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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0950**

Waters Edge Community Association, Inc., et al.,
Appellants,

vs.

Pulte Homes of Minnesota, LLC, et al.,
Respondents.

**Filed May 8, 2017
Affirmed
Bjorkman, Judge**

Washington County District Court
File No. 82-CV-15-5197

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Considered and decided by Peterson, Presiding Judge; Bjorkman, Judge; and
Klaphake, Judge.*

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant-homeowners associations challenge the dismissal of their construction-defect claims against respondent-contractors, arguing the district court erred by determining that appellants released the claims in an earlier settlement agreement and that res judicata otherwise bars the claims. We affirm.

FACTS

Appellant Waters Edge Community Association, Inc. is a residential development in Hugo that consists of 892 townhomes. Waters Edge governs and oversees five homeowners associations: Court Homes, Courtyard Homes, Manor Homes, Patio Homes, and Village Homes.¹ Respondent Pulte Homes of Minnesota, LLC,² was the developer and general contractor for the construction of Waters Edge. Construction began in 2004 and was completed in 2010.

In 2012, homeowners began complaining about various construction issues. The complaints related to “concrete flatwork, driveways, grading, A/C units support, garage headers and other conditions related to exterior elements of the complex.” Waters Edge hired Guy Engineering to investigate. Guy Engineering ultimately identified a number of problems, including tilted air conditioning units, cracking concrete, tilted retaining walls,

¹ The five associations are also appellants and are collectively referred to as “Waters Edge.”

² Pulte Homes of Minnesota Corporation, Pulte Group, Inc., and Does 1-10 are also respondents. We refer to them collectively as “Pulte.”

and shifting patios and sidewalks. Guy Engineering later issued a second report outlining problems with garage door headers in the Manor Homes.

On October 31, 2012, Waters Edge sued Pulte for negligence, breach of contract, and breach of express and implied warranties. On February 28, 2014, the parties entered into two mediated settlement agreements. The first was between Waters Edge, Pulte, and three of Pulte's subcontractors. Waters Edge agreed to release "any and all claims asserted or that could have been asserted" against Pulte "arising from the framing, siding or related work." The agreement specified that the released claims include all unknown damages stemming from claims asserted or claims that could have been asserted relating to the framing, siding, or related work, "regardless of whether such damages or consequences are more significant than anticipated or occurred in the future."

The second settlement agreement was between Waters Edge, Pulte, and two other subcontractors: Valley Blacktopping and Minnesota Vinyl and Aluminum Systems. Waters Edge agreed to release all claims against Pulte "arising from or relating to the work of" the released subcontractors. The released claims again included damages related to any claim asserted or claim that could have been asserted, regardless of whether the damages were more significant than anticipated or occurred in the future.

In March 2014, Waters Edge commenced a second lawsuit against Pulte and three individuals. The 2014 complaint alleges breach of warranty and breach of fiduciary duty, and requests attorney fees. In August, the parties executed a third settlement agreement in which they agreed to

unconditionally mutually release and forever discharge each other . . . from any and all claims that were made, or could have been made in the Action³ of whatever kind or nature, including claims for attorney's fees and costs, that are in any way connected with the errors or omissions in development, design, construction, materials, equipment, sale or repair of, or representations relating to the Project or any portion thereof that were alleged, or could have been alleged in the Action[.]

The parties also agreed that the released claims “include all unknown damages and consequences on account of or because of any claims asserted or that could have been asserted in the Actions, regardless of whether such damages or consequences occur in the future.” And the settlement agreement defines “Project” to include “[t]he separate units, along with all common elements and limited common elements.” On October 23, 2014, the district court dismissed the second lawsuit with prejudice based on the parties’ stipulation.

In March 2015, homeowners began reporting additional problems to Waters Edge. The complaints included possible structural movement of townhomes and decks, water intrusion at deck-to-home junctures, deteriorating garage slabs, and mold on portions of the siding. Two months later, Waters Edge hired Steve Norwood to inspect the above-foundation construction of the townhomes. Norwood observed problems relating to the decks and fire resistive assemblies, the protective sheets covering the foundation insulation, the vinyl siding and trim, and the mailbox kiosks.

³ The third settlement agreement defines “Action” to include both the October 2012 and March 2014 lawsuits.

