questions asked below, it does not necessarily mean that it does not exist on the property. "NO" may mean that Seller is unaware that it exists on the property.

On March 28, 2007, Elfelt assigned his rights under the purchase agreement to Mercy. A corresponding amendment to the agreement postponed closing to August 24, 2007. On August 28, the purchase agreement was amended a second time. The second amendment indicated that Hormel had engaged STS Consultants to conduct an environmental study of a portion of the property. The amendment provides that "[w]ithin 20 days following [Mercy]'s receipt of the [s]tudy . . . [Mercy] shall determine whether the environmental condition of the [p]roperty is acceptable to [Mercy]." The amendment postponed closing to on or before January 31, 2008, provided that Mercy had received the study at least 20 days in advance of closing. The purchase agreement was amended a third time on January 31 to postpone closing to on or before February 6.

STS sent the environmental assessment to Hormel on October 31, 2007. In an e-mail dated December 10, 2007, Mercy acknowledged receipt of a copy of the assessment. The environmental assessment indicates that the former Garrison city dump encroaches on approximately one acre of the property. The assessment notes that waste material consisting of glass, metal, plastic, and automobile parts are on the property and that the

waste is up to six feet deep in some areas. Mercy advised Hormel that it expected Hormel to remove the waste in the encroaching landfill based on a possession clause in the purchase agreement, which required Hormel to "remove ALL DEBRIS AND ALL PERSONAL PROPERTY NOT INCLUDED HEREIN from the property by possession date." Mercy obtained a bid to remove the waste described in the assessment from Liesch Associates, Inc. Liesch provided Mercy with a remediation plan that estimated the overall cost of removal to be $400,000.

On or about July 8, 2008, Hormel served a notice of cancellation of the purchase agreement on Mercy alleging that Mercy had defaulted by failing and refusing to close under the terms of the purchase agreement and the amendments thereto. The notice of cancellation called for the agreement to terminate 30 days after Mercy had been served with the notice. Mercy obtained a temporary restraining order (TRO), which became effective on August 6, and restrained and enjoined Hormel from

> proceeding to effectuate the termination of the [p]urchase [a]greement . . . including without limitation recording the notice of termination, recording an affidavit showing noncompliance with the terms of the notice, taking any action to convey or encumber the real property identified in the [p]urchase [a]greement or otherwise interfering with [Mercy's] lawful rights and interests in the subject property and the [p]urchase [a]greement.

The TRO required the parties to return for a temporary-injunction hearing on August 19.

On November 14, the district court issued an order denying Mercy's motion for a temporary injunction. Mercy claims that its attorney did not receive the November 14 order until November 26, which was the Wednesday before Thanksgiving. On November 26, Mercy's counsel wrote a letter to the district court requesting that it "stay

enforcement of the order and set a supersedeas bond pending appeal pursuant to Minn. R. Civ. Pro. 62.02 to 62.03." Mercy filed an appeal of the district court's order on November 28. On December 3, appellant sent another letter to the district court, again requesting that the district court stay enforcement of the order and either allow Mercy to file a motion for reconsideration of the order or set a supersedeas bond pending appeal. Mercy also asked the district court to "enlarge the time to take all of those actions." Hormel replied that the purchase agreement was cancelled and as a result, the request for a stay was moot. The district court directed appellant to file a formal motion.

On January 26, 2009, the district court heard Mercy's motion to reconsider the November 14 order or, in the alternative, to stay enforcement of the order and order a supersedeas bond. On February 5, the district court issued an order denying the motion in its entirety. Mercy filed an appeal of this order on February 11. A special term panel of this court consolidated Mercy's two appeals.

D E C I S I O N

Mercy raises several claims on appeal. Mercy claims that the district court erroneously concluded that the parties' purchase agreement has been statutorily terminated. Mercy also claims that the district court abused its discretion by denying its request for a temporary injunction. Finally, Mercy claims that the district court abused its discretion by refusing to set the amount of a supersedeas bond. We address each claim in turn.

I.

