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Minn. Stat. § 480A.08, subd. 3 (2010).

STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1106
A11-1143

Marianne F. Richardson,
Plaintiff,

vs.

Blue Star Plumbing, Inc., et al.,
Defendants,

and

Fire Insurance Exchange, as subrogee of Laddy and Ramona Cusick,
Applicant for Intervention,

vs.

Blue Star Plumbing, Inc.,
Defendant,

and

Blue Star Plumbing, Inc.,
Third Party Plaintiff (A11-1106),
Appellant (A11-1143),

vs.

Madonna Cheever, et al.,
Third Party Defendants,

Dillon Herges, et al.,
third party defendants,
Respondents,

Murnane Brandt, P. A., et al.,
Appellants (A11-1106).

Filed April 9, 2012
Reversed and remanded
Larkin, Judge

Sherburne County District Court
File No. 71-CV-10-690

Kay Nord Hunt, Lommen, Abdo, Cole, King & Stageberg, P.A., Minneapolis, Minnesota (for appellants Murnane Brandt, P.A., et al.)

Daniel A. Haws, Stacy E. Ertz, Kari L. Gunderman, Murnane Brandt, P.A., St. Paul, Minnesota; and

Thomas E. Peterson, Law Offices of Thomas E. Peterson, P.A., Bloomington, Minnesota (for appellant Blue Star Plumbing, Inc.)

Stanford P. Hill, Matthew J. Mahoney, Bassford Remele, Minneapolis, Minnesota (for respondents Dillon Herges, et al.)

Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Collins, 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 dismissal of its contribution and indemnity claims under Minn. R. Civ. P. 12.02(e), arguing that the district court erred in determining that appellant's third-party complaint fails to state a claim upon which relief can be granted. Appellant also challenges the district court's imposition of sanctions

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

against appellant's counsel under Minn. Stat. § 549.211 (2010) and Minn. R. Civ. P. 11. Because appellant's third-party complaint states a claim for which relief can be granted, we reverse and remand for further proceedings. We also reverse the district court's award of sanctions against appellant's counsel.

FACTS

This case arises from an explosion that occurred at a residential property located in Big Lake. The events that led to the explosion are as follows.[1] In April 2008, the property went into foreclosure. At some point, the owners of the property removed a clothes dryer from the basement. The dryer had been powered by a natural gas line. The gas line was not capped when the dryer was removed, or if it was, the cap was later removed. In October, ownership of the property reverted to the mortgagee, Federal Home Loan Mortgage Corporation (Freddie Mac).

Freddie Mac hired respondent Dillon Herges, a real-estate agent with respondent Edina Realty (collectively Edina), to serve as the selling agent for the Big Lake property. In early November, Edina contracted with appellant Blue Star Plumbing Inc. to winterize the plumbing at the property. Edina did not notify Blue Star of the uncapped gas line.

[1] Because this case is before us for review of the district court's decision to dismiss appellant's third-party complaint for failure to state a claim, the facts are taken from the dismissed pleading. *See Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010) (stating that when reviewing a dismissal for failure to state a claim on which relief can be granted, an appellate court considers "only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party" (quotation omitted)).

On November 17, Laddy and Ramona Cusick entered into a purchase agreement to buy the Big Lake property. The Cusicks hired a realtor to assist them with the purchase. They also hired a home inspector, who inspected the property on November 18. The inspector's report states that the gas line for the dryer lacked a cap or connection to the dryer. The report states that the "uncapped gas line" was "[h]azardous" and "[a]n imminent THREAT AND DANGER TO LIFE, health and safety of the occupants of the property." The report also warns, "DO NOT USE UNTIL THE HAZARD IS REMOVED." The Cusicks received a copy of the inspection report, but Blue Star was not provided with a copy of the report nor any of the information contained in the report.

