

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1353**

Joel S. Rabbe, et al.,
Appellants,

vs.

Farmers State Bank of Trimont, et al.,
Respondents,

First Financial Bank in Winnebago, et al.,
Respondents.

**Filed May 11, 2020
Affirmed
Rodenberg, Judge**

Martin County District Court
File No. 46-CV-18-424

Richard E. Bosse, Law Offices of Richard E. Bosse, Chartered, Henning, Minnesota (for appellants)

Dustan J. Cross, Dean M. Zimmerli, Gislason & Hunter LLP, New Ulm, Minnesota (for respondents Farmers State Bank of Trimont, Michael Mulder, and Robert Connors)

Philip J. Kaplan, Anthony Ostlund Baer & Louwagie P.A., Minneapolis, Minnesota (for respondents First Financial Bank in Winnebago and William Erickson)

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

UNPUBLISHED OPINION

RODENBERG, Judge

Appellants, several members of the Rabbe family, appeal from the district court's summary judgment dismissing appellants' complaint. Appellants argue that the district court erred in (1) determining that Minn. Stat. § 513.33 (2018) and equitable estoppel require dismissal of their fraudulent-inducement claim, (2) failing to reconsider or reopen the dismissal of appellants' amended complaint after appellants produced an affidavit that contradicts one on which the district court relied in its original order, and (3) denying appellants leave to further amend their complaint. We affirm.

FACTS

This ongoing litigation arises from a farmer-lender relationship. *See Farmers State Bank of Trimont v. Rabbe*, No. A19-0707, 2019 WL 7287075, at *1 (Minn. App. Dec. 30, 2019) (affirming in part and reversing in part the district court's grant of summary judgment, and remanding); *Rabbe v. Farmers State Bank of Trimont*, No. A18-1845, 2019 WL 2416036, at *1 (Minn. App. June 10, 2019) (affirming the district court's dismissal of appellants' claims that respondents failed to comply with the farmer-lender mediation act's good-faith-affidavit requirement), *review denied* (Minn. Aug. 20, 2019). In addition to these two unpublished opinions of this court, appellants also appealed the district court's summary judgment entered in a related lawsuit (the foreclosure litigation, discussed below) on May 25, 2016, but that appeal was dismissed pursuant to a stipulation by the parties.

There are a number of respondents in this appeal: Farmers State Bank of Trimont (FSB), Michael Mulder (president of FSB), Robert Connors (vice president of FSB), First

Financial Bank in Winnebago (FFB), and William Erickson (president of FFB). We refer to FSB, Mulder, and Connors as the FSB respondents. We refer to FFB and Erickson as the FFB respondents.

Loan History

In the early 2000s, appellants, owners of Rabbe Farms, LLP (Rabbe Farms) and Rabbe Ag Enterprises (Rabbe Ag) expanded their businesses with financing from FSB. Appellants' financing needs eventually exceeded FSB's lending limits. Therefore, from 2008 to 2013, FSB solicited third-party banks to buy participation interests in FSB's loans to Rabbe Farms.¹ FFB bought a participation interest in FSB's loans to Rabbe Farms and became a participant bank.

On June 17, 2013, FSB loaned \$14,950,000 to Rabbe Farms. On March 24, 2014, FSB loaned an additional \$2,500,000 to Rabbe Farms, bringing the total outstanding principal indebtedness owed by Rabbe Farms to \$17,450,000. The individual appellants personally guaranteed these loans. These loans were secured in part by mortgages on 503 acres of Rabbe Farms' land and in part by security interests in farm equipment and personal property owned by Rabbe Ag.

Shortly after FSB made these loans to Rabbe Farms, Erickson noticed discrepancies in appellants' 2013 year-end financial statements. Erickson and Mulder met with appellants and their accountant to discuss the issue. A third-party accounting firm engaged

¹ "A loan participation is a common banking practice in which a bank participant provides funds to a lender, which then lends the funds to a borrower." *Cnty. First Bank v. First United Funding, LLC*, 822 N.W.2d 306, 308 (Minn. App. 2012).

to review appellants' 2013 year-end financial statements confirmed that the statements contained a significant accounting error. That accounting error caused appellants' assets, which secured FSB's loans to Rabbe Farms and on which FSB relied in making the loans to Rabbe Farms, to be overstated. The corrected value of Rabbe Farms' collateral made the loans riskier than FSB previously thought. Because of the additional risk, and as it was entitled to do pursuant to the loan documents, FSB declared a default on its loans to Rabbe Farms. Instead of calling the notes due and immediately foreclosing on the existing mortgages, appellants and FSB negotiated a workout of the loan default. The parties entered into a written and signed Forbearance Agreement on August 15, 2014.