We first consider whether the parties' purchase agreement has been statutorily terminated. Minnesota law provides for statutory termination of real-estate-conveyance contracts as follows:

> If a default occurs in the conditions of a contract for the conveyance of real estate . . . that gives the [vendor] a right to terminate it, the [vendor] may terminate the contract by serving upon the [vendee] . . . a notice specifying the conditions in which default has been made. The notice must state that the contract will terminate 60 days . . . after the service of the notice, unless prior to the termination date the [vendee]:
>
> (1) complies with the conditions in default;
> (2) makes all payments due and owing to the [vendor] under the contract through the date that payment is made;
> (3) pays the costs of service of the notice . . . ;
> (4) . . . pays two percent of any amount in default at the time of service . . . ; and
> (5) . . . pays an amount to apply on attorney[ ] fees actually expended or incurred. . . .

Minn. Stat. § 559.21, subd. 2a (2008). If the conditions set forth in the notice are not met, the contract is cancelled. *Id.*, subd. 4(d) (2008).

The predecessor to Minn. Stat. § 559.21, subd. 2a, covered "any contract for the conveyance of real estate or any interest therein executed on or after May 1, 1980." Minn. Stat. § 559.21, subd. 2 (1982), repealed by 1985 Minn. Laws, 1st Spec. Sess. ch. 18, § 16, at 2780. That language had been interpreted as being "broad enough and plain enough to include purchase agreements." *Romain v. Pebble Creek Partners*, 310 N.W.2d 118, 121 (Minn. 1981). Purchase agreements may be cancelled on 30 days notice, unless by their terms a longer termination period applies. Minn. Stat. § 559.21, subd. 4(a).

Under Minn. Stat. § 559.211, if a temporary restraining order or injunction is granted, "the contract shall not terminate until the expiration of 15 days after the entry of the order or decision dissolving or modifying the temporary restraining order or injunction." Minn. Stat. § 559.211, subd. 1 (2008). Mercy argues that because the TRO did not contain an expiration date and because the order denying Mercy's request for a temporary injunction did not contain express language revoking the TRO, the TRO is still in effect and the purchase agreement has not terminated. Mercy's argument raises an issue of statutory construction.

Mercy contends that an express "provision cancelling or dissolving" a previously issued temporary restraining order is an "explicit requirement" for termination under section 559.211. The plain language of the statute refutes this contention. The statute references an "order or decision dissolving or modifying the temporary restraining order or injunction"; the statute does not require that the order contain an express provision to this effect. Minn. Stat. § 559.211, subd. 1. Mercy acknowledges that the language of section 559.211 is plain yet argues that it "must be construed to require an order with specific language dissolving or modifying the temporary restraining order to start the 15-day clock."

When legislative intent is clear from plain and unambiguous language in the statute, "statutory construction is neither necessary nor permitted," and an appellate court will apply the plain meaning of the statute. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). Because the language of the statute is clear and unambiguous, we are neither required nor permitted to engage in statutory construction.

Id. And we will not read a requirement into section 559.211 in an effort to pursue the spirit of the law. *See* Minn. Stat. § 645.16 (2008) ("When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.")

Moreover, Mercy's argument that the TRO remains in effect despite a subsequent order denying injunctive relief places form over substance and leads to an absurd and unreasonable result. It would be unreasonable to allow a TRO that was granted on an emergency basis to continue in effect after the district court has determined, after a full hearing on the merits, that injunctive relief is not warranted, simply because the order denying temporary injunctive relief does not expressly dissolve the TRO. We will not construe section 559.211 in a manner that leads to this unreasonable result. *See* Minn. Stat. § 645.17(1) (2008) (stating that the court may presume that the legislature "does not intend a result that is absurd, impossible of execution, or unreasonable").