On January 9, 2009, the Cusicks closed on the property. On or about April 6, the Cusicks, with the assistance of Marianne and Chester Richardson, began moving into the property. On the same day, the Cusicks contacted Blue Star to de-winterize the property. On or about April 7, Blue Star performed certain de-winterization work on the property. No one notified Blue Star of the uncapped gas line at any time prior to or during Blue Star's work. And the Cusicks did not ask Blue Star to remedy the hazardous condition created by the uncapped gas line. At some point prior to or during Blue Star's de-winterization work, the valve for the uncapped gas line was opened.

On April 8, the Cusicks and the Richardsons returned to the Big Lake property to continue the moving process. On that day, the explosion occurred, causing injury to Marianne Richardson and Ramona Cusick.

Marianne Richardson sued Blue Star and the Cusicks, alleging negligence. Ramona Cusick brought cross-claims against Blue Star for negligence, contribution and indemnity. Laddy Cusick brought cross-claims against Blue Star for contribution and indemnity. Blue Star brought cross-claims against the Cusicks for contribution and indemnity. Blue Star also served a third-party complaint seeking contribution and indemnity from Edina; the home inspector and his employer; the Cusicks' realtor and her employer; the previous home owners; and Chester Richardson.

Instead of answering Blue Star's third-party complaint, Edina moved to dismiss the complaint for failure to state a claim on which relief could be granted. The district court granted the motion to dismiss.[2] Blue Star requested permission to bring a motion for reconsideration, which the district court granted. But the district court ultimately denied Blue Star's motion for reconsideration and "affirmed" its earlier order for dismissal. The district court also granted, in part, Edina's pending motion for sanctions, awarding Edina $5,000 in attorney fees to be paid by appellants Murnane Brandt, P.A.,

[2] There is some confusion in the record regarding the basis for the district court's order. Edina moved the district court for "an Order dismissing the Third-Party Complaint for failure to state a claim upon which relief can be granted." *See* Minn. R. Civ. P. 12.02(e) (allowing a party to assert the defense of "failure to state a claim upon which relief can be granted" by motion). Although the resulting order is captioned, "Order Granting Motion to Dismiss," it states that Edina's "motion for judgment on the pleadings is granted." *See* Minn. R. Civ. P. 12.03 (providing that any party may move for judgment on the pleadings "[a]fter the pleadings are closed"). Because Edina's motion asserted that Blue Star failed to state a claim upon which relief could be granted and the pleadings were not closed at the time of the motion, we construe the district court's order as one for dismissal under rule 12.02(e).

Daniel Haws, Kari Gunderman, and Stacy Ertz (Blue Star's counsel and their law firm).[3] This appeal follows, in which Blue Star challenges the district court's dismissal of its third-party complaint against Edina and its sanctions award.

D E C I S I O N

I.

Under Minn. R. Civ. P. 12.02(e), a defendant may move to dismiss a pleading for "failure to state a claim upon which relief can be granted." A pleading must "contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought." Minn. R. Civ. P. 8.01. Notice pleading took effect in Minnesota following the adoption of rule 8.01. *Kelly v. Ellefson*, 712 N.W.2d 759, 767 (Minn. 2006). "Notice pleading replaced code pleading, which required a complaint to include a specific statement of ultimate facts sufficient to constitute a cause of action." *Id.* "No longer is a pleader required to allege facts and every element of a cause of action. A claim is sufficient against a motion to dismiss based on Rule [12.02(e)] if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *N. States Power Co. v. Franklin*, 265 Minn. 391, 395, 122 N.W.2d 26, 29 (1963). "To state it another way, under this rule a pleading will be dismissed only if it appears to a certainty that no facts, which could be

[3] The district court also ruled on several other summary-judgment motions that were filed by parties other than Edina, including Blue Star. Edina did not move for summary judgment, and the district court did not treat Edina's motion to dismiss as one for summary judgment. *See* Minn. R. Civ. P. 12.02 (providing that if "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment").

introduced consistent with the pleading, exist which would support granting the relief demanded." *Id.* "[I]t is immaterial whether or not the plaintiff can prove the facts alleged." *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739 (Minn. 2000). Thus, rule 12.02(e) "serves an extremely limited function." *Franklin*, 265 Minn. at 394, 122 N.W.2d at 29.

