STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0967

Ellen Quirk Pahl,
Respondent,

vs.

Lexington Riverside Condo Association,
Appellant.

Filed March 25, 2013
Affirmed
Hudson, Judge

Dakota County District Court
File Nos. 19WS-CV-11-1438, 19WS-CO-11-253

Michael R. Pahl, Washington, DC (for respondent)

Jared M. Goerlitz, Peterson, Fram & Bergman, St. Paul, MN (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and Kirk, Judge.

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

HUDSON, Judge

On appeal from judgment for respondent Ellen Quirk Pahl holding that appellant Lexington Riverside Condo Association breached its contract with Pahl requiring it to replace the exterior patio doors of Pahl's condominium, appellant association argues that (1) the district court erred by concluding that an enforceable contract existed for the

association to replace Pahl's exterior patio doors; (2) Minn. Stat. § 515B.3-115 (2012) requires Pahl to pay for the replacement of her exterior patio doors; and (3) Pahl failed to prove that the contract was breached. Because the association breached the valid contract between the parties requiring replacement of Pahl's exterior patio doors to prevent water leakage, we affirm.

FACTS

The Lexington Riverside Condominium Association is a corporation collectively owned by the fee-simple owners of condominiums in a three-building complex located on Sibley Memorial Highway in the Village of Lilydale in Dakota County. The rights of the association and unit owners are governed by the association's declaration and bylaws.

Each condominium unit has a balcony or patio. Each ground-floor patio had exterior glass doors installed three years after the original construction to prevent water from entering the patio areas and seeping into the complex's underground garages. Although the association's original policy provided that owners were responsible for maintenance and repair costs associated with ground-floor patio doors, in July 2003, the association adopted a policy under which it assumed responsibility for ground-floor patio doors "to prevent[] water leakage into units due to rainstorms." This policy was incorporated within the association's rules and regulations.

Pahl purchased a ground-floor condominium unit within the Lexington Riverside complex in 2007. Before the transaction was completed, Pahl was provided with a copy of the declaration, bylaws, and the association's rules and regulations. At closing, Pahl

was provided with a resale certificate indicating that the association was primarily responsible for maintaining exterior ground-floor patio doors.

Following a winter in which snow and rain entered Pahl's patio through a gap between the patio door and frame, in June 2010 Pahl informed the property manager of the leakage and requested that the association replace her exterior patio doors. The property manager had several contractors inspect the doors to estimate replacement cost, two of whom informed Pahl that preventing water leakage would require replacing the doors.

Rather than pay to replace Pahl's patio doors, the association's board of directors decided to review its policy regarding exterior patio doors. In January 2011, the board passed a new policy providing that exterior patio doors were the financial responsibility of unit owners. Pahl's request was officially denied in February 2011.

In July 2011, Pahl filed a claim in Dakota County conciliation court for replacement of her patio doors; Pahl was awarded $7,103.03. The association removed the matter to district court, and a bench trial took place in November 2011. In its order, the district court held that the association was liable for the cost of replacing Pahl's exterior patio doors. The district court stated that when Pahl purchased her condominium unit, Pahl and the association formed a contract that included the declaration, the condominium rules and regulations, and by incorporation, the July 21, 2003 policy regarding the association's financial responsibility for exterior patio doors in ground-floor units. The district court held that pursuant to this contract, the association was responsible for repairing or replacing Pahl's exterior patio doors in the event of water

leakage. The district court further held that while Minn. Stat. § 515B.3-115 assigns financial responsibility for limited common elements such as Pahl's patio doors to the unit owner, the statute is a default rule that does not apply where, as here, the declaration assigns responsibility in some other fashion. The district court concluded that the association breached this contract when it failed to replace Pahl's patio doors. The association's subsequent motion for amended findings was denied. This appeal follows.

D E C I S I O N

The association first argues that the district court erred in concluding that a valid contract existed under which the association was responsible for replacing Pahl's exterior patio doors. "The operative documents that govern a townhome association constitute a contract between the association and its individual members." *Swanson v. Parkway Estates Townhouse Ass'n*, 567 N.W.2d 767, 768 (Minn. App. 1997). Construction of a contract is a question of law, subject to de novo review, unless ambiguity exists. *American Bank of St. Paul v. Coating Specialties, Inc.*, 787 N.W.2d 202, 205 (Minn. App. 2010), *review denied* (Oct. 27, 2010). "Whether a contract is ambiguous is a legal determination." *Id.* A contract is ambiguous if its terms are subject to more than one reasonable interpretation. *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). Where ambiguity exists and contract construction depends upon extrinsic evidence and a writing, construction of the contract is a factual determination that we will not overturn unless manifestly contrary to the evidence. *Morrisette v. Harrison Int'l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992); *EEP Workers' Comp. Fund v. Fun & Sun, Inc.*, 794 N.W.2d 126, 131–32 (Minn. App. 2011).

