**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A10-1690**

North Valley, Inc.,
Appellant,

vs.

Valley Paving, Inc., et al.,
Respondents.

**Filed April 26, 2011**
**Reversed and remanded**
**Shumaker, Judge**

Dakota County District Court
File No. 19-HA-CV-10-3933

Joseph W. Anthony, Aaron R. Hartman, Philip J. Kaplan, Anthony, Ostlund, Baer & Louwagie, P.A., Minneapolis, Minnesota; and

Daniel W. Voss, The Law Offices of Daniel W. Voss, PLLC, Minneapolis, Minnesota (for appellant)

James E. Blaney, Blaney & Ledin, Ltd., Lake Elmo, Minnesota (for respondents)

Considered and decided by Johnson, Chief Judge; Shumaker, Judge; and Randall, Judge.*

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

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

**SHUMAKER**, Judge

Appellant challenges the district court's dismissal of its complaint under Minn. R. Civ. P. 12.02(e) for failure to state a claim upon which relief may be granted. Because materials outside the pleading were submitted with the motion and not excluded by the court, respondents' motion to dismiss converted automatically into a motion for summary judgment under Minn. R. Civ. P. 56. Because the district court did not treat the motion as one for summary judgment, and because the record on appeal does not provide this court with sufficient information for meaningful review, we reverse and remand for further proceedings in accordance with rule 56.

## FACTS

Respondent Valley Paving, Inc., formed in 1978, is a privately owned, closely held Minnesota corporation. At all relevant times, respondent Richard Carron has owned 98% of Valley Paving. In 1992, Valley Paving opened a north-metro office, managed by Bradley Schmidtbauer, who owns the remaining 2% of the corporation. Appellant North Valley, Inc., is a Minnesota closely held corporation that was created as a new entity in a spinoff of Valley Paving's north-metro office in 1998. Schmidtbauer, who is not a party to this case, is the president, director, and 60% shareholder of North Valley. Carron is North Valley's vice president, treasurer, director, and 40% shareholder.

When North Valley was incorporated, Carron and Schmidtbauer allegedly entered into an oral noncompete agreement of indefinite duration for road-construction jobs in the metro area. North Valley claims that Carron and Schmidtbauer agreed personally, and on

behalf of their respective companies, that Valley Paving would not bid for jobs north of Highway 55 and North Valley would not bid for jobs south of Highway 55. Whether in compliance with the alleged oral agreement or for other reasons, it is undisputed that for ten years Valley Paving did not bid for jobs north of Highway 55 and North Valley did not bid for jobs south of Highway 55.

In approximately 2007, Carron and Schmidtbauer's relationship began to deteriorate, apparently because of Carron's disagreement with Schmidtbauer's compensation from North Valley. As a result, Carron requested that Schmidtbauer buy his shares of North Valley. Schmidtbauer refused, alleging that the share-redemption agreement provides for a buyout only upon Carron's death. Carron also sought access to North Valley's business records, but was denied. In January 2009, Valley Paving began bidding for jobs north of Highway 55. Carron commenced a derivative suit against North Valley and Schmidtbauer and sought a writ of mandamus in March 2009.

The Anoka County District Court ordered North Valley and Schmidtbauer to allow Carron access to North Valley's general ledger or show cause why the records were not provided. Schmidtbauer refused to grant Carron access to the records and argued that Carron would use the records to compete against North Valley. The court found Schmidtbauer's argument unpersuasive and, in August 2009, issued an order compelling North Valley to produce the requested financial documents. Carron's forensic accountant reviewed the financial records in December 2009. The accountant determined that Schmidtbauer had misappropriated North Valley funds, resulting in his personal financial gain.

Beginning December 18, 2009, Valley Paving outbid North Valley for at least six road-construction jobs north of Highway 55, resulting in more than $15 million in lost revenues to North Valley.

A hearing was held in Anoka County District Court on April 15, 2010, on Carron's motion for a buyout under Minn. Stat. § 302A.751 (2010).

