STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1044

William Scott Stuart, Jr.,
Appellant,

vs.

James Stuart, et al.,
Respondents,

William S. Stuart,
Respondent,

Catherine Stuart Schmoker, et al.,
Respondents.

Filed February 11, 2013
Reversed and remanded
Chutich, Judge

Cass County District Court
File No. 11-CV-11-1166

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Stephen M. Baker, Walker, Minnesota (for respondents James Stuart et al.)

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Ted N. Lundrigan, Pine River, Minnesota (for respondents Catherine Stuart Schmoker, et al.)

Considered and decided by Worke, Presiding Judge; Chutich, Judge; and Crippen, Judge.*

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

CHUTICH, Judge

In this intra-family dispute over the conveyance of prime lakefront property in northern Minnesota, appellant William Scott Stuart, Jr., (Stuart) appeals from a grant of judgment on the pleadings and summary judgment in favor of respondents. He primarily contends that the district court erroneously concluded as a matter of law that he was not the holder of a right of first refusal that allowed him to buy the property from his grandparents, property to which he currently holds fee title. Alternatively, he asserts that the district court should have (1) ruled that the agreement creating the right of first refusal was void as against his subsequent, but first-recorded, warranty deed to the property; or (2) permitted him to amend his complaint. Because Stuart pleaded facts showing he acquired the right of first refusal, judgment on the pleadings and summary judgment in favor of respondents was erroneously entered. We reverse and remand.

FACTS

This dispute among family members involves a single parcel of land located on Woman Lake in Cass County (the Woman Lake parcel). Stuart is the son of defaulted-

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

defendant William Stuart (father) and the grandson of respondents James and Helen Stuart (grandparents). Respondent Catherine Stuart Schmoker is father's sister, and respondent Richard Schmoker is Catherine's spouse. Respondent Schmoker Family Partnership is represented by Richard and Catherine (together, the Schmokers).

The 1976 Recorded Warranty Deed from Grandparents to Father and the Separate Unrecorded Purchase Agreement

After owning the Woman Lake parcel for many years, grandparents conveyed the property to father by warranty deed executed on March 10, 1976, and recorded in Cass County in 1978. The 1976 deed contained no exceptions, reservations, conditions, or limitations on father's ownership or title. The deed did not reference a separate sale agreement (the 1976 purchase agreement) between grandparents and father that was executed on the same date as the deed.

The effect of this 1976 purchase agreement is the central dispute on appeal. By its terms, the agreement addressed the transfer of the parcel from grandparents to father, and created certain limitations on father's property rights in favor of grandparents.

Under the 1976 purchase agreement, "Sellers" (the grandparents) agreed to sell the Woman Lake parcel to "Buyer" (father) for $30,000. In turn, "Buyer" agreed to lease the property to "Sellers" for $500 a year for a term "coextensive with the respective lives of Sellers," and which would "automatically terminate on the death of" whichever grandparent, "James Stuart or Helen Catherine Stuart," died last. During the term of "Sellers'" tenancy, they were to have unrestricted use of the property, and would pay all costs "attributable thereto," including taxes.

The 1976 purchase agreement gave "Sellers" the right to "construct a cabin or such other improvements" on the Woman Lake parcel and stated that "[o]wnership of such improvements shall be vested solely in Sellers during the term of such lease."

Key to this case, "Sellers" under the 1976 purchase agreement received the right to require that the Woman Lake parcel be sold: "Sellers (or either of them) shall have the right, exercisable at any time, to require that the property, including the real estate and improvements, be sold." In addition, "Buyer" received a right of first refusal:

> Such right [to force a sale] shall be exercised by sending written notice thereof to the Buyer at least thirty (30) days in advance of any intended sale; during such thirty day period, Buyer shall have the right to purchase Sellers' interest for a price equal to the price Sellers are willing to accept from the intended third party purchaser for Sellers' interest in the property.

If the property is sold to a third party, the 1976 purchase agreement provided that sale proceeds shall be distributed as follows:

> (i) The costs of sale shall first be paid.
> (ii) Sellers, or either of them, shall be reimbursed for all costs which Sellers may have incurred in the construction of any cabin or other improvements.
> (iii) The balance, if any shall be paid to Buyer; provided, however, that if the proceeds of sale are not sufficient to pay the costs of sale and to reimburse Sellers as provided in (ii) above, then Buyer agrees to pay to Sellers any such deficit.

Paragraph seven of the 1976 purchase agreement, the effect of which is disputed here, provided that "[t]his Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns." The 1976 purchase agreement was first recorded in November 2010, over thirty years after it was signed.

