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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0111**

Katherine Marie Doornbos,
Appellant,

vs,

Kyle Justice Yaedke,
Respondent,

St. Paul Federal Credit Union, et al.,
Nominal Defendants.

**Filed September 28, 2020
Affirmed
Bratvold, Judge**

Dakota County District Court
File No. 19HA-CV-19-2213

John G. Westrick, Savage-Westrick, PLLP, Bloomington, Minnesota (for appellant)

Carol R. M. Moss, Hellmuth & Johnson, Edina, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Segal, Chief Judge; and
Bratvold, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

In this appeal from a partial final judgment entered under Minn. R. Civ. P. 54.02, appellant argues that the district court erroneously dismissed counts two and three of her amended complaint, with prejudice, for failure to state a claim upon which relief can be

granted. We agree with the district court that, for appellant to be entitled to relief under either count two or three, she must be a member of the limited liability company at the heart of both counts. Because the amended complaint affirmatively alleges that “[n]o members were ever designated” and also fails to sufficiently allege appellant’s membership, we conclude that the amended complaint fails to state a claim upon which relief may be granted. Thus, we affirm and do not consider respondent’s alternative arguments in support of affirmance.

FACTS

In February 2019, appellant Katherine Marie Doornbos served respondent Kyle Justice Yaedke and nominal-defendant Thor Electric LLC with a summons and complaint. A few months later, Doornbos filed an amended complaint alleging five counts; this appeal involves only two of those counts.

The amended complaint alleges these facts relevant to the two disputed counts: Doornbos and Yaedke were in a “romantic relationship and resided together” from August 2006 to March 2017. On May 7, 2009, “the parties created, or organized” a limited liability company, Thor Electric LLC, and filed articles of organization “naming each of the parties as organizers.” Thor Electric elected no board of governors and, “pursuant to Minn. Stat. § 322B.60, the organizers then acted, and continue to act, as the Board of Governors.” “No members were ever designated or contributions approved, but [Yaedke] held [Doornbos] out to be an owner/member to the public for many years.”

Count two asserts it is an “[a]ction under Minn. Stat. § 322C.0901” and specifically alleges that “Yaedke has indicated to [Doornbos] that she has no interest” in Thor Electric.

Count two next “asks the Court to determine [Doornbos’s] interests in Nominal Defendant Thor Electric, LLC since the time of its formation.”

Count three asserts a claim for “Money Had and Received/Breach of Fiduciary Duty” and alleges that Doornbos “has been entitled to an equally proportional distribution of income” from Thor Electric since its formation. But “Yaedke has received all such distributions of income” from Thor Electric “to the detriment of [Doornbos].” Count three also alleges that: “Yaedke by virtue of his co-member status and [his] status as managing member” of Thor Electric, owes Doornbos “a fiduciary duty in his management” of Thor Electric and in his “oversight of distribution[s]”; but “Yaedke breached that fiduciary duty by distributing income to himself only to the detriment of [Doornbos].” For both counts, the amended complaint requests “relief pursuant to [section] 322C.0901” including damages, costs, disbursements, and attorney fees.

Yaedke moved to dismiss counts two and three of the amended complaint under Minn. R. Civ. P. 12.02(e), arguing that both counts failed to state claims upon which relief can be granted, and alternatively, both counts were barred by the applicable statute of limitations. Yaedke argued that Doornbos “is not a member of Thor Electric, LLC” and that the amended complaint “failed to assert the requisite statutory elements or any facts that would support the claim.”

Doornbos opposed the motion and argued that Minn. Stat. §§ 322B.01-.975 (2014) was “the governing statute of the limited liability company,” and it is therefore “the applicable chapter at issue.” Doornbos also contended that she acted as a member or

governor of Thor Electric. Lastly, Doornbos argued that neither claim was barred by the statute of limitations.

The district court granted Yaedke's motion in a written order. The district court determined that the amended complaint "acknowledges no members were ever designated for the LLC and the pleading does not allege the existence of any agreement designating [Doornbos] as a member." The district court declined "to address the other bases for dismissal raised in [Yaedke's] motion."

