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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A08-0808

A08-1175

Bruce Jeurissen, et al.,
Respondents,

vs.

Town & Country Homes, Inc., et al.,
Appellants,

Stewart Title Company of Minnesota, Inc.,
Defendant.

Filed April 28, 2009
Affirmed in part and reversed in part
Kalitowski, Judge

Carver County District Court
File No. 10-CV-06-1319

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Considered and decided by Kalitowski, Presiding Judge; Schellhas, Judge; and
Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KALITOWSKI, Judge

In these consolidated appeals, the parties dispute the interpretation of the term “useable acres” contained in a purchase agreement between respondents and appellants. Appellants contend that the purchase agreement required them to pay for 19.8 useable acres and that the district court erred by concluding that the purchase agreement required them to pay for 27.89 acres. Respondents argue that the district court erred by failing to require appellants to pay for a total of 34.8 acres. Appellants also argue that the district court erred in awarding judgment against all appellants, rather than solely against appellant NDI. We reject respondents’ argument that the district court erred by not including additional land as “useable acres.” We reverse the district court’s order that appellants be required to pay for an additional 8.09 acres and affirm the district court’s determination that all appellants are liable to respondents.

D E C I S I O N

Respondents Bruce Jeurissen and Nancy Jeurissen own approximately 36 acres of land located within the City of Chanhassen (the city). On July 3, 2002, respondents entered into a purchase agreement to sell the land to appellant Town & Country Homes, Inc. (Town & Country). Town & Country subsequently assigned its interest in the purchase agreement to appellant NDI.

A large part of the 36 acres are located within the city’s Bluff Creek Overlay District (BCOD). A city ordinance limits the development of the BCOD in order to preserve as open space land that directly impacts Bluff Creek. Chanhassen, Minn.,

Code of Ordinances No. 445 § 20-1552 (2007), *available at* <http://www.municode.com/resources/gateway.asp?pid=14048&sid=23> (the ordinance).¹ After entering into the purchase agreement, appellants sought and obtained approval from the city council for a development of 146 units to be located on the 19.8 acres that are outside of the primary and secondary zones of the BCOD and north of Bluff Creek. The city council did not require any transfer of density units from the land within the BCOD to the other parts of the property because appellants' development plan complied with the permissible residential density zoning range. After obtaining the city's approval, appellants offered to pay respondents an additional purchase price of \$1,000,693, based on its calculation of 19.8 "useable acres" on which the development was to be located. Respondents refused to accept payment and instead brought suit seeking damages, and on appeal claim they are entitled to a purchase price for 34.8 "useable acres."

The district court concluded that there were 27.89 "useable acres" because appellants could have contemplated a denser development and could have sought approval to transfer density units from 8.09 acres within the BCOD. The district court ordered appellants to tender an additional purchase price based on a total of 27.89 acres.

I.

Appellants challenge the district court's interpretation of the purchase agreement, arguing that the district court failed to consider and apply section 19 of the purchase agreement, which gives appellants the sole discretion to determine the density of housing

¹ The parties rely on Chanhassen city ordinance No. 286, adopted in 1998, and do not dispute the text of the ordinance. The 1998 ordinance was recodified and renumbered as No. 445 in 2007. For ease of reference, we refer to the 2007 version.

for which they seek approval. Appellants argue that their proposed property development did not require a density transfer, and therefore, the district court erred in concluding that respondents were entitled to payment for that part of the land which might have been approved for a density transfer. Respondents counter that the district court properly interpreted the term “useable acres” in the purchase agreement, but erred by failing to consider the usability of the remaining parts of the 36-acre parcel.

Neither party argues that the purchase agreement is ambiguous, and the district court treated the purchase agreement as unambiguous. “The construction and effect of an unambiguous contract present questions of law, which we review de novo.” *Dorsey & Whitney LLP v. Grossman*, 749 N.W.2d 409, 417-18 (Minn. App. 2008) (quoting *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003)). “[T]he primary goal of contract interpretation is to determine 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 interpreting a written instrument, “the intent of the parties is determined from the plain language of the instrument itself.” *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). We will not rewrite, modify, or limit the effect of a contract provision by a strained construction when the contractual provision is clear and unambiguous. *Id.* And a contract’s terms are to be interpreted in the context of the entire contract, and with meaning given to all of its provisions. *Edina Dev. Corp. v. Hurrle*, 670 N.W.2d 592, 596 (Minn. App. 2003) (citing *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998)), *review denied* (Minn. Dec. 23, 2003).

Section 19 of the parties' purchase agreement specifies that appellants must seek government approval for "a residential community *with density of housing*, roads, utilities and costs *satisfactory to Purchaser, in its sole discretion.*" (Emphasis added.) Thus, under the plain language of the agreement, appellants have the sole discretion to determine the density of housing of the proposed development. And under section 2.3 of the purchase agreement, respondents were entitled to an "Additional Purchase Price" of \$113,000 per "useable" acre above the initial payment, upon receipt of governmental approvals for appellants' residential development. Section 2.4 of the purchase agreement provides that land is useable "to the extent Purchaser is *able* to transfer building density units from such area to other land, as more fully described in [the ordinance] attached hereto." (Emphasis added.)