The 1993 Recorded Warranty Deeds from Father to Stuart

In 1993, when Stuart was 23 years old, father and his wife conveyed their interests in the Woman Lake parcel to Stuart by two warranty deeds. The warranty deeds reserved a life estate in the Woman Lake parcel for father, including his "right to use, occupy, hold, possess, and enjoy the premises . . . and all rents, issues and profits accruing therefrom." The warranty deeds also conveyed the Woman Lake parcel subject to the leasehold interest of grandparents. The warranty deeds made no reference to the 1976 purchase agreement or any right of first refusal. Stuart recorded both warranty deeds in 1993. As a result of these transfers, the district court found that Stuart is the "fee owner" of the Woman Lake parcel.

The 2009 Transfer of Father's Life Estate to Grandparents

Stuart asserts that, beginning in 2005, he had a falling out with father and grandparents and that, eventually, all communication ceased. By quit claim deed dated December 14, 2009, father conveyed to grandparents his remaining interest, his life estate, in the Woman Lake parcel. The deed was not recorded until February 2011.

The October 2010 Purchase Agreement Between Grandparents and Catherine Schmoker

In a purchase agreement notarized October 19, 2010, grandparents as "Sellers" entered into a $1.4 million agreement to sell the Woman Lake parcel to Catherine Schmoker as "Purchaser." The 2010 purchase agreement provided that the "closing will occur at [the parties'] convenience, at a date to be agreed upon between the date of this agreement and January 30, 2011." Additionally, the 2010 purchase agreement stated that

at closing, "Purchaser shall receive a Quit Claim Deed(s) from the Sellers as well as all other record title holders," and that upon closing, "Sellers shall enter into a lease with the Purchaser leasing back the premises . . . for the term of their natural lives, or the life of the survivor of them." The 2010 purchase agreement also provided that "Purchaser understands that the Sellers are not the fee owners of the premises but have the right to sell or compel a sale under an agreement with the fee owner under the terms of an agreement dated March 10, 1976."

Communications Between Grandparents and Stuart About the 2010 Purchase Agreement

In a letter dated October 29, 2010, grandparents' attorney informed Stuart that the 2010 purchase agreement had been entered covering "your grandfather's home on Woman Lake. This home is located on the property that was purchased by your father in 1976. That purchase was subject to an agreement whereby your grandfather could require that the premises be sold in order to recoup his investment." The letter explained that "[a]ccording to the terms of the [1976 purchase] agreement, your grandfather was to recover his cost of construction, with the balance going to the fee owner." The letter stated that, under the agreement, Stuart must execute "documents of conveyance from [himself] to [the Schmokers]" and requested that Stuart execute a quit claim deed in favor of the Schmokers. The letter also explained that, per the 1976 purchase agreement and as "the remainderman," Stuart would be receiving approximately $624,699 from the sale of the Woman Lake parcel.

Stuart had not been aware of the 1976 purchase agreement until this October letter, and he did not receive a copy of the actual agreement until December 1, 2010. By letter of December 2, 2010, Stuart's attorney informed grandparents' attorney that, as father's "successor," Stuart would like to exercise the right of first refusal and purchase the Woman Lake parcel "as provided in the [1976 purchase] [a]greement." He again expressed his interest in acquiring the Woman Lake parcel on December 17, 2010, and January 6, 2011.

Early in January 2011, grandparents conveyed what had been father's life estate to the Schmokers by quit claim deed. This quit claim deed, and the December 2009 quit claim deed from father to grandparents conveying father's life estate, were recorded on February 25, 2011.

By letter postmarked April 13, 2011, grandparents' attorney claimed that Stuart's reply to the original October letter was not timely under the 1976 purchase agreement and that he never tendered earnest money and therefore could not purchase the property. After receiving that letter, Stuart recorded a "Notice of Exercise of Right to Purchase." In May 2011, Stuart again notified his grandparents that he was ready, able, and willing to purchase the property, but he received no response.

The Litigation

Stuart filed a complaint against his grandparents, his father, and the Schmokers in June 2011. Count I of the complaint seeks specific performance of the 1976 purchase agreement, thereby allowing Stuart to purchase the property "pursuant to the terms of the [a]greement." Count II requests that, upon grandparents' specific performance "of their

obligations under the [1976] [a]greement," the district court enter an order stating that Stuart is fee owner of the property, free of any interests of grandparents, the Schmokers, and father. Count III seeks damages, and reasserts that "[Stuart] has an absolute right to purchase the property pursuant to the terms of the [1976 purchase] [a]greement" and that grandparents' refusal to sell him the property is "a material breach of the [a]greement" causing him damages. Attached to Stuart's complaint and incorporated by reference therein were fourteen exhibits, including copies of the 1976 deed from grandparents to father, the 1976 purchase agreement, and the 1993 deeds from father and his wife to Stuart.