On November 3, 2015, Waters Edge initiated this lawsuit, asserting negligence and breach-of-warranty claims. The complaint generally alleges construction defects related to the “buildings and residential units.” The complaint acknowledges the first lawsuit but states “[n]o construction defect claims that were either brought in the Prior Action, or that could have been brought in the Prior Action are re-alleged in the instant lawsuit.” Pulte moved to dismiss the lawsuit, arguing that the settlement agreements fully released Waters Edge’s claims related to the townhome development and, in the alternative, that res judicata bars this action.⁴ Following a hearing, the district court granted the motion. The district court ruled that the release provisions of the third settlement agreement encompass all aspects of the Waters Edge development. Waters Edge appeals.

DECISION

On appeal from summary judgment, we review de novo whether there are any genuine issues of material fact and whether the district court erred in applying the law. *Ruiz v. 1st Fid. Loan Servicing, LLC*, 829 N.W.2d 53, 56 (Minn. 2013). We view the evidence in “the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). A genuine issue of material fact exists when there is sufficient evidence that could lead a rational trier of fact to find for the nonmoving party. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

⁴ The district court treated the motion as one for summary judgment because it was required to consider matters outside the pleadings. See *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citing Minn. R. Civ. P. 12.02).

A settlement agreement is a contract, and we review its language de novo to determine the intent of the parties. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 581-82 (Minn. 2010). Likewise, a release is a contract that will be enforced if it expresses “the intent to release, discharge, or relinquish a right, claim, or privilege by a person in whom the claim exists to a person who seeks to be released.” *Curtis v. Altria Grp.*, 813 N.W.2d 891, 902 (Minn. 2012). Public policy favors the settlement of claims. *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 205 (Minn. 1986). Accordingly, “[a] general release of all claims, known and unknown, will be enforced by the court if the intent is clearly expressed.” *Curtis*, 813 N.W.2d at 902.

We begin our analysis by considering the release language contained in the three settlement agreements. The first settlement agreement released “any and all claims asserted or that could have been asserted” that arise “from the framing, siding or related work.” The second settlement agreement released all claims related to work performed by Valley Blacktopping and Minnesota Vinyl and Aluminum Systems. That agreement specifies that Minnesota Vinyl provided “privacy fences, deck railings, fences, and related services.”

The third settlement agreement contains broader language. This agreement defines the “Project” as “[t]he separate units, along with all common elements and limited common elements.” In the “Recitals” portion of the agreement, the parties reference the prior lawsuits and express their “desire to settle all remaining claims which have been asserted or which could have been asserted . . . in the Actions with regard to the Project.” To that end, the parties agreed to

unconditionally mutually release and forever discharge each other . . . from any and all claims that were made, or could have been made in the Action of whatever kind or nature, including claims for attorney's fees and costs, that are in any way connected with the errors or omissions in development, design, construction, materials, equipment, sale or repair of, or representations relating to the Project or any portion thereof that were alleged, or could have been alleged in the Action[.]

Waters Edge and Pulte further agreed that “the Released Claims include all unknown damages and consequences on account of or because of any claims asserted or that could have been asserted in the Action.” But this broad release language specifically excludes “claims as between the [parties] in the Action that . . . relate to or arise from *any other residence, development or project*.” (Emphasis added.)

Waters Edge argues that none of the three settlement agreements evince its intent to release the negligence and warranty claims it asserts in the present action. We disagree. First, all three lawsuits generally assert that Pulte failed to properly design and construct the Project and failed to properly supervise its subcontractors. The complaints all allege that Pulte's failure to do so was negligent, violated provisions of the building code, and breached express and implied warranties. Waters Edge contends that the claims it released in connection with the prior lawsuits relate to ground-level “horizontal construction,” while the claims asserted in this lawsuit relate to “vertical construction,” involving “the buildings themselves from the ground upward.” But the record defeats this argument. The first settlement agreement expressly released claims relating to “framing, siding, or related work.” The second settlement agreement specifically released claims related to deck guardrails and privacy fences. These released claims involve above-ground, “vertical

construction” defects. And analysis of the current complaint demonstrates Waters Edge is again asserting claims relating to the same general issues, including exterior wall coverings, vinyl siding, aluminum trim, deck guardrails, and privacy walls. Moreover, nothing in the language of the three settlement agreements supports limiting the scope of their release provisions to “horizontal construction” defects.