"[Appellate courts] conduct a de novo review of a Rule 12 dismissal." *Krueger v. Zeman Constr. Co.*, 781 N.W.2d 858, 861 (Minn. 2010). We "consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party." *Bahr*, 788 N.W.2d at 80 (quotation omitted).

Blue Star's Duty Theory

Blue Star's contribution and indemnity claims are based on the theory that Edina had a duty, as possessor of the Big Lake property, to correct dangerous conditions on the property or to warn entrants of the conditions. Blue Star's duty theory is based on established precedent regarding landowner liability. "It is well established in our jurisprudence that a landowner has a duty to use reasonable care for the safety of all entrants upon the premises." *Olmanson v. LeSueur Cnty.*, 693 N.W.2d 876, 880 (Minn. 2005).

> The duty required of a landowner (*or the person charged with responsibility for the condition of the land*) as to licensees and invitees is no more and no less than that of any other alleged tortfeasor, and that duty is to use reasonable care for the safety of all such persons invited upon the premises, regardless of the status of the individuals.

Peterson v. Balach, 294 Minn. 161, 174, 199 N.W.2d 639, 647 (1972) (emphasis added). "[T]he landowner's duty of reasonable care includes an ongoing duty to inspect and maintain property to ensure entrants on the landowner's land are not exposed to unreasonable risks of harm." *Olmanson*, 693 N.W.2d at 881. "If dangerous conditions are discoverable through reasonable efforts, the landowner must either repair the conditions or provide invited entrants with adequate warnings." *Id.*

Moreover, "[i]t is generally recognized that one who carries on activities on land on behalf of the possessor is subject to the same liabilities as the possessor, and that one in control of the premises is under the same duty as the owner to keep the premises in safe condition." *Dishington v. A.W. Kuettel & Sons, Inc.*, 255 Minn. 325, 330, 96 N.W.2d 684, 688 (1959) (footnotes omitted). For example:

> An independent contractor or servant to whom the owner or possessor of land turns over the entire charge of the land is subject to the same liability for harm caused to others, upon or outside of the land, by his failure to exercise reasonable care to maintain the land in safe repair as though he were the possessor of the land.

Isler v. Burman, 305 Minn. 288, 294, 232 N.W.2d 818, 821 (1975) (quoting Restatement (Second) of Torts § 387 (1965)).

Although Blue Star's duty theory is based on established precedent, the theory depends on a determination that Edina was in possession of the Big Lake property. Blue Star contends that this is not a usual case where Edina "acted as an ordinary real estate agent." Blue Star asserts that Edina was contractually responsible "for maintaining, preserving, inspecting or repairing the property in question" on behalf of the property

owner, Freddie Mac, and that Edina "bound [itself] to Freddie Mac to perform property maintenance functions on the Big Lake property such as hiring Blue Star to winterize the Big Lake Home's plumbing." Blue Star argues that as a result of this contractual obligation, Edina was a "possessor" of the property, "charged with the duties of a possessor," and therefore "had a duty to discover the dangerous condition and make it safe or warn of its dangerous condition."

The District Court's Decision

The district court rejected Blue Star's duty theory. In doing so, the district court required Blue Star to establish, as a matter of law and fact, that Edina owed a duty of care. The district court reasoned that

> Blue Star . . . has not established that [Edina] owed anyone a legal duty to warn about the uncapped gas line, cap the gas line, or take any action to correct the hazardous condition. Blue Star has not shown through Minnesota case law or statute that a legal duty to investigate, warn, or correct a hazardous condition exists for a seller's real estate agent.

The district court concluded that "Blue Star merely alleges that [Edina] had a legal or contractual duty, without facts, statutes, or case law that would support its proposition. Blue Star's claim for indemnity from [Edina] is factually and legally insufficient."

