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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0598**

In the Matter of: The Trusteeship Created by the Port Authority of the City of St. Paul
Relating to the Issuance of Tax Exempt Senior Lien Parking Ramp Revenue Bonds
(Fourth and Minnesota Parking Ramp Project) Series 2000-1 & 2000-7 and Taxable
Subordinate Lien Parking Ramp Revenue Bonds (Fourth and Minnesota Parking Ramp
Project) Series 2000-2

**Filed October 28, 2019
Reversed and remanded
Reilly, Judge**

Hennepin County District Court
File No. 27-TR-CV-18-1

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(for appellants WHTW, LLC and CCV-1, LLC)

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Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

In this trust instruction proceeding, appellants challenge the district court's grant of summary judgment in favor of the trustee and against appellants. Because the district court erred in converting the trustee's motion for judgment on the pleadings under rule 12.03 into a summary-judgment motion under rule 56 and in granting summary judgment in the trustee's favor, we reverse and remand.

FACTS

This appeal arises out of a trust instruction proceeding (TIP), governed by Minn. Stat. §§ 501C.0201-.0208 (2018), regarding the proposed disposition of a parking ramp located in St. Paul and owned by the Port Authority of the City of St. Paul (Port Authority).

Respondent Wells Fargo Bank, National Association, serves as Trustee for a Trust Indenture dated May 1, 2000, relating to the issuance of tax-exempt senior lien parking ramp revenue bonds and taxable subordinate lien parking ramp revenue bonds. Appellant CCV-1, LLC (CCV) holds taxable subordinated cash flow notes issued by the Port Authority in connection with the ramp. The subordinated cash flow notes include an acceleration provision or an assumption obligation in the event the ramp is sold to a third party. The Port Authority also entered into an Option to Purchase and First Refusal Agreement with appellant WHTW, LLC (WHTW), granting WHTW an option to purchase the ramp and a right of first refusal in the event that the Port Authority receives an offer to purchase the ramp that the Port Authority intends to accept or does accept.

Due to the parking ramp's lack of profitability, both the senior and subordinate bonds are in default. Rather than foreclose the mortgage and dispose of the facility in a sheriff's sale, the Trustee proposed transferring ownership of the ramp by structuring the transaction as a deed in lieu of foreclosure (deed in lieu) on the senior mortgage. In October 2017, Jet Park, LLC, submitted a bid and final offer for the Trustee's right to dispose of ownership of the ramp in lieu of foreclosure. To facilitate the transaction, the Trustee entered into two agreements: (1) the Deed in Lieu of Foreclosure Agreement authorizing the Trustee to proceed with the transaction in a TIP in lieu of initiating foreclosure proceedings and, at closing, assigning all of Port Authority's right, title, and interest in the Deed in Lieu Agreement to the Trustee; and (2) the Agreement for Assignment and Assumption of Deed in Lieu of Foreclosure Agreement (the Assignment Agreement), assigning the Trustee's rights under the mortgage and Deed in Lieu Agreement to Jet Park. The Assignment Agreement is subject to a number of contingencies, including the entry of an order of judgment in a TIP. Under this structure, the holders of the subordinated bonds would receive nothing.

The Trustee filed a petition for preliminary approval to proceed with the disposition of the parking ramp. CCV and WHTW filed a notice of objection to the petition, asserting that the Deed in Lieu of Foreclosure Agreement and the Assignment Agreement constituted a "sale" of the ramp and triggered certain rights and obligations under the parties' respective agreements with the Port Authority. The Trustee moved for judgment on the pleadings under Minn. R. Civ. P. 12.03, which CCV and WHTW opposed. The district court, acting *sua sponte*, converted the Trustee's motion for judgment on the pleadings into

a motion for summary judgment under Minn. R. Civ. P. 56.01, and granted summary judgment in the Trustee's favor and against CCV and WHTW. This appeal follows.

D E C I S I O N

I. The District Court Erred by Converting the Trustee's Motion.

CCV and WHTW argue that the district court erred by converting the Trustee's motion for judgment on the pleadings under Minnesota Rule of Civil Procedure 12.03 into a motion for summary judgment under rule 56.01. We interpret the rules of civil procedure de novo. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 601 (Minn. 2014) ("When interpreting a rule, we look first to the plain language of the rule and its purpose.").