Forbearance Agreements

The 2014 Forbearance Agreement included a stipulation that appellants were in default on the subject loans. FSB agreed to "forbear from exercising its rights and remedies" under the terms of the loans to Rabbe Farms in exchange for appellants' agreement "[t]o secure the repayment of [their] [i]ndebtdness" in the principal amount of \$15,000,000. Appellants also agreed to waive "all legal or equitable defenses to (including any right of setoff, recoupment, or counterclaim) and any defects in the Loan Documents, this Agreement and/or any documents referenced herein." The Forbearance Agreement also included a release of all claims by appellants, providing:

[Appellants] do hereby release and forever discharge [FSB] and all participants of this loan as identified on the attached Exhibit D (the "Participants"), and their officers, agents, attorneys and employees, successors and assigns from all causes of action, suits, claims, and demands of every kind and character, known or unknown, without limit, including any action in law or equity which [appellants] may now have or

may ever have had against [FSB] and/or the Participants, if the circumstances, or any of the circumstances, giving rise to such cause of action, suit, claim, or demand occurred prior to the date of this Agreement.

Exhibit D lists 13 participants, including FFB.

The Forbearance Agreement also included an entire-agreement provision and prominently provided above the signature blocks that “only those terms in writing are enforceable.” It also contained a fair-dealing provision in which appellants acknowledged that they had the opportunity to be represented by counsel and relied on their own judgment in executing the Forbearance Agreement. The agreement contained no promises concerning good-faith negotiations. Appellants all signed the Forbearance Agreement.

The parties agree that appellants defaulted under the terms of the 2014 Forbearance Agreement. On June 19, 2015, FSB and appellants executed an Amended Forbearance Agreement. The Amended Forbearance Agreement included waiver, fair-dealing, and entire-agreement clauses that were nearly identical to those contained in the 2014 Forbearance Agreement. The Amended Forbearance Agreement also included a release clause that was nearly identical to the release clause in the 2014 Forbearance Agreement. FFB was again listed as a participant under the release clause. Unlike the 2014 version of the agreement, the Amended Forbearance Agreement contained a provision stating that appellants and FSB would “negotiate in good faith towards a global resolution relative to the Rabbe Farms Indebtedness.” Appellants signed the Amended Forbearance Agreement.

Farmer-Lender Mediation

On July 25, 2015, appellants and FSB entered into farmer-lender mediation. During mediation, appellants offered to settle their debt with a \$7,500,000 cash payment to FSB. FSB rejected appellants' offer and requested that appellants' offer be submitted in writing for consideration by the participant banks. Appellants' lawyer (not appellants' current counsel) complied. No agreement was reached.

Rabbe Farms and Rabbe Ag filed for Chapter 11 bankruptcy protection on September 29, 2015—the expiration date of the Amended Forbearance Agreement.

Foreclosure Litigation

On October 20, 2015, the FSB respondents sued appellants seeking foreclosure of several mortgages and a money judgment against the individual appellants for any deficiency. FSB alleged that appellants were in default under the terms of both the 2014 Forbearance Agreement and the Amended Forbearance Agreement. Appellants answered the complaint on November 5, 2015. Appellants did not raise fraud, lack of consideration, or invalidity of the loan agreements, Forbearance Agreement, or Amended Forbearance Agreement as defenses in their answer. Appellants did assert a breach-of-contract defense.

On December 24, 2015, the FSB respondents moved for summary judgment on all claims in this foreclosure litigation. The FSB respondents argued that the reaffirmation, waivers, and releases in the 2014 Forbearance Agreement and Amended Forbearance Agreement eliminated all genuine issues of material fact and that they were entitled to judgment as a matter of law. In a supplemental response to the motion for summary

judgment, appellants argued that the FSB respondents failed to negotiate in good faith as required by the Amended Forbearance Agreement.

On March 31, 2016, the district court entered summary judgment in favor of the FSB respondents on all claims in the foreclosure litigation. In its summary judgment order, the district court determined that there was no genuine factual dispute concerning the enforceability of the forbearance agreements. The district court determined that FSB “negotiated in good faith, and nothing that occurred during the negotiation or mediation precludes the Court from granting summary judgment.” On May 25, 2016, the district court issued an amended summary judgment order. Appellants appealed the summary judgment in the foreclosure litigation, but later voluntarily dismissed their appeal by stipulation.