Blue Star contends that the district court "wrongly viewed the Rule 12.02(e) motion as a procedure for resolving a contest about the facts or the merits of the case." That contention has merit. "[T]he existence of a duty . . . is a legal question to be determined by the judge, not the jury." *Balder v. Haley*, 399 N.W.2d 77, 81 (Minn. 1987). Although "[a court is] not bound by legal conclusions stated in a complaint when

determining whether the complaint survives a motion to dismiss for failure to state a claim," *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008), the question of whether a legal duty exists is not purely a question of law. "The existence of a legal duty depends on the factual circumstances of each case." *Gabrielson v. Warnemunde*, 443 N.W.2d 540, 543 n.1 (Minn. 1989). Thus, a determination regarding the existence of a duty may require a determination of the underlying facts. *See id.* (stating that if the facts are disputed, the finder of fact is to resolve the disputed facts before the court can determine if a duty exists).

Whether Edina was in control of the Big Lake property such that it had the duties of a land possessor depends in large part on its contractual obligations to Freddie Mac. But the record is not developed regarding Edina's contractual obligations. Blue Star attempted to uncover the details of Edina's contractual obligations through discovery and to thereby develop a factual record that would solidify its duty theory. But Blue Star was unable to do so in the time between the filing of its third-party complaint in June 2010 and the district court's ruling on Edina's motion to dismiss in October 2010, or by the time of the district court's denial of Blue Star's motion for reconsideration in April 2011. Blue Star asserts that despite the issuance of a subpoena, Edina did not produce the 2008 contract between Edina and Freddie Mac; the relevant Supplier's Code of Conduct; the Big Lake Property Condition Report prepared by Edina and provided to Freddie Mac; the Broker Expense Guide for Preservation and Maintenance of the Property; and the QuickSteps for Broker Guide. Even in the absence of these documents, the allegation in Blue Star's third-party complaint, which must be accepted as true, that Edina contracted

with Blue Star to provide plumbing services at the Big Lake home suggests that Edina's contractual obligations to Freddie Mac went beyond those associated with a traditional listing agreement and that Blue Star's property-preservation possession theory may have merit.

In sum, it is not possible to determine whether Edina had a land possessor's duty of care because of the procedural posture of this case and the resulting undeveloped factual record. Although in theory, a complaint could fail to state a duty-based claim where it is clear that no duty exists without the need to develop a factual record, this is not such a case. *See Jacobson v. Bd. of Trs. of the Teachers Ret. Ass'n*, 627 N.W.2d 106, 109 (Minn. App. 2001) ("A motion to dismiss may be proper, however, when it is clear and unequivocal from the face of the complaint that the statute of limitations has run on all the claims asserted."), *review denied* (Minn. Aug. 15, 2001). A factual record must be developed before the court can determine whether Edina had the duty of a land possessor.

Blue Star's Contribution Claim

We now consider whether, assuming the existence of a duty for purposes of this portion of our analysis, Blue Star has stated claims for which relief can be granted.

We start with Blue Star's contribution claim. "The Minnesota Supreme Court long ago declared that the very essence of the action of contribution is common liability." *In re Individual 35W Bridge Litigation*, 786 N.W.2d 890, 893 (Minn. App. 2010) (quotation omitted), *aff'd*, 806 N.W.2d 811 (Minn. 2011). "[T]he doctrine of contribution applies when several persons are under a common liability to another and

equity distributes the burden among the several obligors in proportion to their respective shares." *Id.* "Contribution rests on common liability, not on joint negligence or joint tort. Common liability exists when two or more actors are liable to an injured party for the same damages, even though their liability may rest on different grounds." *Farmers Ins. Exch. v. Vill. of Hewitt*, 274 Minn. 246, 249, 143 N.W.2d 230, 233 (1966).