Father failed to answer the complaint, and the district court entered default judgment against him. Grandparents moved for judgment on the pleadings under Minn. R. Civ. P. 12.03. The Schmokers counterclaimed against Stuart, seeking a declaratory judgment requiring him to convey to them his interest in the property.

After a hearing, the district court granted grandparents' motion for judgment on the pleadings and entered judgment accordingly. The district court concluded that although Stuart was fee owner of the property, he did not have a right of first refusal stemming from the 1976 purchase agreement. The district court reasoned that because the right of first refusal in the 1976 purchase agreement is "a purely contractual right separate from any interest in the [Woman Lake parcel]" and does not run with the land, it was necessary for father to have assigned the right of first refusal to Stuart for Stuart to hold that right. Consequently, the district court concluded that "there are no facts that [Stuart] could introduce which could give [him] the relief he seeks under his complaint."

Following the district court's entry of judgment granting grandparents' motion, the Schmokers moved for summary judgment on their counterclaim to require Stuart to convey his interest in the parcel. Stuart opposed this motion, and he also moved to amend his complaint to add a claim for a portion of the proceeds from any sale of the parcel.

After a hearing, the district court granted the Schmokers' motion for summary judgment, denied Stuart's motion to amend his complaint, and entered judgment accordingly.[1] The district court concluded that the order granting grandparents' motion for judgment on the pleadings was dispositive of the issues between Stuart and the Schmokers, and ordered Stuart to execute and deliver a quit claim deed to the Schmokers conveying to them his interest in the Woman Lake parcel. Nevertheless, the order stated that "[i]t is not the Court's intent to prevent [Stuart] from making claims for a recovery of a portion of the sales proceeds in the event [he] is unsuccessful in his appeal."

This appeal by Stuart followed.

D E C I S I O N

A district court may dismiss a claim on the pleadings when a plaintiff fails to set forth a legally sufficient claim for relief. Minn. R. Civ. P. 12.03. "[W]hether the complaint sets forth a legally sufficient claim for relief" is a question this court reviews de novo. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003).

[1] On April 18, 2012, the district court filed its order and judgment granting the Schmokers' motion for summary judgment. The April 18 order did not address Stuart's motion to amend. On June 13, 2012, the district court filed an order amending the April 18 order to explicitly deny that motion. The district court also denied another motion of Stuart's to stay proceedings pending appeal; that motion is not at issue here.

When reviewing judgment on the pleadings, this court must consider only the facts alleged in the complaint, accepting those facts as true and drawing all inferences in favor of the nonmoving party. *Id.* We may also consider additional documents and statements incorporated by reference into the pleadings. *See Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739 n.7 (Minn. 2000) (limiting review of order for dismissal to documents and statements referred to in complaint).

A right of first refusal is a contractual right. *Park-Lake Car Wash, Inc. v. Springer*, 352 N.W.2d 409, 411 (Minn. 1984); *Hempel v. Creek House Trust*, 743 N.W.2d 305, 312 (Minn. App. 2007). Concerning real property, "a right of first refusal is in essence a dormant option to buy or lease property." *Dyrdal v. Golden Nuggets, Inc.*, 672 N.W.2d 578, 584 (Minn. App. 2003) (quotation omitted), *aff'd*, 689 N.W.2d 779 (Minn. 2004). It "ripens into an option" to purchase when the owner of property receives a bona fide third party offer and notifies the right-holder. *Id.* (quotation omitted); *see also Shaughnessy v. Eidsmo*, 222 Minn. 141, 145, 23 N.W.2d 362, 365 (1946).

The construction and effect of a contract is a question of law, unless the contract is ambiguous. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003). Whether a contract is ambiguous is a question of law. *Id.* If a contract is ambiguous, its interpretation is a question of fact for the jury. *Id.* If a contract is unambiguous, its language must be given its plain and ordinary meaning. *Id.* at 347. A district court's application of a contract to undisputed facts is also reviewed de novo. *Cisar v. Slyter*, 812 N.W.2d 151, 153 (Minn. App. 2012). Rights of first refusal, like all other contracts,

are expressions of the parties' right to freely contract and will be enforced according to their terms. *Drydal*, 689 N.W.2d at 784.

Applying these principles here, we find that the plain and unambiguous terms of the 1976 purchase agreement created a right of first refusal that was transferred to Stuart when he received the 1993 warranty deeds and became father's "successor" to the Woman Lake parcel, thus becoming a "successor" under the terms of the agreement. By its terms, the 1976 purchase agreement provided that it "shall be binding and inure to the benefit of the parties hereto, their respective *successors* and assigns." (Emphasis added.)