Bankruptcy Proceedings

On July 8, 2016, the parties entered into mediation in appellants’ bankruptcy case. A settlement was reached. As a result, appellants cancelled confirmation dates and trial dates and put all state court proceedings on hold. An order containing the terms of the settlement was entered on October 31, 2016.

Current Litigation

In November 2017, appellants served their complaint in this case. On December 1, 2017, appellants served an amended complaint. Appellants’ amended complaint asserted ten claims. Six of the claims were asserted only against the FSB respondents. The remaining four claims identified all respondents as defendants.

In December 2017, the FSB respondents and the FFB respondents moved to dismiss appellants' amended complaint. On June 13, 2018, shortly before the hearing date for respondents' motion to dismiss the amended complaint, appellants moved to file a second amended complaint that added a new claim for declaratory judgment and a claim of a UCC violation. Erickson was not identified as a defendant in this proposed second amended complaint.

On September 28, 2018, the district court dismissed appellants' amended complaint. The district court also denied appellants' motion for leave to file the second amended complaint, except for one claim—an antitrust claim against FSB and Mulder that appellants later abandoned. The district court determined that the release language in the forbearance agreements was valid and precluded appellants' claims against the FFB respondents and all but one claim against the FSB respondents. The district court held that appellants were statutorily barred by Minn. Stat. § 513.33 from alleging that they were fraudulently induced to enter into the Forbearance Agreement based on an oral promise to negotiate a settlement. The district court's order effectively removed the FFB respondents from the lawsuit and left only the antitrust claim against FSB and Mulder—the claim that appellants have now abandoned.

In February 2019, appellants requested leave to move the district court for reconsideration of the September 28, 2018 order. On April 2, 2019, appellants filed a rule 52.02 motion to amend, claiming to have new evidence. Appellants also proposed a third amended complaint that was identical to the second amended complaint except for three new claims: (1) a breach-of-contract claim related to a failure to negotiate in good faith

under the Amended Forbearance Agreement, (2) a claim for negligent performance of loan administration, and (3) for cancellation of instruments (recession of the Forbearance Agreement and Amended Forbearance Agreement).

The district court denied appellants' motion to further amend the complaint. It also declined to reconsider its September 28, 2018 partial-summary-judgment order. On June 24, 2019, the district court granted summary judgment dismissing appellants' antitrust claim and dismissed appellants' complaint in its entirety. As noted, appellants do not challenge the district court's dismissal of the antitrust claim.

This appeal followed.

D E C I S I O N

I. Erickson was voluntarily dismissed as a defendant.

Appellants initially included Erickson as a defendant in this action. Appellants later agreed on the record to voluntarily dismiss the claims against Erickson with prejudice. But no separate judgment dismissing Erickson was ever entered. When filing this appeal, appellants again identified Erickson as a respondent. At oral argument, counsel for appellants stated that appellants do not dispute Erickson's dismissal. Although no judgment dismissing Erickson appears in the record, appellants agreed to dismiss him and now agree that all claims against him have been effectively dismissed. Therefore, appellants' voluntary dismissal on the record of all claims against Erickson is affirmed.

II. The district court did not err in granting respondents’ motions to dismiss in its order dated September 28, 2018.

Appellants argue that the district court erred in its September 28, 2018 dismissal of all but one claim in appellants’ amended complaint. Appellants contend that the district court improperly applied collateral estoppel to preclude their claim for fraudulent inducement.

When a case is “dismissed pursuant to Minn. R. Civ. P. 12.02(e) for failure to state a claim on which relief can be granted, the question before this court is whether the complaint sets forth a legally sufficient claim for relief,” which we review de novo. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). “In doing so, we consider only the facts alleged in the complaint, accepting those facts as true.” *Sipe v. STS Mfg, Inc.*, 834 N.W.2d 683, 686 (Minn. 2013) (quotation and citation omitted).

In the context of a rule 12 motion, “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 (Minn. 2004). The forbearance agreements were referenced in and made part of the complaint, so they were properly considered by the district court on the motion to dismiss.

Parties are required to mediate in good faith during farmer-lender mediation. Minn. Stat. § 583.27, subd. 1 (2018). “If the mediator determines that either party is not participating in good faith . . . the mediator shall file an affidavit indicating the reasons for the finding” Minn. Stat. § 583.27, subd. 2 (2018). A creditor or debtor may petition the district court for review of “a mediator’s affidavit of lack of good faith or a mediator’s

failure to file an affidavit of lack of good faith of a creditor.” Minn. Stat. § 583.27, subd. 6(a) (2018). The district court would review such a petition for an abuse of discretion. *Id.* The Farmer-Lender Mediation Act, Minn. Stat. §§ 583.20-.32 (2018), “requires that a finding of bad faith be made by the mediator, not by the district court.” *Prod. Credit Ass’n of Worthington v. Spring Water Dairy Farm, Inc.*, 407 N.W.2d 88. 91 (Minn. 1987).

