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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1978**

Cambria Company LLC,
Appellant,

vs.

M&M Creative Laminants Inc.
d/b/a M&M Creative Laminates Inc.,
Respondent.

**Filed August 5, 2019
Appeal dismissed; motion denied
Slieter, Judge**

Le Sueur County District Court
File No. 40-CV-17-662

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Minnesota; and

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Matthew J. Schaap, Brian J. Wisdorf, Dougherty, Molenda, Solfest, Hills & Bauer P.A.,
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Pennsylvania (for respondent)

Considered and decided by Slieter, Presiding Judge; Halbrooks, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Appellant Cambria Company LLC, a Minnesota business, and respondent M&M Creative Laminants Inc., a Pennsylvania business, came before the district court related to a collection action filed by Cambria and counterclaims raised by M&M. Cambria moved to dismiss, pursuant to Minn. R. Civ. P. 12.02(e), three of M&M's counterclaims, which included a claim under the Minnesota Franchise Act (MFA), Minn. Stat. §§ 80C.01-.30 (2018). Cambria asserted M&M could not obtain relief pursuant to the MFA as a purported non-Minnesota franchisee. The district court denied Cambria's motion to dismiss. Subsequently, the district court certified two questions as important and doubtful: (1) whether the MFA applies to non-Minnesota franchisees, and (2) whether the parties' contractual choice-of-law provision changes the answer to the first question. Cambria also filed a motion to strike M&M's brief and addendum that was referred to this panel.

This litigation will not end if we answer the questions certified and the answer will not have statewide impact. Therefore, the certified questions are not important and doubtful, and the motion to strike is moot. We dismiss the appeal and deny the motion to strike.

FACTS¹

M&M is a family-owned business in Pittsburgh, Pennsylvania, providing professional kitchen and bath designs and construction services. In 2008, Cambria's regional representative approached M&M about becoming a primary franchisee for Cambria in the Pittsburgh region. Cambria allegedly represented to M&M that if M&M acted as Cambria's franchisee for the region, Cambria would not offer its products for sale in "Big Box" stores. On or about May 15, 2009, the parties executed a business-partner agreement (BPA), which included a provision that disputes between the parties would be addressed in Le Sueur County, Minnesota, and that Minnesota law would apply to the contract. Cambria and M&M engaged in their business relationship for eight years.

On or about May 2, 2017, Cambria, through its district manager and general manager, informed M&M it would be terminating the BPA immediately, and Cambria would no longer sell its products to M&M. Cambria provided no explanation for its termination.

Subsequently, the parties commenced lawsuits in different jurisdictions. These actions were eventually consolidated into one action in Le Sueur County. Cambria filed a collection action, and M&M filed counterclaims asserting: (1) breach-of-franchise agreement, (2) breach of contract, (3) unjust enrichment, (4) intentional interference with contractual relations, (5) unfair competition, and (6) a claim for declaratory judgment.

¹ Because this matter comes before the court following a motion to dismiss, the facts alleged in the counterclaim are accepted as true. *Hall v. State*, 908 N.W.2d 345, 349 n.1 (Minn. 2018).

Cambria moved to dismiss for failure to state a claim upon which relief can be granted pursuant to Minn. R. Civ. P. 12.02(e). Cambria sought dismissal of M&M's counterclaims of breach-of-franchise agreement, unfair competition, and declaratory judgment. The district court denied Cambria's motion to dismiss in its entirety. In the district court's order denying Cambria's motion to dismiss, the district court addressed application of the MFA related to the breach-of-franchise-agreement claim. The district court reasoned that M&M, as a non-Minnesota franchisee, was not protected by the MFA but that the parties' Minnesota choice-of-law contractual provision allowed M&M to assert the counterclaim. Then the district court went on to apply the MFA because the "facts presented by Cambria and M&M" supported the finding that the parties' agreement constituted a franchise agreement. Because the parties' agreement constituted a franchise, the district court determined the wrongful-termination provision pursuant to Minn. Stat. § 80C.14, subd. 3(a), may apply based on "factual conclusions to be determined by the trier of fact when all the evidence has been duly presented."

Cambria moved to certify questions as important and doubtful for appellate review pursuant to Minn. R. Civ. App. P. 103.03(i) and to stay discovery pending the answer to these questions. M&M opposed certification and staying discovery. Following a hearing, the district court granted Cambria's motion to certify the following questions:

1. May a non-Minnesota resident claiming to be a franchisee invoke the provisions of the Minnesota Franchise Act where its only connection with Minnesota is the location of the purported franchisor?