On June 8, 2010, North Valley sued Carron and Valley Paving in Dakota County District Court claiming: (a) breach of fiduciary duty; (b) usurpation of corporate opportunity; (c) unfair competition; and (d) breach of contract.[1] North Valley sought actual damages as well as injunctive and equitable relief. Respondents moved to dismiss North Valley's complaint under Minn. R. Civ. P. 12.02(e) for failure to state a claim upon which relief can be granted. In their motion to dismiss, respondents argued that the alleged oral noncompete agreement is illegal and unenforceable because it is a per se violation of the Sherman Act, a violation of the Minnesota Antitrust Law of 1971, is barred by the statute of frauds, violates the parol evidence rule, and is contrary to public policy concerning collusive bidding. The district court concluded the oral noncompete agreement is unenforceable because it violates federal and state antitrust laws, is barred by the statute of frauds, and violates the parol evidence rule. Finding that each of North Valley's claims was based on an unenforceable agreement, the district court issued an

[1] North Valley's claims alleging (a) breach of fiduciary duty and (b) usurpation of corporate opportunity were only against Carron. The remaining claims of unfair competition and breach of contract were brought against both Carron and Valley Paving.

order dismissing North Valley's complaint with prejudice for failure to state a claim upon which relief may be granted.

About a month after North Valley sued Carron and Valley Paving in Dakota County District Court, the Anoka County District Court granted Carron's motion to force Schmidtbauer to buy out Carron's interest in North Valley. The Dakota County District Court dismissed the complaint underlying this case a month after issuance of the order forcing the buyout. This appeal followed.

On appeal, North Valley challenges the Dakota County District Court's dismissal of its complaint because of the court's determination that the oral noncompete agreement is unenforceable. North Valley argues that its claims against Carron for breach of fiduciary duty, usurpation of corporate opportunity, and unfair competition are valid and do not depend on the validity of the oral noncompete agreement. Further, North Valley claims that the oral noncompete agreement is enforceable and, contrary to respondents' assertions and the district court's rulings, does not violate federal or state antitrust laws, is not barred by the statute of frauds, and does not violate the parol evidence rule.

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

This matter reaches us because the district court granted the respondents' rule 12.02(e) motion to dismiss the case. A rule 12.02(e) motion to dismiss for failure to state a claim upon which relief can be granted will be denied "if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *N.S.P. Co. v. Franklin*, 265 Minn. 391, 395, 122 N.W.2d 26, 29 (1963).

When matters outside the pleadings are presented to a court considering a motion to dismiss, and those external matters are not excluded by the court when it makes its determination, the motion to dismiss shall be treated as one for summary judgment. Minn. R. Civ. P. 12.02. This rule applies regardless of whether the defendant or the plaintiff presents matters outside the pleading to the district court. *Fabio v. Bellomo*, 504 N.W.2d 758, 760-61 (Minn. 1993) (stating that when district court considered testimony offered by plaintiff to oppose defendant's motion to dismiss, motion should have been treated as one for summary judgment).

The district court may, however, consider documents referenced in a complaint without converting the motion to dismiss into a motion for summary judgment. *Martens v. Minn. Mining & Mfg. Co*., 616 N.W.2d 732, 739 n.7 (Minn. 2000); *see also Brown v. State*, 617 N.W.2d 421, 424 (Minn. App. 2000) (holding that district court's reliance on extrinsic documents referenced in appellants' complaint was appropriate, when used with complaint, to decide motion to dismiss), *review denied* (Minn. Nov. 21, 2000); *In re Hennepin Co. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995) (*Recycling Bond Litigation*) (holding that in determining motion to dismiss, district court may review a document referred to in complaint and central to claims alleged).

In opposition to respondents' motion to dismiss, North Valley submitted documents relating to its incorporation, including: a letter from an attorney summarizing transactions; a stock-purchase agreement; a promissory note; a bill of transfer; a security agreement; and a pledge agreement. The district court not only did not exclude these documents but specifically referred to them in its memorandum accompanying its order

dismissing North Valley's complaint, stating: "The parties' agreements that led to the creation of North Valley were put in several forms of writing (the Stock Purchase Agreement, Memorandum summarizing transactions, the Promissory Note, the Bill of Transfer, the Security Agreement, and the Pledge Agreement)." The district court explained that these documents supported the determination that the statute of frauds bars the use of the oral noncompete agreement as evidence. The court also cited language from the stock-purchase agreement and referenced the promissory note, security agreement, and pledge agreement in concluding the parol evidence rule precludes the admissibility of the oral noncompete agreement.