The district court granted Mercy's request for an emergency TRO on July 29, 2008. Pursuant to this order, a hearing was scheduled for August 19 to determine whether a temporary injunction should issue. Following the August 19 hearing, the district court issued an order on November 14, denying Mercy's motion for a temporary injunction. The November 14 order includes a finding that the TRO had been issued by the district court "pending further order of the court at a temporary injunction hearing on the matter." While the terms of the TRO do not explicitly provide for its dissolution after the issuance of a further order, that is the implicit, but necessary, effect of the November 14 order. *See State ex. rel. Leary v. District Court*, 78 Minn. 464, 466, 81 N.W. 323, 324

(1900) (stating that a TRO "continues in force from the time of its issuance until the court makes some further order with respect thereto, and this whether the writ expressly so provides or not"); *see also* 2A David F. Herr & Roger S. Haydock, *Minnesota Practice* § 65.10 (4th ed. 2005) ("A TRO remains in effect without an express provision in the order until further order of the court or until the action is terminated." (citing *Leary*, 78 Minn. at 464, 81 N.W. at 323)). The district court's November 14 order denying further relief in the form of a temporary injunction implicitly, but necessarily, revoked the initial TRO. Thus, statutory termination occurred on November 29.

Hormel argues that Mercy's request to stay the district court's November 14 order became moot once statutory termination occurred. Hormel further argues that because the purchase agreement has terminated, this court cannot enjoin termination and Mercy's appeal should be dismissed as moot.[1]

The doctrine of mootness requires appellate courts "[to] decide only actual controversies and avoid advisory opinions." *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). If a court cannot grant effective relief, the matter is generally dismissed as moot. *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005). Mootness, however, is "a flexible discretionary doctrine, not a mechanical rule that is invoked automatically." *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 439 (Minn. 2002) (quotation omitted). "If a party to an appeal suggests that the controversy has, since the rendering of

[1] Hormel previously brought a motion to dismiss the appeal as moot. A special term panel of this court denied Hormel's motion, finding that Hormel had not demonstrated the appeal to be moot on the limited record before the court at that time. We now address Hormel's claim with the benefit of a full record.

judgment below, become moot, that party bears the burden of coming forward with the subsequent events that have produced that alleged result." *Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 98, 113 S. Ct. 1967, 1976 (1993).

Despite our conclusion that the purchase agreement statutorily terminated on November 29, we disagree that Mercy's appeal is moot. The district court retains equitable power to reinstate a purchase agreement that has been statutorily terminated. *See Follingstad v. Syverson*, 160 Minn. 307, 200 N.W. 90 (1924); *Coddon v. Youngkrantz*, 562 N.W.2d 39 (Minn. App. 1997), *review denied* (Minn. July 10, 1997); *D.J. Enters. of Garrison v. Blue Viking, Inc.*, 352 N.W.2d 120 (Minn. App. 1984), *review denied* (Minn. Oct. 11, 1984). We have "rejected the argument that equity is powerless to interfere with the vested cancellation rights of a contract vendor." *Coddon*, 562 N.W.2d at 44. Because the courts maintain equitable authority to grant relief, Mercy's appeal is not moot.

II.

We next consider Mercy's claim that the district court abused its discretion by denying injunctive relief. The decision whether to grant an injunction rests within the broad discretion of the district court and "will not be reversed absent an abuse of that discretion." *Metro. Sports Facilities Comm'n v. Minn. Twins P'ship*, 638 N.W.2d 214, 220 (Minn. App. 2002), *review denied* (Minn. Feb. 4, 2002). An appeal from an order denying a motion for a temporary injunction is "strictly limited in scope," and the sole issue on appeal is whether the denial of the motion constitutes a "clear abuse of discretion." *Pac. Equip. & Irrigation, Inc. v. Toro Co.*, 519 N.W.2d 911, 914 (Minn.

App. 1994) (quotation omitted), *review denied* (Minn. Sept. 16, 1994). "Appellate courts are not justified in interfering unless the action of the [district] court is clearly erroneous and will result in injury which it is the duty of the court to prevent." *Id.* (quotation omitted). Injunctive relief is an extraordinary remedy that should be granted sparingly. *AMF Pinspotters, Inc. v. Harkins Bowling, Inc.*, 260 Minn. 499, 504, 110 N.W.2d 348, 351-52 (1961).