The mediator in the farmer-lender mediation in this case made no finding of bad faith. There was no petition for district-court review of the absence of a bad-faith finding. Accordingly, in the summary judgment order in the foreclosure litigation, Judge Trushenski concluded that FSB had as a matter of law negotiated in good faith. He elaborated in his memorandum attached to the summary judgment order that “[t]he mediator did not make [a finding of a lack of good faith] and nothing in the record shows otherwise.” Judge Trushenski also noted that appellants “admitted in the Forbearance Agreement and First amendment that they had no defense to the enforceability of the loan documents. [Appellants] also acknowledged the documents were valid and binding.”

Appellants appealed the summary judgment in the foreclosure litigation, but later dismissed the appeal pursuant to a stipulation of the parties. Judge Trushenski’s conclusions in the foreclosure litigation that FSB negotiated in good faith are therefore part of a final judgment.²

² The parties contend that they are currently involved in other litigation, including an action by appellants attempting to set aside Judge Trushenski’s earlier judgment. The record in this appeal contains nothing concerning any such litigation.

In issuing the September 28, 2018 order concerning the motions to dismiss in this case, Judge Timmerman properly considered that Judge Trushenski’s conclusions in the foreclosure litigation concerning good-faith negotiations and the validity of the forbearance-agreement releases was final as between these parties. *See Reil v. Benjamin*, 584 N.W.2d 442, 444 (Minn. App. 1998) (explaining “that a legal question or fact issue that has been determined by a court of competent jurisdiction cannot be relitigated in a subsequent action between the same parties or their privies”). Judge Timmerman also concluded that “the release contained within both Forbearance Agreements is unambiguous in its scope and intent” and that the FSB and FFB respondents were “released and discharged” pursuant to the release provisions. To the extent that appellants asserted that the parties made agreements not included in their two forbearance agreements, the district court held that Minn. Stat. § 513.33 bars such claims. As such, Judge Timmerman concluded that appellants failed to state a claim on which relief can be granted.³

As discussed, we review a district court’s rule 12 dismissal de novo. *Hebert*, 744 N.W.2d at 229. Doing so, the record clearly reflects that the terms of the releases in the forbearance agreements are unambiguous and unquestionably valid. Appellants unambiguously agreed that they were in default in 2014 and unambiguously released respondents from all liability in each forbearance agreement. And appellants have not

³ The appealed-from order underlying the judgment of dismissal in this case is captioned as “Findings of Fact, Conclusions of Law, and Order.” As a reminder to the district court, a motion to dismiss does not require any findings of fact because the facts alleged in the complaint are to be accepted as true. *See Sipe*, 834 N.W.2d at 686. On careful examination of the record, and despite the caption, the district court made no findings concerning disputed facts.

effectively pleaded any failure of respondents to abide by the terms of the valid releases, in light of the earlier and final judgment as between these same parties in the foreclosure litigation that there was no lack of good faith on the part of any of respondents in farmer-lender mediation. Accordingly, the district court properly granted the FSB and FFB respondents' motions to dismiss.

III. The district court did not abuse its discretion in denying appellants' July 30, 2018 motion to amend the complaint.

Appellants argue that the district court should have granted their motion to amend the complaint because the only basis that the district court cited in support of denying the motion was "the collateral estoppel of Judge Trushenski's Findings of Fact, Conclusions of Law and Order" which appellants assert was error.

"Under Minn. R. Civ. P. 15.01, the decision by a trial court to deny a motion to amend a pleading may be reversed only if the trial court abused its discretion." *Copeland v. Hubbard Broad., Inc.*, 526 N.W.2d 402, 405 (Minn. App. 1995). "It is . . . not an abuse of discretion to deny a motion to amend when the movant fails to establish evidence to support its claims." *Id.*

On September 28, 2018, the district court determined that "the only legally cognizable claims in the complaint are those pertaining to the alleged antitrust violation." The district court allowed the proposed amendments to the complaint pertaining to the alleged antitrust violation and "[t]he deletion of material from the amended complaint."

Except as to the now-abandoned antitrust claim, the proposed second amended complaint restated the same causes of action as the amended complaint. Even had the

amendment been allowed, the very same releases determined in the earlier foreclosure litigation by Judge Trushenski to be valid would have had the same dispositive legal effect under appellants' proposed additional amendments.