Blue Star's contribution claim rests on a negligence theory. "The basic elements of a negligence claim are: (1) existence of a duty of care; (2) breach of that duty; (3) proximate causation; and (4) injury." *Bjerke v. Johnson*, 742 N.W.2d 660, 664 (Minn. 2007). Blue Star argues that Edina owed a duty of care to the Cusicks, that it breached that duty, and that the breach was the proximate cause of Marianne Richardson's and Ramona Cusick's injuries. Consistent with this liability theory, Blue Star's complaint alleges that Edina had a duty to the injured parties and that Edina's breach of that duty was the proximate cause of their injuries:

> Mr. Herges, as the listing agent of the Big Lake Home, a known foreclosed property, was aware, or should have been aware, that items had been removed from the Big Lake Home, and owed a duty to take reasonable care to ensure that the removal of the items did not place the Big Lake Home in a dangerous or hazardous condition before offering the Big Lake Home for sale and/or entry by others.
>
> Mr. Herges, was aware, or should have been aware, of the dangerous and hazardous condition posed by the uncapped gas line in the Big Lake Home and owed a duty to take reasonable care to correct the problem, or otherwise notify and warn potential entrants of the danger posed by the uncapped gas line before offering the Big Lake Home for sale and/or entry by others.

> Mr. Herges breached his duty of care and was negligent by not identifying the uncapped gas line in the Big Lake Home, by not having the gas line capped prior to the sale of the Big Lake Home, and by not warning entrants into the Big Lake Home, including Blue Star, of the uncapped gas line and dangerous condition created by that hazard.
>
> The negligent conduct of Mr. Herges was the direct and proximate cause of the injuries sustained by Mrs. Richardson and Ramona Cusick.
>
> Edina Realty, as the principal of Mr. Herges, is vicariously liable for Mr. Herges' negligent conduct, and is therefore liable for the injuries sustained by Mrs. Richardson and Ramona Cusick.
>
> . . . .
>
> In the event that . . . Marianne Richardson and/or . . . Ramona Cusick were injured or damaged, then such injuries or damages were caused by the negligent conduct of [Edina].
>
> If Blue Star is found liable to [Marianne] Richardson and/or Ramona Cusick for any amount of damages . . . then Blue Star is entitled to contribution and/or indemnity from [Edina] for their negligent conduct, for any amounts which may be awarded to [Marianne] Richardson and/or Ramona Cusick.

It does not appear to a certainty that "no facts . . . exist which would support granting the relief demanded." *Franklin*, 265 Minn. at 395, 122 N.W.2d at 29. If evidence is produced consistent with Blue Star's pleading theory, it is possible to grant relief in the form of contribution.

Blue Star's Indemnity Claim

We next consider Blue Star's indemnity claim. Unlike contribution, "[i]ndemnity does not require common liability. Indemnity instead arises out of a contractual

relationship, either express or implied by law, which requires one party to reimburse the other entirely." *Blomgren v. Marshall Mgmt. Servs., Inc.*, 483 N.W.2d 504, 506 (Minn. App. 1992) (quotation omitted). A claimant may recover indemnity, among other situations not applicable here, "[w]here the one seeking indemnity has incurred liability because of a breach of duty owed to him by the one sought to be charged." *Id.* (quotation omitted).

Blue Star's indemnity claim is based on the assertions that Edina owed Blue Star a duty of care, it breached the duty, and Blue Star incurred liability as a result. In essence, Blue Star asserts that if it is liable to plaintiffs, the liability is a result of Edina's failure to correct, or warn Blue Star of, the uncapped gas line before inviting Blue Star onto the property to winterize the home. Blue Star argues that if Edina had satisfied its duty to Blue Star, the explosion would not have occurred and Marianne Richardson and Ramona Cusick would not have been injured. Consistent with this theory, Blue Star's third-party complaint alleges that Edina was "aware, or should have been aware, of the dangerous and hazardous condition posed by the uncapped gas line . . . and owed a duty to take reasonable care to correct the problem, or otherwise notify and warn potential entrants of the danger posed by the uncapped gas line." The complaint further alleges that Edina breached its duty of care and was negligent by "not warning entrants into the Big Lake Home, *including Blue Star*, of the uncapped gas line and dangerous condition created by that hazard." (Emphasis added.)