2. Does a contractual provision providing that the parties are bound by Minnesota law change the answer to the first question?

The district court denied Cambria's request to stay discovery, and the appellate record indicates a number of discovery disputes between the parties, including: an emergency motion to compel Cambria to participate in discovery, a motion to quash a subpoena and obtain a protective order, and a motion to compel M&M to respond to discovery requests.

D E C I S I O N

I. The questions certified by the district court are not “important and doubtful.”

Pursuant to Minn. R. Civ. App. P. 103.03(i), an appeal may be taken from a district court's certification of questions that present as “important and doubtful” after an order that denies a motion to dismiss for failure to state a claim upon which relief can be granted, Minn. R. Civ. P. 12.02(e), or an order that denies a motion for summary judgment, Minn. R. Civ. P. 56.01. Certification “should be used sparingly, and only where intermediate appeal may avoid protracted or expensive litigation.” *Jostens, Inc. v. Federated Mut. Ins. Co.*, 612 N.W.2d 878, 884 n.2 (Minn. 2000) (quotation omitted). ““The certification process is not a substitute for the normal appellate process nor a method for securing advisory opinions.”” *Doe 175 ex rel. Doe 175 v. Columbia Heights Sch. Dist.*, 842 N.W.2d 38, 44 (Minn. App. 2014) (quoting *Jacka v. Coca-Cola Bottling Co.*, 580 N.W.2d 27, 30 (Minn. 1998)).

“We independently review whether a question is important and doubtful.” *Siewert v. N. States Power Co.*, 757 N.W.2d 909, 914 (Minn. App. 2008), *aff'd*, 793 N.W.2d 272 (Minn. 2011); *see also Emme v. C.O.M.B., Inc.*, 418 N.W.2d 176, 180-81 (Minn. 1988)

(applying *de novo* review to determine whether a question is important and doubtful). This court may decline to reach the merits that the certified questions pose if it concludes that the questions are not important and doubtful. See *Proprietors Ins. Co. v. Cohen*, 451 N.W.2d 904, 906 (Minn. App. 1990) (dismissing appeal, holding that “[t]he question presented [was] neither important nor doubtful, and certification was inappropriate”).

“A question is doubtful only if there is no controlling precedent.” *In re Welfare of Child of L.M.L.*, 730 N.W.2d 316, 319 (Minn. App. 2007) (quotation omitted). “Even if the question is one of first impression, there must be substantial ground for difference of opinion before certification is appropriate.” *Proprietors Ins. Co.*, 451 N.W.2d at 906. The mere fact a question is vexing does not constitute a basis for certification. *Emme*, 418 N.W.2d at 179.

A. Doubtful

We recognize that the issue of whether the MFA applies to non-Minnesota franchisees appears to be a question without controlling precedent. The supreme court in *Martin Inv’rs, Inc. v. Vander Bie* recognized the legislature’s intent in adopting the MFA was to protect franchisees in Minnesota. 269 N.W.2d 868, 872 (Minn. 1978) (“Chapter 80C was adopted in 1973 as remedial legislation designed to protect potential franchisees within Minnesota from unfair contracts and other prevalent and previously unregulated abuses in a growing national franchise industry.”). We are bound by the supreme court’s decision in *Martin Inv’rs, Inc.* See *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010) (“The district court, like this court, is bound by supreme court precedent and the published opinions of the court of appeals”), *review denied* (Minn. Sept. 21, 2010).

However, *Martin Inv'rs, Inc.*, does not address the issue now raised by the parties on the scope of the MFA. Therefore, the question does appear to be doubtful. Even so, and as noted above, our analysis must also consider whether the question is important.

B. Important

Even though a certified question may be doubtful, for this court to exercise its jurisdiction pursuant to Minn. R. Civ. App. P. 103.03(i), the certified question must be important as well. Whether a question is important depends on balancing a number of factors. *Jostens, Inc.*, 612 N.W.2d at 884. “A question is increasingly important if: (1) it will have statewide impact, (2) it is likely to be reversed, (3) it will terminate lengthy proceedings, and (4) the harm inflicted on the parties by a wrong ruling by the district court is substantial.” *Id.* “Conversely, the question is decreasingly important if: (1) it is likely to be affirmed, (2) it is likely that trial will moot the issue, (3) reversal of the question will not terminate the action, and (4) reversal of the question will not relieve the parties of any significant burden.” *Id.* The factors for importance do not warrant equal consideration, and courts should place significant weight on whether reversal may terminate the proceedings. *Id.* However, “[t]he fact that reversal will not terminate the proceedings is not in and of itself determinative of whether the question is ‘important.’” *Id.*