If, on a motion for judgment on the pleadings,

matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided for in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Minn. R. Civ. P. 12.03. However, "a court may consider documents referenced in a complaint without converting the motion to dismiss to one for summary judgment." *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490-91 (Minn. 2004) (citing *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739 n.7 (Minn. 2000)).

The district court, acting *sua sponte*, converted the Trustee's motion to dismiss into one for summary judgment on the ground that "all documents presented by the parties, namely, the terms of the taxable subordinated cash flow note, are not incorporated in the pleading." Appellants asserted, and respondent agrees, that the district court erred when it *sua sponte* converted the motion to dismiss into a motion for summary judgment.

It is uncontested that the notes were referenced in the petition, and the district court's consideration of materials referenced and relied on in the pleadings does not convert the Trustee's dismissal motion to one for summary judgment. *See id.*; *see also In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995) (noting that in cases involving written agreements referenced but not attached to pleadings, the written agreement is treated like an attachment if "the complaint refers to the contract and the contract is central to the claims alleged"). The district court erred when it converted the motion to dismiss to a motion for summary judgment.

II. The District Court Erred by Granting the Trustee's Dismissal Motion.

CCV and WHTW assert that the district court erred when it granted judgment in favor of the Trustee. The Trustee counters that even if we analyze the district court's judgment under the proper rule 12 analysis, we should affirm the district court's grant of judgment in its favor. On review of a rule 12.03 motion for judgment on the pleadings, we accept the facts alleged in the pleadings as true and construe those allegations in the light most favorable to the nonmoving party. *Hoffman v. N. States Power Co.*, 764 N.W.2d 34, 45 (Minn. 2009). We review the judgment "de novo and determine only whether the [pleading] sets forth a legally sufficient claim for relief." *Williams v. Bd. of Regents of Univ. of Minnesota*, 763 N.W.2d 646, 651 (Minn. App. 2009) (quotation and citation omitted).

We determine that the Trustee's motion for judgment on the pleadings should have been denied based on the record before the district court because (1) whether any part of the transaction constitutes a "sale" under CCV's taxable subordinated cash flow notes

cannot be decided on the pleadings or documents referenced in the pleadings, and (2) whether WHTW's option and first refusal rights have been triggered cannot be decided on the pleadings or documents referenced in the pleadings.

a. CCV's Taxable Subordinated Cash Flow Notes

In 2000, the Port Authority issued taxable subordinated cash flow notes to CCV-1 in connection with the ramp. The notes included an acceleration provision or, alternatively, an assumption obligation "[i]n the event that the [Port] Authority sells the Ramp." The Trustee argues that it was entitled to judgment on the pleadings because CCV does not have any rights under the notes if the Trustee disposes of the property in a sheriff's sale or through another default remedy. The district court agreed with the Trustee and determined that the transaction proposed by the Trustee with Jet Park "is not a sale of the [ramp] by the Port Authority," and the acceleration clause of CCV's notes "is not implicated." The district court also rejected CCV's argument that the court should consider the transaction as a whole to determine whether a "sale" occurred.

On appeal, CCV contends that the Deed in Lieu of Foreclosure Agreement and the Assignment Agreement, construed together, could have contemplated a sale of the ramp from the Port Authority to Jet Park. Further, CCV argues that the term "sale" in the notes is ambiguous. Contract language is ambiguous if it is susceptible to two or more reasonable interpretations. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). We review de novo the question of whether contract language is plain or ambiguous. *Glacial Plains Coop. v. Chippewa Valley Ethanol Co.*, 912 N.W.2d 233, 236 (Minn. 2018). If a contractual provision is ambiguous, determining its meaning is a factual question. *City of*

Virginia v. Northland Office Props. Ltd., 465 N.W.2d 424, 427 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991).