Once again, it does not appear to a certainty that "no facts . . . exist which would support granting the relief demanded." *Franklin*, 265 Minn. at 395, 122 N.W.2d at 29. If

evidence is produced consistent with Blue Star's pleading theory, it is possible to grant relief in the form of indemnification.

Edina's Arguments

Edina argues that it cannot be liable under a landowner-liability theory because it did not possess the property at the time of the explosion and because the written inspection report satisfied any duty owed by Edina. As to Edina's lack-of-possession argument, Edina asserts that even if this case were to involve "a classic landowner-invitee relationship, Edina Realty had relinquished all control and possession of the . . . home when the Cusicks closed on the home." Edina's briefing focuses on whether Edina possessed the property *at the time of the explosion*. But Blue Star does not contend that Edina possessed the property at that time; Blue Star contends that Edina possessed the property at the time of the alleged breach and that the breach caused injuries several months later. If Edina intended to argue that a landowner or possessor is not liable for injuries that occur after possession is relinquished, it should have addressed the issue directly and provided adequate briefing. We decline to analyze a relinquished-possession argument in the absence of adequate briefing. *See State, Dep't of Labor and Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach an issue in the absence of adequate briefing); *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (declining to address allegations unsupported by legal analysis or citation).

As to Edina's argument that the written inspection report satisfied any duty that Edina had, Edina asserts that it met its disclosure obligations under Minn. Stat. § 82.68,

subd. 3(e) (2010). This statute requires real-estate agents to make certain disclosures to prospective purchasers. *See* Minn. Stat. § 82.68, subd. 3(e). Edina also cites to an unpublished case of this court, *Zehrer v. Helland*, No. C2-98-214, 1998 WL 346651 (Minn. App. June 30, 1998). Edina contends that "[i]f any duty was owed by Edina Realty to Plaintiff Richardson or Blue Star (there were none), it would have been entirely satisfied by the written inspection report provided to the Cusicks." The district court similarly reasoned that even if Edina

> owed the buyers a duty of disclosure of the hazardous condition, the Minnesota Court of Appeals has indicated in an unpublished decision [(*Zehrer v. Helland*)] that a home buyer cannot establish reasonable reliance on an alleged misrepresentation of a real estate agent when the buyer makes the purchase contingent on an independent inspection of the condition of the house.

Edina's argument regarding the impact of the inspection report is unpersuasive for several reasons. First, Edina improperly relies on an unpublished decision of this court. *See Vlahos v. R & I Constr. of Bloomington, Inc.*, 676 N.W.2d 672, 676 n.3 (Minn. 2004) (stating that the district court erred "both as a matter of law and as a matter of practice" by relying on an unpublished opinion of the court of appeals, "stress[ing] that unpublished opinions of the court of appeals are not precedential" and noting both that "[t]he danger of miscitation [of unpublished opinions] is great because unpublished decisions rarely contain a full recitation of the facts" and that "[u]npublished decisions should not be cited by the district courts as binding precedent"). Second, the argument does not distinguish between the duty discussed in the cited statute and unpublished case (i.e., a real-estate agent's disclosure obligations to a purchaser) and the alleged duty in

this case (i.e., a land possessor's obligation to correct or warn of dangerous conditions on the land). Third, Edina makes no attempt to explain how the written inspection report could satisfy its purported duty to Blue Star when neither the report nor its contents were disclosed to Blue Star. In sum, none of Edina's arguments persuades us to affirm the district court's rule 12 dismissal.