The district court acted well within its discretion when it denied appellants' motion to amend the complaint because the second amended complaint was substantially the same as appellants' amended complaint in all relevant respects and asserted no cause of action that was viable after the earlier summary adjudication.

Further, the district court did not abuse its discretion in denying appellants leave to move for reconsideration. We review a district court's decision to deny reconsideration for an abuse of discretion. *In re Welfare of S.M.E.*, 725 N.W.2d 740, 743 (Minn. 2007). "A district court abuses its discretion when it bases its conclusions on an erroneous interpretation of the applicable law." *Fannie Mae v. Heather Apartments Ltd. P'ship*, 811 N.W.2d 596, 599 (Minn. 2012). A motion that reargues a prior motion, without making any new factual or legal arguments, is not a proper motion for reconsideration. *Lewis v. Lewis*, 572 N.W.2d 313, 315 (Minn. App. 1997), *review denied* (Minn. Feb. 19, 1998); *see also State by Fort Snelling Park Ass'n v Minneapolis Park & Recreation Bd.*, 673 N.W.2d 169, 178 n.1 (Minn. App. 2003) (stating that *Lewis* has been overruled in part, but remains good law as far as establishing the necessary components for a motion for amended findings), *review denied* (Minn. Mar. 16, 2004). Appellants' motion for reconsideration was plainly an attempt to reargue the earlier summary judgment motion. The district court acted within its discretion in denying appellants' motion to reconsider.

IV. The district court did not err in denying appellants' motions to amend the findings of fact and amend the complaint.

Appellants argue that the district court erred in denying their motion to amend the findings of fact of September 28, 2018, because the district court relied on a “perjurious affidavit” in finding that FSB negotiated in good faith during the farmer-lender mediation. The referenced affidavit was signed by attorney M.D. (FSB’s attorney), related to respondents’ contention that it acted in good faith during farmer-lender mediation, and was referenced by the district court in its order dismissing all but one of appellants’ original claims in this case. The M.D. affidavit stated that both parties made various offers during the mediation sessions but could not reach an agreement.

Appellants now, and in their motion for amended findings—which was denied by the district court as an impermissible second attempt at bringing a motion for reconsideration—contend that the M.D. affidavit was false because there were not multiple offers by the parties and there were not multiple mediation sessions.

The district court denied appellants’ motion for amended findings without regard to the truth or falsity of the M.D. affidavit, explaining that it would not consider the “new evidence” that appellants put forth “to challenge Judge Trushenski’s conclusion of law that FSB negotiated in good faith during Farmer-Lender mediation.” The district court stated that it was “precluded from going outside the record previously submitted” so “the new evidence . . . as well as any arguments predicated on that evidence, must be disregarded.” The district court concluded that appellants’ arguments predicated on the claimed new evidence are “an attempt to reargue the [earlier] motions.”

On appeal, appellants assert the same argument concerning the same “new evidence” but add one additional affidavit from Joseph Roach (a partner of one of appellants’ former attorneys at the farmer-lender mediation), which purports to corroborate the other affidavits in disputing the accuracy of the M.D. affidavit. Appellants argue that they “requested the District Court to clarify, correct or expand its findings by considering the new evidence from the bank’s record which totally contradicts the Affidavit used by Judge Trushenski and the District Court in granting the motion for summary judgment and the motion to dismiss respectively.”

“Upon motion of a party . . . the court may amend its findings or make additional findings, and may amend the judgment accordingly if judgment has been entered.” Minn. R. Civ. P. 52.02. “We review the district court’s decision whether to grant a motion for amended findings for an abuse of discretion.” *Landmark Cmty. Bank, N.A. v. Klingelhutz*, 927 N.W.2d 748, 754 (Minn. App. 2019). “The district court abuses its discretion if its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Id.* (quotation omitted).

The district court’s judgment of dismissal in this case did not depend on the accuracy of the M.D. affidavit. As discussed, the question of whether FSB had mediated in good faith was fully and finally resolved by Judge Trushenski’s summary judgment in the foreclosure litigation. Appellants appealed from that summary judgment, but dismissed the appeal. On our de novo review of the record, that earlier summary judgment rested on the conclusion that, as a matter of law, FSB did not act in bad faith. The district court in this case relied on that final judgment and did not rely on the accuracy of the M.D. affidavit.

The summary judgment in the foreclosure litigation binds both parties to this appeal. Judge Timmerman properly declined to revisit the issue.

The district court therefore did not abuse its discretion in denying appellants' motion for amended findings.

Affirmed.