North Valley, in its brief to this court and in its memorandum opposing respondents' motion to dismiss, claims that the incorporation documents it submitted may be considered by the court without converting the motion to dismiss to a motion for summary judgment, citing *Brown* and *Recycling Bond Litigation*. But North Valley did not expressly refer to or incorporate by reference any of the submitted incorporation documents in its complaint. Even if we assume the incorporation documents are central to North Valley's claims, the complaint does not refer to the documents with enough specificity for them to be included in the district court's review of respondents' motion to dismiss. In *Recycling Bond Litigation*, the supreme court concluded that the complaint referred to certain bond agreements because provisions of the agreements were cited in the plaintiff's complaint. North Valley's complaint refers to "agreements which effectuated" the spinoff of Valley Paving's northern office to form North Valley. This is the only reference to the documents in the complaint, which does not more specifically

quote or cite any of the documents. The district court considered extrinsic documents that were not referenced in the complaint, including a memorandum; the stock-purchase agreement; a promissory note; a bill of transfer; a security agreement; and a pledge agreement. Because the district court did not exclude these materials, the court erred in not treating the motion as one for summary judgment and permitting the parties to proceed under rule 56.

*Summary Judgment*

Because the district court's dismissal was effectively a grant of summary judgment, we review this matter as an appeal from summary judgment. Summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. "On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted." *Fabio*, 504 N.W.2d at 761. Accordingly, for purposes of this case, we must accept as true the factual allegations made by North Valley. "On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We review these two questions de novo. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002).

The district court's treatment of respondents' motion as one for dismissal hindered this court's ability to provide meaningful summary-judgment review. For instance,

because it considered respondents' motion under rule 12.02(e), the district court assumed that the oral noncompete agreement existed, and construed all reasonable inferences in favor of North Valley. When properly considering a motion to dismiss, construing all reasonable inferences in favor of the plaintiff is proper. In contrast, on summary judgment, the district court is not entitled to assume that any fact is true but rather is to scrutinize the alleged facts to determine whether they genuinely present a triable issue.

The district court's failure to treat the motion to dismiss as a motion for summary judgment also precluded the parties from necessary discovery and from presenting materials relevant to summary judgment. When matters outside the pleadings are presented to the court, converting the motion to dismiss to a motion for summary judgment, rule 12.02 states that "all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Minn. R. Civ. P. 12.02. North Valley, Valley Paving, and Carron were not given that opportunity.

The district court tied all claims in North Valley's complaint to the alleged oral noncompete agreement and, finding the alleged agreement to be unenforceable, dismissed the case. To determine whether there is an enforceable agreement, we would need to consider whether it violates the integration clause, is overly broad as to duration, and is deleterious to the public interest because it precludes bidding on public projects. We cannot meaningfully consider these issues, and we cannot determine if there is an enforceable oral noncompete agreement, because on the undeveloped record on appeal, it appears that there are dispositive factual and legal issues to be considered and resolved by the district court.

Further, there is scant attention paid to, and no analysis of, the issue of Carron's fiduciary duties, if any, independent of the alleged oral noncompete agreement. Specifically, what fiduciary duty, if any, is there when Carron, a corporate officer and director, has ostensible duties to two corporations, North Valley and Valley Paving? The parties have not produced any information that could assist in resolving this issue.

We are guided by the pronouncement in *Donnay v. Boulware*, 275 Minn. 37, 45, 144 N.W.2d 711, 716 (1966):

> Summary judgment is a "blunt instrument" and should not be employed to determine issues which suggest that questions be answered before the rights of the parties can be fairly passed upon. It should be employed only where it is perfectly clear that no issue of fact is involved, and that it is not desirable nor necessary to inquire into facts which might clarify the application of the law.

On the record before us, we cannot meaningfully review the issues this case presents. The parties did not have the opportunity to fully address the issues because of the district court's focus on the oral noncompete agreement and its dismissal of the case under rule 12.02(e). Therefore, we reverse and remand this case to the district court. The parties will have the opportunity to proceed under rule 56, if they so choose, and to address the concerns we have identified as well as other pertinent issues that may develop on remand.

*Federal Antitrust Laws*

Lastly, we note that the district court lacks subject-matter jurisdiction to adjudicate issues arising under the federal antitrust laws. Lack of subject-matter jurisdiction may be raised at any time. "Whenever it appears by suggestion of the parties or otherwise that

the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Minn. R. Civ. P. 12.08(c). Jurisdiction to determine matters involving federal antitrust laws is vested exclusively in the federal courts, and issues arising under those laws, whether raised by way of attack or defense, are beyond the jurisdiction of state courts. *A.M.F. Pinspotters, Inc. v. Harkins Bowling, Inc.*, 260 Minn. 499, 508, 110 N.W.2d 348, 354 (1961). Consequently, it would be improper for the district court to address federal antitrust issues on remand.

**Reversed and remanded.**