A district court abuses its discretion when its decision is against logic and facts on the record. *Posey v. Fossen*, 707 N.W.2d 712, 714 (Minn. App. 2006). In evaluating whether a district court abused its discretion in deciding whether to grant a temporary injunction, a reviewing court considers: (1) "[t]he nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief"; (2) "[t]he harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial"; (3) "[t]he likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief"; (4) "[t]he aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal"; and (5) "[t]he administrative burdens involved in judicial supervision and enforcement of the temporary decree." *Dahlberg Bros. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965). On review of the district court's application of these factors, this court views the facts "as favorably as possible to the party who prevailed below." *Bud Johnson Constr. Co. v. Metro. Transit Comm'n*, 272 N.W.2d 31, 33 (Minn. 1978).

The Relationship Between the Parties

The district court found that the first *Dahlberg* factor does not favor the issuance of a temporary injunction because the parties did not have a long-standing or specialized relationship. This finding is supported by the record and is not clearly erroneous. Mercy argues that the district court "failed to consider the very important relationship between a vendor and a vendee under a purchase agreement" and points out that "the purpose of [s]ection 559.211 is to protect contract vendees," relying on *O'Meara v. Olson*, 414 N.W.2d 563 (Minn. App. 1987). In *O'Meara*, we stated that "the statute must be strictly followed to afford the vendee protection against arbitrary termination of rights under the contract." 414 N.W.2d at 567. In the present case, the statute was strictly followed, and concerns regarding the vendee's contractual rights are satisfied.

Balance of the Harms

Generally, failure to show irreparable harm is, by itself, a sufficient ground for denying a temporary injunction. *Morse v. City of Waterville*, 458 N.W.2d 728, 729 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990). To be granted an injunction, the moving party must offer more than a "mere statement that it is suffering or will suffer irreparable injury." *Carl Bolander & Sons v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993). Money damages are generally not independently sufficient to provide a basis for injunctive relief. *Miller v. Foley*, 317 N.W.2d 710, 713 (Minn. 1982).

The district court found that the balance of the harms favors Hormel, reasoning that "[d]enial of the temporary injunction in this matter does not permanently affect [Mercy]'s rights to the property." But statutory termination precludes any recovery in an

action arising out of the contract because statutory termination terminates the contract itself. *Olson v. N. Pac. Ry. Co.*, 126 Minn. 229, 231, 148 N.W. 67, 69 (1914) (precluding any recovery under the contract); *Hollywood Dairy, Inc. v. Timmer*, 411 N.W.2d 258, 259 (Minn. App. 1987) (holding that purchaser who failed to comply with the contract loses any cause of action based on the contract post-cancellation). The district court's denial of Mercy's request for a temporary injunction resulted in statutory termination of the purchase agreement. As a result, Mercy was stripped of virtually all its rights to the property and suffered irreparable harm.

Moreover, the district court reasoned that if Hormel were "not allowed to cancel the [p]urchase [a]greement and [is] required to close on the [p]roperty according to [Mercy]'s terms and demands, [Hormel] will be forced to incur extensive cost for the requested remediation." This was not the correct standard to apply when balancing the harms. *Dahlberg* requires the court to consider the harms that the parties will suffer "if the injunction issues *pending trial*." 272 Minn. at 275, 137 N.W.2d at 321 (emphasis added). Instead, the district court considered the harm that respondent would suffer if the injunction was granted and appellant was awarded specific performance after a trial on the merits.

Because the district court's finding on the balance-of-harms factor is based on an error of law, the finding constitutes an abuse of discretion. *See State v. Vang*, 763 N.W.2d 354, 357 (Minn. App. 2009) (citing *Almor Corp. v. County of Hennepin*, 566 N.W.2d 696, 701 (Minn. 1997)) (stating that a district court abuses its discretion when its

ruling is based on an erroneous view of the law). Proper application of law to the facts of this case indicates that the balance-of-harms factor weighs in Mercy's favor.