As a threshold matter, the district court correctly found, and the parties do not dispute, that the 1976 purchase agreement is valid and enforceable even though its terms were not referenced in the warranty deed that passed from grandparents to father. It is well established that promises contained in purchase agreements that cannot be performed until sometime after closing remain enforceable even though no specific mention of these promises is made in the deed. *See, e.g.*, *Bruggeman v. Jerry's Enters., Inc.*, 591 N.W.2d 705, 710 (Minn. 1999) (holding that sellers of real estate could assert their contractual rights to repurchase property if the buyer had not started development within two years even though no mention of the repurchase agreement was made in the deed).

The district court also correctly found and the parties agree that, depending on its language, a right of first refusal may be transferable to another. Specifically, the district court found that paragraph seven of the 1976 purchase agreement concerning "successors and assigns" shows that the right of first refusal created in the agreement was intended to

be transferable. Nevertheless, the district court found as a matter of law that transfer of the right of refusal to Stuart never occurred here because father never expressly *assigned* the right of first refusal to Stuart, and because the right does not "pass automatically with the conveyance of the Property."

This analysis is flawed based upon the express language of the 1976 purchase agreement and relevant case law. The 1976 purchase agreement provided that the right of first refusal was to "be binding upon and inure to the benefit" of not only the parties' "assigns" but also to their "successors." Stuart became successor to all of "Buyer's" non-reserved rights and interests in and pertaining to the Woman Lake parcel when father, as "Buyer," conveyed the property to Stuart in the 1993 warranty deeds. *See Lowe v. Patterson*, 271 Minn. 1, 7, 135 N.W.2d 38, 41 (1965) (observing that parties receiving conveyance of real property were "successors in interest" to prior purchasers); *Black's Law Dictionary* 1569–70 (9th ed. 2009) (defining "successor" as "[a] person who succeeds to the office, rights, responsibilities, or place of another; one who replaces or follows a predecessor" and defining "successor in interest" as "[o]ne who follows another in ownership or control of property"). Because Stuart became the next fee owner of the Woman Lake parcel, he is a "successor" under the contract.

Basic principles of contract law require that we give meaning to each term in a contract as written. *See Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 526 (Minn. 1990) ("Because of the presumption that the parties intended the language used to have effect, we will attempt to avoid an interpretation of the contract that would render a provision meaningless."). Accordingly, where a contract specifically provides that rights

pass to a "successor," no express assignment is necessary before courts will enforce contracts that bind or benefit a successor. *See City of Winona v. Cowdrey*, 93 U.S. 612, 617–18 (1876) (holding that city must pay successor company when city contractually agreed to pay for a railroad built in the company's own name or "that of their successors or assigns"); *Saliterman v. Finney*, 361 N.W.2d 175, 178 (Minn. App. 1985) (finding that non-compete agreement with first employer bound successor employer when the agreement stated that it would "bind the successors if any in interest to the parties"). To hold otherwise would modify the contractual language at issue to bind and benefit only "successors who are assigns." Notably, the agreement does not use that phrase.

Our conclusion that the specific terms of the 1976 purchase agreement govern whether the right of first refusal passed to Stuart when he became father's successor to the property is consistent with the *Hempel* decisions analyzed by the district court and respondents. *See Hempel*, 743 N.W.2d 305 (*Hempel I*); *Hempel v. Creek House Trust*, No. A08-1288, 2009 WL 1919612 (Minn. App. 2009) (*Hempel II*).[2] Unlike here, where the right of refusal concerns only one parcel of land, *Hempel I* involved two adjacent parcels, the Hempel parcel and the Creek House parcel, originally owned by a person named Ingemann. *Hempel I*, 743 N.W.2d at 308.

[2] We recognize that *Hempel II* is unpublished and therefore not binding. *See* Minn. Stat. § 480A.08, subd. 3(c) (2012) (stating that "[u]npublished opinions of the Court of Appeals are not precedential"); *Gen. Cas. Co. of Wis. v. Wozniak Travel, Inc.*, 762 N.W.2d 572, 582 (Minn. 2009) (stating that an "unpublished Minnesota court of appeals decision does not constitute precedent"). Because *Hempel I* and *Hempel II* construe language creating a right of refusal similar to this case, however, we find the discussion in *Hempel II* to be helpful and persuasive. Moreover, brief consideration of *Hempel II* provides a more complete context for the precedential *Hempel I* decision.