The incorporated ordinance governing density transfers for cluster developments located in the BCOD grants to the city the discretion to approve density clustering or transfer when approving a development within the BCOD. Chanhassen, Minn., Code of Ordinances No. 445, § 20-1559. Section 20-1559 provides that "[i]n areas where density clustering is applicable, density *may be transferred* to unconstrained parts of the site within land included in the secondary zone, subject to the restrictions of this ordinance, and within land lying outside of identified zone areas." *Id.* (emphasis added). Pursuant to this ordinance, a developer potentially could transfer density units from the BCOD to its development. But the ability to transfer density depends upon whether the city council exercises its discretion to permit transfer during the approval process.

Therefore, although section 2.4 of the purchase agreement states that parts of the land shall be considered “useable” to the extent the purchaser is *able* to transfer building density units, under the city ordinance, a density unit can only be transferred upon the city council’s approval. Here, appellants did not request, nor did the city council approve, a density transfer.

Further, if, as respondents argue, the parties’ intent was that the purchase price should be based on the maximum allowable density for a development, the purchase agreement could have required appellants to seek the city council’s approval for the maximum density. Moreover, if a price based on maximum density was the parties’ intent, the purchase agreement would not have reserved to appellants the sole discretion to determine density.

We conclude that given the broad discretion conferred upon appellants by section 19 of the purchase agreement to pursue city council approval for the housing development density of their choice, appellants were under no express or implied obligation to seek approval for the maximum possible density of their residential development. And it was within appellants’ sole discretion to not request a density unit transfer from the city council. Therefore, we reverse the district court’s order that appellants be required to pay respondents for the additional 8.09 acres.

II.

Appellants argue that the district court erred in awarding judgment against all appellants, rather than solely against NDI, because appellant Town & Country assigned its interest in the purchase agreement to appellant NDI. We disagree.

The construction and effect of an unambiguous contract present questions of law, which we review de novo. *Grossman*, 749 N.W.2d at 417-18.

The district court subsequently amended its order and found that “[p]laintiff Bruce Jeurissen and Defendant Town & Country Homes, Inc. entered into a Purchase Agreement for the sale of the Land in July, 2002, (the “Purchase Agreement”). Town & Country Homes, Inc. subsequently assigned its interest in the Purchase Agreement to Defendant NDI of Minnesota, LLC.” Despite this amendment, the district court left its conclusion that all “Defendants” were liable to respondents unaltered.

Contract rights are generally assignable, except when the assignment is: (1) prohibited by statute; (2) prohibited by contract; or (3) the contract involves a matter of personal trust or confidence. *Travertine Corp.*, 683 N.W.2d 270. And generally, an assignment of “the contract” or of “all my rights under the contract” or an assignment in similar general terms is an assignment of rights and a delegation of performance of the duties of the assignor, and its acceptance by the assignee constitutes a promise by the assignee to perform those duties. 20C Brent A. Olson, *Minnesota Practice* § 336.2-210 (2008). “This promise is enforceable by either the assignor or the other party to the original contract.” *Id.* In substance, the original obligor may not divest itself of liability without the consent of the obligee. *Epland v. Meade Ins. Agency Assocs., Inc.*, 564 N.W.2d 203, 207 (Minn. 1997). If the obligee consents to the delegation of duties, and agrees to release the original obligor from its responsibilities under a contract, a substitution of one party for another—or novation—occurs. *Id.* Notwithstanding the assignment of rights to another, the original obligor remains responsible for performance

on the contract. *Epland*, 564 N.W.2d at 207; *Tony & Leo, Inc. v. United States Fidelity & Guar. Co.*, 281 N.W.2d 862, 865 (Minn. 1979).

Here, appellant Town & Country is the original obligor and the assignor, and respondents are the obligees. And two other appellants—Hovstone Properties Minnesota, L.L.C., and K. Hovnanian T&C Homes at Minnesota, L.L.C.—are both doing business as Town & Country, thus rendering them additional original obligors. Town & Country validly assigned its rights under the purchase agreement to NDI. But Town & Country—as the original obligor—remained liable on the contract absent a release, or novation, from respondents. *See id.* (stating that the assignment of rights to another does not null the original obligor’s responsibility for performance on the contract). Town & Country’s assignment to NDI did not divest it of its liability because there is no evidence that Town & Country obtained the consent of respondents, as the obligees to the purchase agreement, to be released of liability. *See Tony & Leo, Inc.*, 281 N.W.2d at 865 (holding that the original obligor may not divest itself of liability without the consent of the obligee). Moreover, the purchase agreement does not state that an assignment of rights automatically entails a novation or release of liability. Section 21.6 of the parties’ purchase agreement provides only that, “This Agreement and the rights set out herein may be assigned to an entity to be formed by Purchaser for purposes of developing the Property.” Thus, there is no evidence that there was a novation of NDI as a substitute for Town & Country under the purchase agreement.

Because the assignment of rights does not extinguish the obligor’s duties and liability under the purchase agreement, and because appellants did not otherwise obtain a

release of liability from respondents, all appellants remain liable under the purchase agreement to respondents.

In conclusion, appellants had no obligation under the purchase agreement to seek approval from the city council for the maximum possible density of their housing development and the district court therefore erred in ordering that appellants pay for an additional 8.09 acres above its purchase offer for 19.8 acres. And because appellants Town & Country, and the other appellants doing business as Town & Country, never obtained a release of liability under the purchase agreement from respondents, all appellants remain liable under the agreement.

Affirmed in part and reversed in part.