Because Blue Star's third-party complaint states claims for which relief can be granted, assuming the existence of a duty, and because we cannot determine on the undeveloped factual record that Edina did not have the duty of a land possessor, we reverse the district court's order for dismissal of Blue Star's contribution and indemnity claims against Edina and remand for further proceedings. *See Hebert*, 744 N.W.2d at 236 (remanding a case to district court for further proceedings after the district court erroneously dismissed the case for failure to state a claim on which relief could be granted where the relevant legal issue was fact dependent and could not be resolved because of the rule 12 procedural posture and resulting undeveloped factual record).

II.

We now address Blue Star's challenge to the district court's sanctions award against counsel for appellants under Minn. R. Civ. P. 11 and Minn. Stat. § 549.211. We review the district court's award for an abuse of discretion. *See In re Claims for No-Fault Benefits Against Progressive Ins. Co.*, 720 N.W.2d 865, 874 (Minn. App. 2006), *review denied* (Minn. Nov. 22, 2006).

If a district court determines that an attorney has violated the pleading requirements of Minn. Stat. § 549.211, it may "impose an appropriate sanction." Minn.

Stat. § 549.211, subd. 3; *see also* Minn. R. Civ. P. 11.03 (providing that the district court may impose appropriate sanctions on an attorney for violations of rule 11.02). The relevant portions of Minn. Stat. § 549.211, subd. 2, set forth the following requirements:

> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery[.]

See Minn. R. Civ. P. 11.02 (setting forth the same requirements).

Section 549.211 "requires bad faith, a frivolous claim which increases the opponent's costs, an unfounded position taken to delay the action or harass the opponent, or fraud upon the court." *Radloff v. First Am. Nat'l Bank of St. Cloud, N.A.*, 470 N.W.2d 154, 156 (Minn. App. 1991), *review denied* (Minn. July 24, 1991). "A good faith argument for a change in the law excuses the advancement of a claim unwarranted under existing law." *Id.* "Sanctions under rule 11 should not be imposed when an attorney has an objectively reasonable basis for pursuing a factual or legal claim or when a competent attorney could form a reasonable belief that a pleading is well-grounded in fact and law." *Gibson v. Coldwell Banker Burnet*, 659 N.W.2d 782, 787 (Minn. App. 2003) (quotation omitted).

In considering Edina's motion for sanctions, the district court concluded that "Blue Star's claims against Edina Realty and Dillon Herges were frivolous and not objectively reasonable." The court explained that "[b]ecause Blue Star articulated no

Minnesota case law, no Minnesota statutory authority, presented no contractual duty owed to Plaintiffs, and cited only one foreign jurisdiction (not on point) case, the Court [found] that Blue Star litigated this claim in bad faith without an objectively reasonable basis to extend the current law."

We disagree that Blue Star did not support its claims in district court. In its memorandum of law in opposition to Edina's motion to dismiss, Blue Star asserted that landowners owe a duty of reasonable care for the safety of all entrants and that the duty includes an obligation to inspect and maintain property to ensure that entrants are not exposed to unreasonable risks of harm and to warn of dangerous conditions on the property. Blue Star cited several supreme court cases and the Restatement (Second) of Torts as support. Blue Star argued that Edina was acting on behalf of the landowner, Freddie Mac, and therefore had the duty of a land possessor to inspect the property and warn potential entrants of dangerous conditions on the property. Blue Star cited authority for its argument, including a supreme court case and the Restatement (Second) of Torts.

We also disagree that Blue Star's legal theory is frivolous or asserted in bad faith. Precedent establishes that a person in control of property has the same duty as the property owner to inspect and either warn or repair dangerous conditions on the property. *See Isler*, 305 Minn. at 294, 232 N.W.2d at 821. Although this duty has never been applied in the context of the facts of this case and may be at odds with the limited duty of a real-estate agent acting pursuant to a traditional listing agreement, it does not follow that Blue Star's argument is without support or made in bad faith. We observe that Blue Star's duty theory has never been rejected by the Minnesota appellate courts. For these

reasons, the district court abused its discretion in awarding sanctions under Minn. R. Civ. P. 11.03 and Minn. Stat. § 549.211.

Reversed and remanded.