STATE OF MINNESOTA
IN COURT OF APPEALS
A10-638

A. L. & C. E. Ward, Inc.,
Appellant,

vs.

City of Fairmont,
Respondent.

Filed October 26, 2010
Affirmed
Klaphake, Judge

Martin County District Court
File No. 46-CV-08-1046

Matthew Thompson Nielsen, Krahmer & Nielsen, P.A., Fairmont, Minnesota (for appellant)

Elizabeth W. Bloomquist, Fairmont, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Klaphake, Judge; and Shumaker, Judge.

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

KLAPHAKE, Judge

In this declaratory judgment action, appellant A.L. & C.E. Ward, Inc., an agricultural corporation that owns about 4.3 acres of farmland on the east side of the city of Fairmont, and respondent, the City of Fairmont, dispute whether their settlement agreement covers defects to a city sanitary sewer construction project, a portion of which

was included in an easement over appellant's property, and whether an action on those defects is time-barred. We affirm because the district court did not err in concluding that appellant's action was time-barred under Minn. Stat. § 541.051 (2008), and because the settlement agreement included appellant's claims arising from construction activity on the property.

FACTS

In order to facilitate a sanitary sewer project to alleviate standing water and ineffective sanitary sewer conditions in the city of Fairmont, the parties entered into a sewer easement agreement in 1992. The sewer easement agreement contains a clause that states:

> Any drainage tile disturbed by installation, construction or repair shall be replaced by [respondent] with tile of comparable quality and quantity. . . . If construction disturbs existing tile drainage and if repair is not possible, [respondent] shall provide alternative drainage of a similar or better quality and quantity than disturbed.

During construction of the sanitary sewer system, a contractor damaged drainage tile within the easement area and replaced the drainage tile as required by the sewer easement agreement.

On May 9, 1995, the parties entered into a settlement agreement that required the contractor to pay $19,000 to appellant's lessees for crop and property damage that occurred in 1993 and 1994. This settlement agreement also includes the following language with respect to appellant:

> [Respondent] and [the contractor] will not pay any sums to [appellant]. [Appellant] agrees that any compensation due to

> it will be decided between [appellant] and [appellant's lessees] and may come from the [lessee] settlement described above in paragraphs 2 and 3. [Appellant] agrees that it has received adequate consideration for a full and final settlement of all of its claims arising from the construction activity on the [sanitary sewer project].

The settlement agreement includes a release, an accord-and-satisfaction clause, and an integration clause. Respondent did not conduct further construction or remedial work on the sewer project after 1995.

In 2006, appellant hired a drainage contractor to install extensive new drainage tile on its property that connected to the drainage tile installed earlier by respondent. In October 2007, appellant contacted respondent, asking respondent to fund further repairs to or replacement of the drainage tile that was installed by the contractor in 1993, and pay for crop damages. After respondent's city council denied the request, appellant initiated a declaratory judgment action in district court. Appellant challenges the district court's decision in favor of respondent.

D E C I S I O N

1. Statute of Limitations

The district court ruled that "[c]laims for damages arising from the installation of field tile in the easement area in 1993" were time-barred under Minn. Stat. § 541.051, subd. 2. The court found that respondent "has not constructed, repaired, maintained, or replaced any part of the sanitary sewer located in the easement area since 1995," and that according to appellant's expert, "the tile replaced by [the contractor] in 1993 was the source of the problems with the field tile system."

Construction and application of a statute of limitations is a question of law, which this court reviews de novo. *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54 (Minn. 1998). Minn. Stat. § 541.051, subd. 1, provides:

> Except where fraud is involved, no action by any person in contract, tort, or otherwise to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, shall be brought against any person performing or furnishing the design, planning, supervision, materials, or observation of construction or construction of the improvement to real property or against the owner of the real property more than two years after discovery of the injury, nor in any event shall a cause of action accrue more than ten years after substantial completion of the construction.

Minn. Stat. § 541.051, subd. 2, provides:

> Notwithstanding the provisions of subdivision 1, paragraph (a), in the case of a cause of action which accrues during the ninth or tenth year after substantial completion of the construction, an action to recover damages may be brought within two years after the date on which the cause of action accrued, but in no event may such an action be brought more than 12 years after substantial completion of the construction.

The statute begins to run "when an actionable injury is discovered or, with due diligence, should have been discovered, regardless of whether the precise nature of the defect causing the injury is known." *Dakota County v. BWBR Architects*, 645 N.W.2d 487, 492 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).

Appellant argues that respondent is not a party to which Minn. Stat. § 541.051 applies because respondent did not "perform[] or furnish[] the design, planning, supervision, materials, or observation of construction or construction of the improvement

to real property" and was not the "owner of the property." *Id.*, subd. 1. This court addressed this issue in *Olmanson v. Le Sueur Cnty.*, 673 N.W.2d 506, 511 n.1 (Minn. App. 2004), *aff'd* 693 N.W.2d 876 (Minn. 2005). There, this court ruled that a county that held a prescriptive easement to build a culvert on private property was "a 'landowner' for purposes of the applicability of Minn. Stat. § 541.051" in a negligence action brought by a snowmobiler who was injured after hitting the culvert.[1] Likewise here, we reject appellant's argument that respondent is not a party to which Minn. Stat. § 541.051 applies; respondent owns the sewer easement and acted as a property owner when it contracted with other parties to construct the drainage tile on appellant's property.

