

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0629**

William Hansen d/b/a W.G. Hansen & Associates,
Appellant,

vs.

Teleplus Consulting, Inc.,
Defendant,

and

William G. Hansen,
Appellant,

vs.

David E. Steen, et al.,
Defendants,

Unity Bank,
Respondent.

**Filed April 26, 2021
Affirmed
Jesson, Judge**

Hennepin County District Court
File No. 27-CV-17-1143

Kevin S. Sandstrom, Eckberg Lammers, P.C., Stillwater, Minnesota (for appellant)

Shaun D. Redford, Olson, Redford & Wahlberg, P.A., Edina, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Reyes, Judge; and
Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant William Hansen, with a judgment of \$624,000 against Teleplus Consulting Inc. (Teleplus) in hand, sought to recover that award from not only Teleplus and its sole owner—David Steen—but also from respondent Unity Bank. Hansen’s lawsuit was based on two undisputed facts: (1) that Steen gave Unity Bank a mortgage against his home; and (2) that payments on the mortgage were made directly from Teleplus’s business account at Unity Bank. Those mortgage payments, according to Hansen, were fraudulent, voidable transfers.

The district court disagreed, noting a third fact: that the payments from Teleplus were accounted for as shareholder loans or distributions to Steen. As a result, the district court granted summary judgment to Unity Bank. And when Hansen sought to amend his complaint to attach additional claims—including conspiracy between Unity Bank and Steen—the court denied the motion. Hansen appeals. Because the mortgage payments were not fraudulent as a matter of law, and because the district court did not abuse its discretion in concluding that Hansen’s amended complaint was untimely, prejudicial, and could not withstand summary judgment, we affirm.

FACTS¹

Teleplus Consulting Inc., solely owned by David Steen, helped businesses negotiate their telecommunications contracts. Appellant William Hansen had worked for Teleplus

¹ The following is a summary of facts presented in affidavits and deposition testimony submitted at motion hearings. The parties do not contest the events leading to this lawsuit.

since 2000. In 2014, Teleplus began to struggle financially, borrowing money and losing profits. When Hansen stopped receiving timely commission payments in late 2015, he complained, and was then fired. Believing he was wrongfully discharged, Hansen proceeded to arbitration, pursuant to his contract with Teleplus, and was awarded approximately \$624,000.

When his arbitration award remained unpaid, Hansen filed this lawsuit against Teleplus to compel payment. But because Teleplus had filed a notice of intent to dissolve, Hansen could not obtain judgment against the company. As a result, Hansen filed a separate action against Steen, his son, and his other businesses to obtain payment of his award. The cases were consolidated in early 2017. Nearly a year later, Hansen filed his first amended complaint and added respondent Unity Bank as a defendant.

Among the new claims was the assertion that Teleplus made mortgage payments to Unity Bank that violated the Minnesota Uniform Voidable Transactions Act (Voidable Transactions Act or Act), Minn. Stat. §§ 513.41-.51 (2020), and, as a result, were voidable, leaving Unity Bank liable to Hansen (a creditor of Teleplus) for those payments. Steen had set up the automatic monthly mortgage payments when he refinanced his mortgage in 2014. Instead of having the money transferred from the Teleplus business account to Steen's personal account, and then to Unity Bank, Steen instructed Unity Bank to have the payments made directly from the Teleplus business account. Unity Bank knew that Steen, as the sole owner of Teleplus, had the authority to make such transfers.

Although the payments were made directly to Unity Bank from Teleplus's business account, Teleplus classified the payments as shareholder loans to Steen—not as payments

to Unity Bank—on its 2014 and 2015 tax documents. The payments were then reclassified as shareholder distributions to Steen in 2016. In 2016 and 2017, Teleplus again reported the payments as shareholder distributions to Steen. Throughout this period, Steen’s personal tax documents reflected Teleplus’s accounting of the payments as shareholder loans or distributions. Between 2014 and 2017, Teleplus’s payments on the mortgage, which are a focus of this appeal, totaled \$73,655.94.

After nearly a year of discovery and pretrial proceedings on the claims in his first amended complaint, Hansen moved for leave to amend his complaint a second time. He sought to include claims against Unity Bank related to three additional loans the bank had provided to Steen and one of his other businesses in 2017. In part, Hansen argued that by providing the loans, Unity Bank conspired with Steen in depleting his assets, further limiting Hansen’s ability to recover his arbitration award. Because Hansen claimed to have only recently obtained the information about the 2017 loans, he argued that the district court should permit amendment of his complaint. But the district court denied Hansen’s motion, determining that it was untimely, prejudicial, and futile.