Likelihood of Success on the Merits

While each of the five factors articulated in *Dahlberg* is important, this court has stated that the probability of success in the underlying action is a "primary factor" in determining whether to issue a temporary injunction. *Minneapolis Fed'n of Teachers v. Minneapolis Pub. Schs.*, 512 N.W.2d 107, 110 (Minn. App. 1994), *review denied* (Minn. Mar. 31, 1994). Even if a party makes a strong showing of irreparable harm, a district court need not grant a temporary injunction where that party has demonstrated no likelihood of success on the merits. *Sanborn Mfg. Co. v. Currie*, 500 N.W.2d 161, 164-65 (Minn. App. 1993). The district court found Mercy failed to establish that it would succeed on the merits of its case.

Mercy's claims in the underlying action included breach of contract and negligent and fraudulent misrepresentation. With regard to its contractual claim, Mercy contends that Hormel breached the purchase agreement by failing to remove the encroaching landfill waste from the property. As support for this contention, Mercy argues that the landfill waste is "debris" and that Hormel is required to remove the debris under the possession clause, which requires Hormel to "remove ALL DEBRIS AND ALL PERSONAL PROPERTY NOT INCLUDED HEREIN from the property by possession date." The district court rejected this argument, concluding that the landfill waste was governed by an environmental-concerns clause in the purchase agreement, instead of the possession clause. The district court reasoned that the environmental-concerns clause

made "no mention of the now requested remediation and contemplates nothing to that effect." Moreover, the district court found that the "encroachment by the landfill was not known or anticipated and was, at most, a mutual mistake of fact. A contract can be voided in cases of mutual mistake."

Mercy's likelihood of success on its contractual claim depends on whether the debris in the encroaching landfill falls under the possession clause, which requires Hormel to remove all debris from the property by possession date, or the environmental-concerns clause, which does not require any action by Hormel. Mercy's contractual claim raises an issue of contract interpretation. "Contract interpretation is a question of law which we review de novo." *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004) (citing *Employers Mut. Cas. Co. v. A.C.C.T., Inc.*, 580 N.W.2d 490, 493 (Minn. 1998)). The primary goal of contract interpretation is to ascertain and enforce the intent of the parties. *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323 (Minn. 2003). When a contractual provision is clear and unambiguous, courts should not rewrite, modify, or limit its effect by a strained construction. *Telex Corp. v. Data Prods. Corp.*, 271 Minn. 288, 294-95, 135 N.W.2d 681, 686-87 (1965); *Anderson v. Twin City Rapid Transit Co.*, 250 Minn. 167, 176, 84 N.W.2d 593, 599-600 (1957); *Grimes v. Toensing*, 201 Minn. 541, 545, 277 N.W. 236, 238 (1938). When a contract contains both general and specific provisions on a particular issue, the specific provision may govern over the general. *See* Restatement (Second) of Contracts § 203(c) (1981) ("[S]pecific terms and exact terms are given greater weight than general language[.]").

The district court correctly concluded that the debris in the encroaching landfill falls under the environmental-concerns clause instead of the possession clause. The possession clause uses the general term "ALL DEBRIS" without defining or limiting the term in any way. But the environmental-concerns clause specifically refers to "hazardous substances." And the environmental assessment describes the debris in the encroaching landfill as a hazardous substance. The assessment states:

> Waste deposits up to 6 feet in depth consisting of glass, metal, plastic and automobile parts were observed in the eight test pits performed on the Hormel property. Laboratory analysis of surface soil, waste and groundwater samples showed no apparent contamination levels above regulatory standards at locations sampled associated with the portion of the dump located on the G.A. Hormel II Trust property. However, the presence of metal, glass and *debris at the surface is a physical hazard*.

(Emphasis added.)

Mercy itself treated the debris in the encroaching landfill as an environmental concern. For example, Mercy obtained a bid for remediation of the landfill waste material from Liesch Associates, Inc. Mercy's inquiries of Liesch demonstrate that Mercy considered the debris to be an environmental concern by asking Liesch to address the following questions: (1) whether "disposal of debris and possibly contaminated soil from the Hormel property [was] permitted in the Crow Wing County sanitary landfill"; (2) whether "bio-treatment of the soil, based on the Environmental Assessment data, [is] possible after the debris has been screened and separated"; and (3) whether "bio-treating [is] less expensive or more expensive than extraction, removal and disposal." Liesch

notes that the proposed remediation plan would need to be revised in the event that subsequent investigation revealed "groundwater or subsurface vapor contamination."