Later, Doornbos's counsel asked the district court to modify its order "to allow an immediate appeal." The district court issued an amended order, finding that there is "no just reason for delay" and directing that judgment be entered under Minn. R. Civ. P. 54.02. Doornbos appeals.

D E C I S I O N

A district court may dismiss a complaint when the plaintiff "fail[s] to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02(e). A complaint "shall contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought." Minn. R. Civ. P. 8.01. "Minnesota is a notice-pleading state and does not require absolute specificity in pleading, but rather requires only information sufficient to fairly notify the opposing party of the claim against it." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 604-05 (Minn. 2014) (quotation omitted).

“A plaintiff must provide more than labels and conclusions.” *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010).

When a district court dismisses a complaint for failure to state a claim, we “review whether the complaint sets forth a legally sufficient claim for relief de novo.” *DeRosa v. McKenzie*, 939 N.W.2d 342, 346 (Minn. 2019). During our review, we “accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party.” *Id.* A claim can survive a motion to dismiss for failure to state a claim “if it is possible on any evidence which might be produced, consistent with the pleader’s theory, to grant the relief demanded.” *Walsh*, 851 N.W.2d at 603; *see also Bahr*, 788 N.W.2d at 80 (“[A] pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded”). We “are not bound by legal conclusions stated in a complaint when determining whether the complaint survives a motion to dismiss for failure to state a claim.” *Finn v. Alliance Bank*, 860 N.W.2d 638, 653-54 (Minn. 2015) (quotations omitted).

Doornbos argues that the district court erroneously dismissed counts two and three of her amended complaint. Doornbos contends that the amended complaint alleges that she “acted as a member and/or the governor of the LLC” and suggests the district court erred by concluding that she was not a member. Yaedke responds that Doornbos is “not a member as a matter of law.”

The district court determined that, for Doornbos to be entitled to relief, counts two and three must allege facts on which Doornbos may prove that she is a member of Thor

Electric, but that the amended complaint “fail[ed] to allege facts that, if true, establish [Doornbos] is or ever was a member of the LLC.” The district court reasoned that the amended complaint (1) “acknowledges no members were ever designated for the LLC,” (2) “does not allege the existence of any agreement designating [Doornbos] as a member,” and (3) does not allege facts that “confer[] LLC membership on a person” under chapter 322C. The district court determined that the amended complaint “failed to state a claim for which relief can be granted under Minn. Stat. § 322C.0901.”

We review the district court’s reasoning de novo. *DeRosa*, 939 N.W.2d at 346. First, we examine the elements of counts two and three and determine whether both counts require Doornbos to be a member of Thor Electric in order to state a claim under rule 12. Concluding that both counts so require, we next consider whether chapter 322B or chapter 322C governs our review of the amended complaint. Because the answer is unclear, we analyze the amended complaint under the legal requirements for limited-liability-company membership under both chapter 322B and chapter 322C.

Membership requirement

First, we determine whether counts two and three require Doornbos to be a member of Thor Electric in order to state a claim. Count two of Doornbos’s amended complaint alleges an “[a]ction” under Minn. Stat. § 322C.0901, which provides that “a *member* may maintain a direct action against another member, a manager, a governor, or the limited liability company to enforce the member’s rights and otherwise protect the member’s interests.” Minn. Stat. § 322C.0901, subd. 1 (2018) (emphasis added.) For Doornbos to obtain relief from Yaedke under section 322C.0901, she must allege that she is a member

of Thor Electric, and must “plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.” *See id.*, subd. 2.

Count three, titled “Money Had and Received/Breach of Fiduciary Duty,” requires that Doornbos plead facts aligning with the elements of a breach-of-fiduciary-duty claim, which are “duty, breach, causation, and damages.” *Hansen v. U.S. Bank Nat’l Ass’n*, 934 N.W.2d 319, 327 (Minn. 2019). The amended complaint alleges that Yaedke, “by virtue of his co-member status,” owes Doornbos a fiduciary duty, and that he “breached that fiduciary duty by distributing income to himself only to the detriment of [Doornbos].” Thus, to establish that Yaedke owed Doornbos a fiduciary duty as a “co-member,” the amended complaint must allege that she is a member of Thor Electric. *See* Minn. Stat. § 322C.0901, subd. 1.