The declaration provides that the association is responsible for the maintenance, repair, management, and operation of "the Common Area and Facilities." The declaration also provides that "[e]xterior windows and frames, exterior glass sliding doors and frames and casings are Common Areas and Facilities." Pahl argues that this unambiguously establishes that the association is responsible for maintenance of her patio doors, which are exterior, glass, and sliding. The association argues that the previous sentence, stating that owners "shall have an exclusive easement with respect to such balcony or patio within the railed-in portion of such balcony or patio," implies that doors or fixtures attached to the patio are not common areas, but instead are part of the exclusive easement. The association further argues that because patios did not have exterior doors when the declaration was adopted, patio doors were not intended to fall under the category of "exterior glass sliding doors" under the declaration. Finally, the association argues that the declaration defines "limited common areas," which it asserts includes exterior patio doors, but does not assign responsibility for those areas.

The association's arguments are unpersuasive given the clear language of the declaration categorizing exterior glass sliding doors as common areas, which under the declaration are the financial responsibility of the association. Even if some ambiguity exists, it would require us to look to the extrinsic evidence. *Swanson*, 567 N.W.2d at 769. And the extrinsic evidence overwhelmingly supports Pahl's interpretation of the declaration. The July 2003 policy states that the association is responsible for repairing or replacing the ground-floor patio doors when necessary for "preventing water leakage." This policy was referenced both in the resale certificate and the rules and regulations

given to Pahl when she purchased her unit. Thus, even if we were to agree with the association that the declaration is ambiguous regarding responsibility for replacing the exterior patio doors, the extrinsic evidence establishes that the parties entered into a contract under which the association was responsible for repairing or replacing Pahl's patio doors when necessary to prevent water leakage. We therefore conclude that the district court did not err in determining that the parties had a valid contract requiring the association to replace Pahl's exterior patio doors.

The association also argues that, if there was a contract, the contract was not enforceable due to a lack of consideration. This argument lacks merit. Under the basic structure of a condominium association, the condominium unit owner pays monthly dues to the association; in return, the association is responsible for maintaining common areas such as exterior glass sliding doors. This is the essence of a bargained-for exchange, and thus the contract was supported by valid consideration. *See Deli v. Hasselmo*, 542 N.W.2d 649, 656 (Minn. App. 1996), *review denied* (Minn. Apr. 16, 1996).

The association next argues that it was required to assess the cost of replacing the exterior patio doors to Pahl under the Minnesota Common Interest Ownership Act, Minn. Stat. §§ 515B.1-101 to .4-118 (2012). That act provides, in part: "Unless otherwise required by the declaration[,] any common expense associated with . . . a limited common element shall be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides." Minn. Stat. § 515B.3-115(e), (e)(1). The association argues that because exterior patio doors are a limited common element, the statute requires it to assign the cost of replacing the doors to

Pahl. But as we have discussed, the declaration provides that the association is responsible for maintenance of "exterior glass sliding doors," which is intended to include ground-floor patio doors. Therefore, under the plain language of the statute, the contract between the parties is controlling.

The association argues that Pahl failed to prove that the association breached the contract. The declaration provides that the unit owner is responsible for promptly reporting the need for repairs, and it is the association's responsibility to make those repairs. The July 2003 policy states that unit owners are to report water leakage from ground-floor patio doors to the association, and that the association will remedy the situation "upon verification." Pahl reported the water leakage to the property manager, and it is uncontested that the association received this information. Pahl therefore satisfied her contractual obligations. The district court found that the existence of water leakage was verified by Pahl herself, visual evidence, and the two contractors who told Pahl that her patio doors would need to be replaced to prevent water leakage. This finding was not manifestly contrary to the evidence. Therefore the district court did not err in concluding that under the contract, having received verification of the water leakage, the association was responsible for replacing Pahl's exterior patio doors, and it breached the parties' contract when it failed to do so.

Affirmed.