CCV argues that the terms of the note are susceptible to more than one reasonable interpretation, including: (1) the transaction with Jet Park does not constitute a sale because the Port Authority is not selling the ramp; (2) the two-step structure of the transfer to Jet Park through the Deed in Lieu of Foreclosure Agreement and the Assignment Agreement is, in reality, a sale of the ramp from the Port Authority to Jet Park designed to frustrate CCV's and WHTW's contractual rights; or (3) the Deed in Lieu of Foreclosure Agreement and the Assignment Agreement transaction is a sale within the larger context of the note as a whole. On this record, we agree that each of these proposed interpretations is reasonable, and the parties are entitled to conduct discovery to resolve the factual dispute of whether the contemplated transaction with Jet Park constitutes a "sale" for purposes of the relevant documents. *See Bakken v. Helgeson*, 785 N.W.2d 791, 795 (Minn. App. 2010) (holding that whether a transaction constitutes a "sale" for purpose of triggering a duty to pay in a dissolution judgment is a question of fact) (citing *Redmond v. Redmond*, 594 N.W.2d 272, 276 (Minn. App. 1999)); *see also Ministers Life Cas. Union v. Franklin Park Towers Corp.*, 239 N.W.2d 207, 210 (Minn. 1976) (instructing courts to consider parties' intention at time of transaction to determine real nature of an otherwise ambiguous term in a contract regarding a property conveyance).

Because the term "sale" in CCV's note with the Port Authority is susceptible to more than one reasonable interpretation, there are factual issues outstanding. Therefore,

we determine that the district court erred by entering judgment as a matter of law in the Trustee's favor.

b. WHTW's Option to Purchase and First Refusal Agreement

The Port Authority entered into an Option to Purchase and First Refusal Agreement with WHTW in 2000, in which it agreed to grant WHTW the option to purchase the ramp and a right of first refusal under certain conditions. WHTW's rights are triggered by an unrelated third party's offer to purchase the ramp, "which the Port Authority intends to accept or does accept, and which purchase, if consummated, would result in the [ramp] being subject to real estate taxes."

In 2017, Jet Park offered to purchase the Trustee's right to accept the ramp in lieu of foreclosure. The district court reasoned that this transaction did not trigger WHTW's rights under its agreement with the Port Authority because WHTW's rights "are entirely subordinate to those of the Trustee," and the Trustee had "the plain right to accept the deed to the [ramp] in lieu of foreclosing the mortgage and disposing of the [ramp] via a sheriff's sale." The court determined that any interests WHTW had "is subordinated to that of Trustee and terminated upon the Trustee's acceptance of a deed in lieu of foreclosure." The district court rejected WHTW's argument that the court should consider the underlying nature of the proposed sale by the Trustee to Jet Park, and whether the Port Authority is actually the true seller of the ramp. The court reasoned that it could not "look outside the four corners" of the parties' agreement to determine whether the underlying nature of the proposed disposition of the parking ramp was a "sale" from the Port Authority to Jet Park.

The district court's decision was erroneous. Based on the representations in the petition, a reasonable inference could be drawn from the record that the Port Authority—rather than the Trustee—listed the ramp for sale, marketed the facility, and solicited offers for the ramp on behalf of both the Port Authority and the Trustee. It is notable that the Trustee failed to include Jet Park's offer as an exhibit to the TIP petition. Without Jet Park's offer in evidence, the record is incomplete and discovery is necessary to develop the facts concerning how Jet Park's offer to purchase the ramp was solicited, submitted, and accepted.

While the facts may turn out differently after full discovery and associated proceedings, the facts alleged in the petition could support a determination that the Port Authority received a bona fide offer from an unrelated third party to purchase the property which the Port Authority either accepted or intended to accept, thus triggering WHTW's rights under the Option and First Refusal Agreement. At the oral argument before this court, the attorney for WHTW and CCV candidly admitted that, after completion of further discovery, his clients may not have a colorable claim, and we appreciate counsel's candor on this point. But at this stage in the proceedings, we must draw all inferences and assumptions in favor of WHTW, the nonmoving party. *See Hoffman*, 764 N.W.2d at 45. We recognize that “[a] motion for judgment on the pleadings is not a favored way of testing the sufficiency of a pleading, and will not be sustained if by a liberal construction the pleading can be held sufficient.” *Ryan v. Lodermeier*, 387 N.W.2d 652, 653 (Minn. App. 1986); *see also Hoffman*, 764 N.W.2d at 45 (noting that pleadings must be “liberally construe[d]” in reviewing a judgment on the pleadings). “Moreover, the pleadings must

be construed favorably to the party against whom the judgment is asked.” *Ryan*, 387 N.W.2d at 653. We determine that the district court erred by granting judgment on the pleadings in the Trustee’s favor and against WHTW because the record is undeveloped and the relevant issues cannot be resolved as matter of law.

In sum, we determine that the district court erred by granting judgment on the pleadings in the Trustee’s favor and against appellants, and we reverse and remand for further proceedings consistent with this decision.

Reversed and Remanded.