Second, the release language in the third settlement agreement is sufficiently comprehensive and broad to bar the current lawsuit. Contrary to Waters Edge’s contention, no specific language is required to release unknown claims. *Curtis*, 813 N.W.2d at 901-02. Rather, we consider whether “the release is executed under circumstances evincing basic fairness and both releasor and releasee clearly indicate in the instrument an intent to release all claims for both known and unknown injury.” *Barilla v. Clapshaw*, 306 Minn. 437, 440, 237 N.W.2d 830, 832 (1976) (quotations omitted). Both the context in which the parties entered into the third settlement agreement and the agreement’s language lead us to conclude that the parties intended Waters Edge to release all claims—both known and unknown—related to construction of the townhome development.

As to context, the third settlement agreement followed two lawsuits and two prior, claim-specific settlements. The first settlement agreement released only “Claims against Pulte for damages or liability that arise from the framing, siding or related work . . . performed by SNG, CCC, or Welle” and stated that Waters Edge “expressly reserves all other claims that arise from the services of Pulte or any other of their subcontractors.” The second settlement agreement similarly reserved claims against Pulte for work performed by unnamed subcontractors. In contrast, the third settlement agreement refers broadly to

all manner of design and construction claims, notes the prior settlement agreements, and expresses the parties' "desire to settle all remaining claims which have been asserted or which could have been asserted." The timing of the third settlement agreement—six months after the first two agreements, four years after construction was completed, and following two separate lawsuits—also suggests a shared intention to conclude the issues between the parties once and for all. Waters Edge does not argue that the circumstances under which this agreement was reached were unfair. To the contrary, the parties agreed to the settlement terms during a mediation session. And the settlement agreement states that both Waters Edge and Pulte relied on the advice of their attorneys and "fully understood and voluntarily accepted" the terms of the agreement.

The language the parties chose to use in connection with the third settlement agreement further supports the conclusion that the parties intended the agreement to operate as a general release of all claims. As noted above, Waters Edge agreed to release "any and all claims that were made, or could have been made . . . that are in any way connected with the errors or omissions in development, design, construction, materials, equipment, sale or repair of . . . the Project." The agreement specifies that the released claims include "all unknown damages and consequences . . . regardless of whether such damages or consequences occur in the future." This reflects the parties' intent to finally resolve all claims between them. We are persuaded by Pulte's argument that the parties' express reservation of claims that "instead relate to or arise from any other residence, development or project" demonstrates that the parties intended to fully and finally resolve all claims related to the construction of Waters Edge.

Third, we are convinced that interpreting the third settlement agreement as a general release of claims related to the construction of Waters Edge does not violate public policy. Waters Edge argues that the release provisions cannot be read to include unknown injuries that the parties did not contemplate and that were still within the 10- to 12-year repose period under Minn. Stat. § 541.051, subd. 1(a) (2016). Waters Edge cites to several cases to support this argument. *See Barilla*, 306 Minn. at 441, 237 N.W.2d at 832; *Doud v. Minneapolis St. Ry. Co.*, 259 Minn. 341, 347, 107 N.W.2d 521, 525 (1961); *Aronovitch v. Levy*, 238 Minn. 237, 246, 56 N.W.2d 570, 576 (1953). But as the supreme court noted in *Barilla*, these cases involve parties who were induced into releasing unknown injuries based on a mutual mistake. 306 Minn. at 441, 237 N.W.2d at 832. The holdings in *Doud* and *Aronovitch* do not disturb the general principle that “if the parties really contract to release their claim for unknown injuries, the contract should be enforced.” *Id.* And Waters Edge cites no authority to support its assertion that it could not release claims for construction defects it had yet to discover and for which the statutory repose period had not expired. A party may release claims for unknown injuries. *Id.*

In sum, the circumstances under which the parties entered into and the language they used in the third settlement agreement persuade us that the parties intended for Waters Edge to release all of its claims against Pulte relating to the construction of Waters Edge.

On this record, we conclude that the district court did not err in granting summary judgment in favor of Pulte.⁵

Affirmed.

⁵ Pulte also argues that the current lawsuit is barred by res judicata. Because we conclude that the settlement agreements bar the current lawsuit, we need not reach this issue.