Additionally, a February 4, 2008 letter from Mercy's counsel to Hormel's counsel discusses the debris in the context of environmental law and refers to the debris as a hazardous substance stating:

> With regard to the environmental contamination, the [p]urchase [a]greement did not disclose the potential contamination and in fact at line 73 and 74 indicates that to the best of [Hormel's] knowledge there [are] no hazardous substances located on the property. Now that hazardous substances have been identified as located on the property, assuming the environmental report we have received is in fact a final report, [Mercy] would like to obtain legal [advice] regarding the extent of its risk associated with consummating this purchase.

Finally, communications between Mercy and Hormel's counsel also address the debris in the landfill as an environmental concern. Mercy contacted Hormel's attorney by e-mail on December 10, 2007, regarding Mercy's preliminary review of the environmental assessment. Mercy wrote, "A quick glance seems to indicate that there is contamination on Hormel land." Mercy asked what Hormel's plans were to mitigate any future liability exposure resulting from the encroaching landfill. Hormel responded that upon completion of the sale, it planned to have no further responsibility for the property and no exposure to "potential environmental liability claims." And on January 30, 2008, Mercy contacted Hormel directly by e-mail to confirm its understanding of Hormel's position. Mercy wrote that it understood that "[t]he [t]rust is unwilling to clean up the contaminated dump on its land," and that "[a]fter the sale, the [t]rust wishes to be totally free of all exposure to risk and any liability whatsoever related to the environmental

contamination." On this record, Mercy's claim that the debris does not qualify as a hazardous substance governed by the environmental-concerns clause is not persuasive. The district court did not abuse its discretion by determining that Mercy failed to show a reasonable likelihood of success on the merits of its contractual claim.

With regard to its claims for negligent and fraudulent misrepresentation, Mercy argues that Hormel misrepresented the condition of the land by claiming that there is no buried debris or waste on the property and by failing to disclose the encroachment of the Garrison dump even though Hormel "clearly knew of the encroachment." To succeed on a claim of fraudulent misrepresentation, a plaintiff must prove that he or she acted in reliance on a false representation and suffered pecuniary damage as a result. *See Flynn v. Am. Home Prods. Corp.*, 627 N.W.2d 342, 349 (Minn. App. 2001) (setting forth the elements of fraudulent misrepresentation). A negligent-misrepresentation claim similarly requires proof of reasonable reliance on a misrepresentation, which reliance is the proximate cause of damages. *See id.* at 350-51 (setting forth the elements of negligent misrepresentation).

In order to succeed on the merits of its fraudulent and negligent misrepresentation claims, Mercy must establish that it relied on Hormel's alleged misrepresentations and suffered damages as a result. "A misrepresentation is an assertion that is not in accord with the facts." *Carpenter v. Vreeman*, 409 N.W.2d 258, 260 (Minn. App. 1987). "There is no legal effect from a misrepresentation, material or fraudulent, unless the recipient assents to the contract in reliance on the misrepresentation." *Id.* at 261. "It is enough if

the representations were a substantial and material inducement to the purchase." *Goldfine v. Johnson*, 208 Minn. 449, 452, 294 N.W. 459, 460 (1940).

In concluding that Mercy did not make a sufficient showing that it was likely to prevail on the merits of its misrepresentation claims, the district court reasoned, in part, that once the encroaching landfill was discovered, Mercy investigated the encroachment and the environmental problems caused thereby and had the opportunity to not proceed with closing. The district court's reasoning is sound. "If there is a misrepresentation but the purchaser, instead of relying upon it, makes an independent examination and acts upon the result thereof without regard to the misrepresentations, there is no cause of action." *Berryman v. Riegert*, 286 Minn. 270, 277, 175 N.W.2d 438, 443 (1970) (quotation omitted). The supreme court long ago described the "well-nigh universal" rule that untrue representations do not give rise to a cause of action where a purchaser acts upon the results of his or her own independent investigation instead of relying on the misrepresentations. *Meland v. Youngberg*, 124 Minn. 446, 452, 145 N.W. 167, 169-70 (1914) (holding that when plaintiff made his own independent investigation and acted upon his own judgment, it necessarily follows that he is precluded from asserting that he relied upon the representations of the defendant). The supreme court explained:

> [I]f the buyer undertakes to investigate and determine the entire matter for himself, and is afforded a full and fair opportunity therefor, and in fact does make such investigation, and is permitted to make it as full and complete as he chooses, and he accepts the property after such investigation, the authorities are practically unanimous that he cannot be heard thereafter to assert that he relied upon the representations of the adverse party.

Id. at 454, 145 N.W. at 171.

Mercy discovered the alleged misrepresentations after entering into the purchase agreement but before closing. The second amendment to the purchase agreement provided Mercy with an opportunity to investigate the true condition of the property and to determine whether it was acceptable to Mercy. The amendment indicates that Hormel had engaged an environmental consultant that was acceptable to Mercy to prepare an environmental study of a portion of the property. The amendment provides that in exchange for Hormel's willingness to conduct a study, "*as requested by [Mercy]*," Mercy will be solely responsible for the costs of the study unless "[Hormel] declines to release any information about the Study to [Mercy] or in the event [Mercy] elects not to close this transaction based on the Study received from [Hormel] or lack thereof." (Emphasis added.) While the study was to be completed under the exclusive control and supervision of Hormel, the amendment provided that Hormel would consult with Mercy, and the resulting study indicates that "[Mercy], a prospective purchaser of the subject property, provided property description documents for use in the environmental assessment."

The amendment further provided that Mercy had a right "to share [the study] with its consultants, advisors, lenders or any other parties essential to [Mercy's] decision to close the transaction contemplated in the [p]urchase [a]greement." Mercy ultimately provided the study to Liesch, and Liesch reviewed and relied on the study in formulating a remediation plan for Mercy.

On or about December 10, 2007, Mercy received a copy of the study, which confirmed the existence of the encroaching landfill and described the waste therein. In a

letter to Hormel dated February 4, 2008, Mercy discussed the study and stated, "Now that hazardous substances have been identified as located on the property . . . [Mercy] would like to obtain legal [advice] regarding the extent of its risk associated with consummating this purchase."[2] Then, in a letter dated March 7, 2008, Mercy notified Hormel that it waived "the defects to marketability of title" and was "prepared to close the Agreement immediately."[3]

As a result of the environmental study, Mercy obtained full knowledge of the alleged misrepresentations and the true condition of the property. Yet Mercy was willing to proceed with closing. Mercy has consistently maintained that it is willing to close on the property. In essence, Mercy seeks to close on the property with full knowledge of the alleged misrepresentations and nonetheless recover damages under a misrepresentation theory. But the law does not permit Mercy to recover on its misrepresentation claims unless Mercy can establish reliance on the alleged misrepresentations. Mercy's reliance ended once Mercy became aware of the alleged misrepresentations and the true condition of the property and yet continued to pursue acquisition of the property. Because Mercy

[2] Mercy claims that its obligation to close is triggered by its receipt of a "final" environmental report and complains that it has only received a "preliminary" report. The second amendment to the purchase agreement states, "Within 20 days following [Mercy's] receipt of the Study described above, [Mercy] shall determine whether the environmental condition of the Property is acceptable to [Mercy]." All references in the second amendment are to the "Study"; the second amendment does not reference preliminary or final reports.

[3] Mercy's March 7 correspondence also asked Hormel to confirm in writing that Hormel would "remove all debris and all personal property from the Property by the date of possession." This language is an obvious reference to the possession clause in the purchase agreement. But, as discussed above, Mercy's contention that this clause requires Hormel to remove waste in the encroaching landfill is untenable.

conducted an independent investigation and acted upon the results thereof without regard to the alleged misrepresentations, it cannot maintain its cause of action. *See id.* The district court did not abuse its discretion by determining that Mercy failed to show a reasonable likelihood of success on the merits of its misrepresentation claims.