Because both counts two and three require that Doornbos be a member of Thor Electric before she is entitled to relief, we must determine whether the amended complaint sufficiently alleges Doornbos’s membership under the generous standard applicable to rule 12 review. *See Walsh*, 851 N.W.2d at 603 (stating a claim may survive a motion to dismiss for failure to state a claim “if it is possible on any evidence which might be produced, consistent with the pleader’s theory, to grant the relief demanded”). But a threshold issue remains before we may analyze the sufficiency of the allegations: which version of the limited liability company statute applies to the amended complaint?

Governing chapter

Doornbos contends that she is a member of Thor Electric under chapter 322B, the limited-liability-company statute in effect when the parties formed Thor Electric in 2009. Yaedke responds that the legislature repealed chapter 322B and thus it “is not applicable to this case.” Instead, he asserts that chapter 322C currently governs limited liability companies. Doornbos counters that chapter 322B’s “legal authority has hardly evaporated,” and argues this court “has applied 322B after the effective date of Chapter 322C where the issues arose prior to its effective date.”

Doornbos is correct that chapter 322B was in effect in 2009 when they formed Thor Electric. But Yaedke is also correct that, in 2014, the legislature repealed chapter 322B and adopted a new limited-liability-company statute, chapter 322C. *See* 2014 Minn. Laws ch. 157, art. 1, § 91, at 62. The applicability of chapter 322C to existing limited liability companies is governed by Minn. Stat. § 322C.1204 (2018). Subdivision two states that “[e]xcept as otherwise provided in subdivision three, on and after January 1, 2018, this chapter governs *all* limited liability companies.” Minn. Stat. § 322C.1204, subd. 2 (emphasis added). Subdivision three provides that chapter 322C applies “to a limited liability company formed before August 1, 2015,” and identifies three requirements. *Id.*, subd. 3. Because, after careful review of the statutory requirements in subdivision three, it is not immediately clear whether chapter 322B or chapter 322C applies to Doornbos’s amended complaint, we consider the allegations under both chapters and interpret the relevant provisions in both chapters.

When we interpret statutes, we aim to “ascertain and effectuate the intention of the Legislature.” *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). If the statutory language is unambiguous, we apply it and “give words and phrases . . . their plain and ordinary meanings.” *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72-73 (Minn. 2012). Appellate courts interpret statutes as a whole while giving “effect to all of its provisions.” *Cocchiarella*, 884 N.W.2d at 624 (quotation omitted). No party contends that chapter 322B or chapter 322C are ambiguous. We agree and therefore apply the plain language of both chapters.

Chapter 322B

Doornbos argues the amended complaint sufficiently alleges that she is a member under chapter 322B for two reasons, which we consider in turn. First, Doornbos contends that under section 322B.60, subdivision one, organizers may act as governors if the limited liability company’s articles of organization do not name governors. She also argues that under section 322B.03, subdivision 30, one with “governance rights” is a member. Because Doornbos was an organizer and organizers can act as governors, Doornbos contends that she has “governance rights and was thereby a member.”

Doornbos’s argument is unpersuasive, however, because she omits key language from the definition of member. Reading the definition of “member” as a whole, subdivision 30 provides that one with “some governance rights *of a membership interest*” is a member. Minn. Stat. § 322B.03, subd. 30 (emphasis added). The amended complaint does not allege that Doornbos has “governance rights of a membership interest.” It alleges that Thor Electric filed its articles of organization, but also alleges that it elected no board of

governors and “the organizers then acted, and continue to act, as the Board of Governors.” At most, the amended complaint alleges that Doornbos was an organizer, and perhaps a governor, but it does not allege that she was or is a member. In fact, the amended complaint alleges that “[n]o members were ever designated.”