With only one claim against it, Unity Bank filed a motion for summary judgment. The district court granted the motion, determining that the mortgage payments were not avoidable under the Act because Steen made the payments, not Teleplus. Nor were the accounting measures used by Teleplus to record the mortgage payments as income to Steen illegal or improper, the district court concluded. As a result, any issues in accounting with

regard to the distribution of money between Teleplus and Steen, the district court stated, was a separate matter of piercing the corporate veil and obtaining judgment against Steen.²

Hansen appeals.

DECISION

Hansen challenges the district court's grant of Unity Bank's motion for summary judgment, arguing that genuine issues of material fact remain regarding whether the mortgage payments were voidable. Hansen further contends that the district court abused its discretion by denying his motion for leave to amend because, absent prejudice to the opposing party, leave to amend should be granted. We address each argument in turn.

I. The district court did not err by granting Unity Bank's motion for summary judgment.

We review a district court's grant of summary judgment de novo to determine whether there are any genuine issues of material fact and whether the district court misapplied the law. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). To do so here, we begin with an overview of the Voidable Transactions Act. Minn. Stat. §§ 513.41-.51. We then turn to the application of the Act to the facts of this case. Finally, we address Hansen's argument that the affidavit of his expert—in which the expert opined that Teleplus's practice of directly paying Steen's personal mortgage goes against corporate formalities—creates a genuine issue of material fact.

² A bench trial was held in August 2019 on Hansen's remaining claims against Teleplus and Steen. The district court found that transfers between Teleplus and Steen—including the mortgage payments at issue here—were voidable.

The Voidable Transactions Act seeks “to prevent debtors from placing property that is otherwise available for the payment of their debts out of the reach of their creditors.” *Citizens State Bank Norwood Young Am. v. Brown*, 849 N.W.2d 55, 60 (Minn. 2014). To do so, it permits creditors (like Hansen, here) to recover assets that have been fraudulently conveyed to others. Minn. Stat. §§ 513.47(a)(1), .48(b). And a creditor may recover the funds if the transfer either was made with actual fraudulent intent or falls into a category of transfers the law recognizes as constructively fraudulent. Minn. Stat. § 513.44(a).

Although Hansen claims that Steen had both actual and constructive fraudulent intent in transferring money from Teleplus to Unity Bank, Hansen offers no support for his claim of actual fraudulent intent. Thus, the focus of our review is whether there was constructive fraud. A transfer is constructively fraudulent if, in making the transfer, the debtor does not receive *reasonably equivalent value* in return, and the debtor’s assets became or would have become unreasonably small in relation to the transaction, or the debtor would have incurred debts beyond their ability to pay as they came due. *Id.* (a)(2).

The monies at issue here are the transfers from Teleplus’s business account to Unity Bank to make Steen’s mortgage payments. The district court—relying on the undisputed facts that all of the transfers were characterized as either loans or distributions to Steen—held that the entity making the transfer was Steen, not Teleplus. As the district court noted, “the accounting and income taxes records accurately reflect this transaction for what it is—*a payment by Teleplus to Steen who then paid Unity Bank.*” (Emphasis added.) The court further acknowledged that, at the time of summary judgment, Hansen failed to identify

evidence that, if believed, would establish that Steen had not provided reasonably equivalent value for the shareholder distributions.³

We agree with the district court. It is undisputed that Steen used the Teleplus account to apply his shareholder distributions to pay his mortgage. He reported those distributions on his personal income tax returns. And Unity Bank recorded the money as payments on Steen's mortgage. Further, as the district court noted, if the distributions to Steen were unlawful because Teleplus was insolvent and Steen had not provided reasonably equivalent value, that is a basis for a claim against Steen and Teleplus. Not Unity Bank.

Finally, we observe that the payments to Unity Bank were, without dispute, supported by reasonably equivalent value—the mortgage financing Steen's home. This situation involving the bank is a far cry from cases where we have deemed transfers as constructively fraudulent for lack of reasonably equivalent value. For example, in *Citizens State Bank Norwood Young Am.*, the debtor paid his wife \$1.5 million, and in exchange, received a home that was worth \$271,000. 849 N.W.2d at 64. Because the debtor only received a fraction of the value of the transfer to his wife, he did not receive reasonably equivalent value and the transfer was constructively fraudulent. *Id.* at 67; *see also First*

³ As the district court observed, Hansen provided no evidence that, if believed, would show that “what Steen provided to Teleplus in exchange for the shareholder distributions was not equivalent to the distributions. Instead, [Hansen] argues that *Teleplus* did not receive reasonably equivalent value from Unity Bank and that *Teleplus* made illegal distributions to Steen while insolvent.” (Emphasis added.) But whether Teleplus was insolvent or whether Steen provided reasonably equivalent value to Teleplus in exchange for the shareholder distributions is not relevant to whether Steen received reasonably equivalent value for the transfers to Unity Bank.