[I]f reversal will not terminate the proceedings, we will require that a district court, in certifying the question, make specific findings as to how the interlocutory appeal will materially advance the ultimate termination of litigation and avoid protracted or expensive litigation. . . . [I]f the questions are otherwise properly certified, we will remand for such findings. However, such remand is only necessary if the questions also meet the “doubtful” prong

Id. “[A] great deal of importance should be placed on whether reversal of the question will terminate the proceedings. This is consistent with the general policy against piecemeal litigation,” *Id.* (footnote omitted).

1. Answering the certified questions will not terminate lengthy proceedings.

We begin with the fact that addressing the certified questions will not terminate the litigation in this matter. As the district court reasoned in its order certifying questions to this court, answering these questions “would merely change the law to be applied to the case” and “[a]t best, it will clarify the proper law to be applied and eliminate re-trial if the incorrect law was originally applied.” Both parties concede that, even if we answered the certified questions in favor of Cambria disallowing M&M’s MFA counterclaim to proceed, the parties have nine outstanding claims for trial related to the parties’ business relationship over the last eight years. Although Cambria asserts that resolution of the MFA claim would precipitate resolution of the remaining matters, the basis for that claim is unclear. Cambria appears to rely on issues of M&M identifying \$83 million in possible damages related to the MFA claim as the basis for delaying resolution of this case. However, M&M notes the damages related to the MFA counterclaim will be the same damages raised on the alternative breach-of-contract counterclaim. The only damages not recoverable if the MFA claim is dismissed are reasonable attorney fees that might be awarded pursuant to Minn. Stat. § 80C.17, subd. 3. Because answering the certified questions will not terminate the litigation, this factor weighs heavily against the questions being properly certified.

2. Likelihood of the district court's decision being affirmed or reversed.

Whether a question should be certified includes consideration of the district court's decision being affirmed or reversed. Without reaching the merits of the underlying appeal, on its face, we cannot plainly determine the likelihood of affirming or reversing the district court's decision.

3. It is possible the issue may be mooted by trial.

An additional factor for consideration on importance is whether the appeal may be mooted during the trial. Both parties acknowledge this matter may be mooted by particular fact-finding related to whether M&M's business relationship with Cambria qualified as a franchise pursuant to the MFA. *See* Minn. Stat. § 80C.01, subd. 4(a) (defining franchise for application under the MFA). If the fact-finder determines that M&M fails to meet the definition of a franchise to implicate the MFA, then the answer to the certified questions would merely constitute an advisory opinion—contrary to the purpose of certified questions. *See Doe 175*, 842 N.W.2d at 44. This factor also weighs against considering the questions being properly certified.

4. The record lacks support to find that this is an issue of statewide impact.

A question, however, may also present an issue of statewide impact that supports certification. *See Hall v. State*, 890 N.W.2d 728, 733 (Minn. App. 2017) (recognizing, among other grounds, that \$606 million in abandoned property controlled by the state for a class of at least tens of thousands of members had a statewide impact), *rev'd on other grounds*, 908 N.W.2d 345 (Minn. 2018). The parties acknowledge the record lacks any

support that answering these certified questions has statewide impact. Although the district court's order references that "[t]here are hundreds, if not thousands, of Minnesota businesses that have developed ambiguous partnerships that could potentially be within the penumbra of the Minnesota Franchise Act, but not being conducted as such," the record does not include any information to support this finding.

Although this court is cognizant of the district court's desire to ensure the correct legal standard applies to this case going forward, we must also consider the need to avoid piecemeal litigation posed by answering certified questions that do not terminate the action. These certified questions focus solely on the MFA counterclaim presented by M&M. Therefore, even if the court answered the questions, the parties would still be litigating the collection action raised by Cambria and M&M's other counterclaims. Accordingly, we conclude the certified questions are not important, and the appeal must be dismissed. *Proprietors Ins. Co.*, 451 N.W.2d at 906.

II. Cambria's motion to strike M&M's brief is denied because the appeal is dismissed.

Cambria requests this court strike M&M's brief and addendum for noncompliance with the Minnesota Rules of Civil Appellate Procedure and order M&M to refile and comply with the appellate rules of procedure. Because we do not reach the merits of the appeal, the motion to dismiss is denied as moot.

Appeal dismissed; motion denied.