When Ingemann sold the Hempel parcel, she gave the buyers a right of first refusal to purchase the Creek House parcel, which stated: "[t]he right of first refusal . . . shall be binding upon [Seller] and [Seller's] heirs and assigns and shall inure to the benefit of [Buyer] and [Buyer's] heirs and assigns." *Id.* The Hempel parcel was then sold twice, each time with a specific assignment of the right of refusal. *Id.*

By contrast, when Ingemann sold the separate Creek House parcel via warranty deed, the deed did *not* contain any assignment of the right of first refusal. *Id.* The property was then transferred again. *Id.* When the owners of the Hempel parcel learned of the second transfer, they sued alleging breach of contract and seeking specific performance. *Id.* at 309.

Hempel I found that the right of first refusal did *not* grant the buyers of the Hempel parcel any title interest in the Creek House parcel. *Id.* at 313. Construing the right of first refusal as a contract right, the court found that the statute of limitations had run because the buyers of the Hempel parcel had not brought the claim within six years of Ingemann's first sale of the Creek House parcel. *Id.* at 311–13. The court remanded the case, however, to determine whether the Hempel parcel owners still had a valid right of first refusal. *Id.* at 314.

On appeal after remand, this court concluded that, given the language binding "heirs and assigns," the right of first refusal was transferable, and the Hempel parcel owners were validly assigned the right of first refusal to purchase the Creek House Property. *Hempel II*, 2009 WL 1919612 at *1. By contrast, since the owners of the

Creek House parcel were not "heirs or assigns" of their predecessors in title, they were not bound by the contract. *Id.*

After carefully considering pertinent case law, we are convinced that a right of first refusal may be transferred to a successive owner of property even though no express assignment takes place *if* the contract language and the facts establish that the parties intend that result. Here, where the parties specifically contemplated that "successors and assigns" would be benefited and burdened by the contract rights established in the 1976 purchase agreement, we must give effect to that intent.[3] Accordingly, based upon the unambiguous terms of the 1976 purchase agreement, Stuart is therefore entitled to exercise the right of first refusal, which under the purchase agreement, was transferred to him when he became a successor to the Woman Lake parcel.

Finally, we note that this interpretation of the 1976 purchase agreement avoids a result that is illogical and unreasonable. The 1976 purchase agreement created a benefit and a burden to both the sellers and buyers. The grandparents, as sellers, benefited by being able to require that the Woman Lake parcel be sold even after they no longer owned fee title to it, but their ability to sell the property to a third party was burdened by

[3] Given our conclusion that the express terms of the 1976 purchase agreement show that the parties intended that the right to force sale of the parcel and the right of first refusal to buy the parcel would be "binding upon and inure to the benefit of . . . successors and assigns," we need not reach the issue of first impression of whether, absent such clear contractual language, a right of refusal is a type of interest in property, whether it be an encumbrance or a servitude, that "runs with the land." *See, e.g.*, *Federated Retail Holdings, Inc. v. Cnty. of Ramsey*, 820 N.W.2d 553, 560 (Minn. 2012) (setting forth three legal factors that must be met to create a property interest that "runs with the land"); *Pelser v. Gingold*, 214 Minn. 281, 285, 8 N.W.2d 36, 39 (1943) (discussing when a covenant is said to "run with the land").

the requirement to offer a right of first refusal to father, the buyer of fee title under the 1976 purchase agreement. Similarly, father's fee title was constrained by the grandparents' ability to require that the property be sold, but he benefited by having the right to buy the property once he was given notice of the grandparents' intent to sell the parcel.

Now, grandparents are essentially contending that they are entitled to the benefit of the 1976 purchase agreement—being able to sell the property to a third party—without the corresponding burden of the agreement—first offering the parcel to Stuart, the current fee holder. Nothing in the language of the 1976 purchase agreement justifies granting the grandparents the benefit of the agreement without the corresponding burden of offering Stuart, as father's successor, the right of first refusal. The 1976 purchase agreement expressly provides that it "shall be *binding upon and inure to the benefit of* the parties hereto and their respective successors and assigns." (Emphasis added.) Our interpretation of the agreement binds and benefits both grandparents and Stuart as the 1976 purchase agreement contemplates.

In sum, we conclude, as a matter of law, that Stuart has a valid right of first refusal under the 1976 purchase agreement.[4] Accordingly, the district court erred in granting judgment on the pleadings for respondents and summary judgment on the Schmokers' counterclaim. We reverse and remand this case to the district court for further proceedings consistent with this opinion.

Reversed and remanded.

[4] Accordingly, we need not consider his alternate arguments concerning the Minnesota Recording Act or the denial of his motion to amend his complaint.