Public Policy

"The object of a temporary injunction is to maintain the matter in controversy in its existing condition until judgment so that the effect of the judgment shall not be impaired by the acts of the parties during the litigation." *Pickerign v. Pasco Mktg., Inc.*, 303 Minn. 442, 446, 228 N.W.2d 562, 565 (1975). The district court found that an injunction was not necessary to maintain the matter in its existing condition until judgment on the merits, and therefore "public policy supports denial of an injunction to enjoin cancellation of the [p]urchase [a]greement."

As discussed above, the district court's finding is based on the erroneous conclusion that Mercy would maintain its interest in the property after cancellation of the purchase agreement. Because this finding is based on an error of law, it is an abuse of discretion. *See Vang*, 763 N.W.2d at 357. The denial of injunctive relief triggered statutory termination of the purchase agreement and extinguished Mercy's rights to bring suit under the agreement; injunctive relief was necessary to preserve the status quo pending a trial on the merits.

But while the district court erroneously weighed this factor against Mercy, once the error is accounted for the factor does not favor either party. Each party argues that the policies underlying statutory cancellation support a finding in its favor. Mercy argues

that the purpose of the statute is to protect the rights of vendees (i.e., to maintain the status quo). Hormel argues that public policy favors providing vendors with a cost-effective means of cancelling land-sale contracts. The district court noted that neither party "produced more than conclusory statements supporting [their] contentions" that public policy supported their respective positions. The district court's conclusion was not erroneous. Neither party has set forth a prevailing policy consideration.

Administrative Burdens

The district court found that the administrative burdens associated with granting the injunction would not be excessive. Accordingly, it concluded that "this factor weighs in favor of [granting the temporary injunction], but not heavily." "While the existence of administrative burden associated with an injunction might be a significant factor counseling against granting the injunction, the absence of such a burden is not a very strong argument in favor of extraordinary relief." *Queen City Const., Inc. v. City of Rochester*, 604 N.W.2d 368, 379 (Minn. App. 1999), *review denied* (Minn. Mar. 14, 2000.) The district court's finding on the administrative-burdens factor was not an abuse of discretion.

In summary, while the district court erred in its determination that denial of the injunctive relief would not subject Mercy to irreparable harm, Mercy has not shown a likelihood of success on the merits. While the district court may properly grant an injunction to preserve the status quo until trial when a moving party makes a strong showing of irreparable harm, but a doubtful showing that the party is likely to win the case, "the prospect for this balancing of considerations does not exist in the

circumstances . . . where [the moving party] has shown no likelihood it will win [its] case." *Sanborn Mfg. Co.*, 500 N.W.2d at 164-65. Because Mercy has shown no likelihood that it will win its case, we hold that the district court did not abuse its discretion by denying Mercy's request for injunctive relief.

III.

Mercy argues that the district court abused its discretion by refusing to set the amount of a supersedeas bond and by refusing to exercise its equitable powers to enjoin cancellation of the purchase agreement. Minn. R. Civ. App. P. 108.01, subd. 1 ("[A]ppellant may obtain a stay by providing a supersedeas bond or other security in the amount and form which the trial court shall order and approve. . . ."). These arguments relate to Mercy's attempt to stay, pending appeal, the November 14 order that denied Mercy's motion for a temporary injunction.

A stay of the November 14 order would have delayed cancellation of the purchase agreement pending appeal to this court. Other than the extinguishment of its rights under the purchase agreement, Mercy has not identified any harm resulting from the district court's denial of a stay pending appeal, and our review of the record does not indicate any obvious harm. Because Mercy has not shown that it suffered prejudicial harm from the lack of the stay pending appeal, any error in the denial of the stay is not prejudicial and does not provide a basis for reversal. Minn. R. Civ. P. 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not

affect the substantial rights of the parties."). Accordingly, we do not address Mercy's arguments on these issues.

Affirmed.

Dated:

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Judge Michelle A. Larkin