Appellant also argues that the six-year statute of limitations set forth in Minn. Stat. § 541.05 (2008), rather than section 541.051, should apply. This statute of limitation applies to "various cases" and includes, other than UCC cases, actions on a contract and other types of actions which clearly do not apply here. As this case involves an action in contract or tort "or otherwise" for damages arising from an improvement to property, it is subject to section 541.051, and not section 541.05. Appellant also argues that the sewer easement creates sufficient consideration for the parties to "override" section 541.051 and permit section 541.05 to apply. However, while the sewer easement arguably may have permitted alteration of the parties' rights and duties, including creating a long-term duty

[1] In considering *Olmanson* upon further review, the supreme court did not address whether the county constituted an owner for purposes of section 541.051, other than to say that it would "treat the county as a property owner" because the parties did "not ma[k]e an issue of the county's legal status as owner with regard to the culvert for purposes of summary judgment." 693 N.W.2d at 879 n.1.

on the part of respondent to maintain or repair the drainage tile that it constructed in 1993-94, the settlement agreement extinguished any such duty with regard to appellant's claims, because it released respondent from "any and all damages sustained by the parties in 1993 and 1994." Under these circumstances, the sewer agreement does not alter the applicability of section 541.051.

2. Scope of Settlement Agreement

On appeal, a court gives de novo review to an unambiguous contract, which presents a question of law. *See Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003); *BankCherokee v. Insignia Dev., LLC*, 779 N.W.2d 896, 903 (Minn. App. 2010), *review denied* (Minn. May 18, 2010). Contract "[l]anguage is ambiguous if it is subject to more than one reasonable interpretation." *The Business Bank v. Hanson*, 769 N.W.2d 285, 288 (Minn. 2009). "Where a written contract is unambiguous, the court must deduce the parties' intent from the language used." *Metro. Sports. Facilities Comm'n v. Gen. Mills, Inc.*, 470 N.W.2d 118, 123 (Minn. 1991).

Appellant makes two arguments with regard to the proper interpretation of the language in the portion of the settlement agreement that states: "[Appellant] agrees that it has received adequate consideration for a full and final settlement of all of its claims arising from the construction activity on the [sanitary sewer project]." First, appellant argues that "construction activity" "involves the specific damages or activities associated with construction, but not the construction itself," because construction activity "would not have to do with the performance of the underlying tile" and instead "would have to do with the damage created by the excavating, installation and rebuilding of the physical

soils damaged in the construction process." This limiting definition of "construction activity" is a strained interpretation of those words. By referring to a broad range of actions, "activity" is inclusive, rather than exclusive, and should be read to include all construction rather than, as argued by appellant, be limited to non-performance of the actual construction. The construction urged by appellant is unreasonable and contrary to the plain meaning of the words "construction activity." Further, other language in the settlement agreement states that the terms of the agreement between all of the parties to the settlement "are to be in full settlement and satisfaction of *any and all damages* sustained by the parties in 1993 and 1994 as a result of the construction of the [sanitary sewer project.]" (Emphasis added.) This language, and other language that releases respondent from liability for "all claims," when read in conjunction with the language relied on by appellant above, supports a more simple and inclusive interpretation of "construction activity." We therefore conclude that the term "construction activity" should include the performance of the drainage tiling that was the subject and purpose of the construction here.

Second, appellant argues that the settlement agreement's release of "any and all damages sustained by the parties in 1993 and 1994" does not replace or supersede the requirements of the sewer easement agreement, which required respondent to replace drainage tile that was damaged during construction or repair of tile installed by respondent. A valid settlement agreement "must manifest an intent to release, discharge, or relinquish a right, claim, or privilege by a person in whom it exists to a person against whom it might have been enforced to be a release." *Dykes v. Sukup Mfg. Co.*, 781

N.W.2d 578, 582 (Minn. 2010). Minnesota law "presumes that parties to a release agreement intend what is expressed in a signed writing," and a party seeking to invalidate a release bears the burden of offering facts to overcome that presumption. *Sorensen v. Coast-to-Coast Stores, Inc.*, 353 N.W.2d 666, 669-70 (Minn. App. 1984), *review denied* (Minn. Nov. 7, 1984). In *Sorensen*, this court ruled that a franchise termination agreement that released "any and all claims, demands or causes of action to the date hereof," included claims and causes of action that a party did not specifically know of or intend to release. *Id.* The agreement here likewise includes clear language releasing respondent from liability for claims arising from the 1993-94 drainage tile repairs on appellant's property. As in *Sorensen*, because the clear language of the parties' settlement agreement includes a release of all claims, appellant's claim that it did not know of the damages caused by the construction activity lacks merit. *Id.* at 669. The damages appellant claims it suffered because of the drainage tile repair work done by respondent in 1993-94 were contemplated by the parties at the time of execution of the release and were within the scope of the release. *See id.* Under these circumstances, we reject appellant's arguments that attack the validity or scope of the release.

Affirmed.