Second, Doornbos argues that when Thor Electric was formed, chapter 322B required that a limited liability company have members. See Minn. Stat. § 322B.11. And, “it is presumed that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been organized” when the articles of organization are filed and the fee paid. Minn. Stat. § 322B.18. Reading both sections of chapter 322B together, Doornbos contends that because Thor Electric’s articles of organization did not identify members, “it might appear that members were lacking in violation of Minn. Stat. § 322B.11.” She concludes that because section 322B.11 requires members for a limited liability company to be valid, she and Yaedke are members. Specifically, Doornbos argues that Yaedke “held [Doornbos] out to the general public as a member . . . and in having himself act[] as a member . . . both parties are members in the absence of any formal LLC agreements” or documents.

Even if we assume that Doornbos’s reading of these sections is correct, the amended complaint has not sufficiently alleged Doornbos’s membership in Thor Electric under chapter 322B. The statutory definition of member states a “member” is “a person *reflected in the required records* of a limited liability company as the owner of some governance rights of a membership interest of the limited liability company. A person may be a member without having voting rights.” Minn. Stat. § 322B.03, subd. 30 (emphasis added.) But the

amended complaint does not plead that Thor Electric’s “required records” show Doornbos was “the owner of some governance rights of a membership interest.” Rather, the amended complaint alleges that Doornbos and Yaedke were or acted as governors. The amended complaint also states that “[n]o members were ever designated.” Lastly, the amended complaint does not refer to any governing documents or records, and Doornbos’s brief to this court concedes that “there is no company document naming [a member].”

We specifically reject Doornbos’s argument that she is a member because Yaedke “held [her] out to the general public as a member.” Doornbos does not identify any legal authority recognizing that an individual, under chapter 322B, is a member based on a governor holding them out to the public as a member. With no legal authority supporting her argument, we decline to hold that Doornbos is a member because Yaedke held her out to be a member. We thus conclude that the amended complaint does not plead facts alleging that Doornbos is a member of Thor Electric under chapter 322B.

Chapter 322C

Under Minn. Stat. § 322C.0102, subdivision 15 (2018), a “member” is defined as “a person that has become a member of a limited liability company under section 322C.0401 and has not dissociated under section 322C.0602.” Minn. Stat. § 322C.0401 (2018) provides multiple ways that an individual may become a member.¹ Subdivision two provides that if a limited liability company has multiple members “those persons become

¹ Under subdivision one, if a limited liability company has one member, it must be “as agreed by that person and the organizer of the company.” Minn. Stat. § 322C.0401, subd. 1. Because the one-member scenario discussed in this subdivision is not relevant to Doornbos’s complaint, we do not consider it.

members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.” Minn. Stat. § 322C.0401, subd. 2. Subdivision three provides that a limited liability company may have no members upon formation, and that a person becomes an initial member “with the consent of a majority of the organizers. The organizers may consent to more than one person simultaneously becoming the company’s initial members.” *Id.*, subd. 3. Subdivision four provides that an individual can become a member if (1) “provided in the operating agreement,” (2) “as the result of a transaction effective under sections 322C.1001 to 322C.1015,” (3) “with the consent of all members,” or (4) the last person to have been a member designates a person to become a member. Minn. Stat. § 322C.0401, subd. 4.

Doornbos’s amended complaint fails to plead facts alleging that she is a member of Thor Electric in any of the ways described in section 322C.0401, subdivisions 1-4. The amended complaint alleges that Doornbos was an “organizer.” This term is defined in section 322C.0102, subdivision 19 (2018), as “a person that acts under section 322C.0201 to form a limited liability company.” But section 322C.0201, subd. 4(c) specifically states that “[t]he formation of a limited liability company does not by itself cause any person to become a member.” Thus, the amended complaint does not plead facts alleging that Doornbos was or is a member under chapter 322C. We conclude that the amended complaint fails under either chapter 322C or chapter 322B.

In sum, stating a claim for relief under either count two or three requires that Doornbos be a member of Thor Electric. Because the amended complaint fails to plead

facts alleging Doornbos's membership in Thor Electric, we conclude that the district court did not err by dismissing both counts of the amended complaint, with prejudice, for failure to state a claim upon which relief may be granted.

Affirmed.