Nat'l Bank of Cold Spring v. Jaeger, 408 N.W.2d 667, 670 (Minn. App. 1987) (concluding that because the debtor received nothing of value in exchange for the transfer of the deed to his homestead—which was worth more than \$135,000—the transaction was void). That is not the case here, where the value Unity Bank provided was roughly equivalent to the value of Steen's monthly mortgage payments.

Still, Hansen points to conflicts between his accounting expert and that of Unity Bank to assert that material issues of fact remain. In his affidavit, Hansen's expert broadly addressed income tax basis accounting and generally accepted accounting principles.⁴ But he failed to pinpoint any specific violation of those guidelines for recording the transfers here as shareholder loans and distributions and offered no specific evidence—via affidavits or otherwise—to show that the accounting methods used were illegal. Because the affidavit does not raise genuine issues of material fact with regard to whether the mortgage payments were fraudulent, we are not persuaded by Hansen's argument.

In sum, there is no genuine issue of material fact that Steen made the mortgage payments at issue here, and in exchange, Unity Bank provided reasonably equivalent value

⁴ But in identifying these general principles, Hansen's expert also concedes that "closely held companies such as Teleplus Consulting *can choose to utilize an alternative method of accounting.*" (Emphasis added.) Further, the expert states that "a business may occasionally reclass part of personal payments as a loan or a distribution to a shareholder," and admits that the Internal Revenue Service "would and does often mandate that corporate transfers for non-business purposes be *reattributed as personal income to the shareholders.*" (Emphasis added.)

by financing Steen's mortgage. The district court did not err by granting Unity Bank's motion for summary judgment.⁵

II. The district court did not abuse its discretion by denying Hansen's motion to amend his complaint.

Hansen claims that the district court abused its discretion by denying his motion to amend his complaint to add claims that Unity Bank had violated state and federal law, acted negligently, and committed civil conspiracy. At oral argument before this court, Hansen conceded that the primary focus of his amended complaint was the proposed civil conspiracy claim. And our review of the relevant state and federal laws leads us to conclude that Hansen's statutory and negligence claims do not hold water because, as the district court determined, the laws cited by Hansen do not apply to Unity Bank's actions here.⁶ Therefore, the conspiracy claim is the focus of our review. The primary factual

⁵ Hansen also urges us to consider the district court's ruling in the August 2019 trial (after the court granted summary judgment in Unity Bank's favor) as further support for his claim that the bank is liable to Hansen for payment of the \$73,655.94. He argues that the district court's posttrial conclusion that payment of Steen's personal home mortgage was voided under the Voidable Transactions Act means that he is entitled to judgment against Unity Bank as a matter of law. We disagree. First, that ruling was not before the district court when it considered Unity Bank's motion for summary judgment, and as a result we do not consider it here. *Wall v. Fairview Hosp. & Healthcare Servs.*, 584 N.W.2d 395, 404 (Minn. 1998) ("To allow trial testimony to form the basis of a claim after the court has already ruled that the claim may not go forward would undermine the purpose of summary judgment."). More fundamentally, that decision held that the payment was voidable *as between Teleplus and Steen*, not Unity Bank.

⁶ Hansen alleged that Unity Bank violated state and federal law by providing home-equity-line-of-credit and business-line-of-credit loans to Steen without verifying his ability to repay. 15 U.S.C. § 1639c(a) (2018); 12 C.F.R. § 1026.43(a) (2020); Minn. Stat. § 58.13, subd. 1(a)(24) (2020). But Unity Bank is a state-chartered bank and is not subject to Minnesota Statute section 58.13, subdivision 1(a)(24). Minn. Stat. § 58.13, subd. 1(b) (2020). Nor are the loans subject to the federal ability-to-pay regulations, because home-equity loans are expressly exempt from the statute, and the business loans were made to a

basis for that claim is two emails that Steen sent to Unity Bank. In the emails, Steen asked to discuss the “game plan” with regard to Hansen’s arbitration award and notified the bank that he would be filing for bankruptcy.

In reviewing the district court’s denial of Hansen’s motion for leave to amend, we consider whether the court abused its discretion. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). Because the district court has wide discretion to grant or deny motions for leave to amend, we will not reverse absent a clear abuse of that discretion. *Id.*

A party may amend its complaint without leave from the court once, as Hansen did here to include the Voidable Transactions Act claim against Unity Bank. Minn. R. Civ. P. 15.01. But if the party seeks to amend its complaint again it must obtain the permission of the district court or the written consent of the opposing party. *Id.* Leave to amend “shall be freely given when justice so requires.” *Id.* But where a proposed amendment would prejudice the opposing party, cause undue delay, or include futile claims, the district court may deny the motion.⁷ *Voicestream Minneapolis, Inc. v. RPC Props., Inc.*, 743 N.W.2d 267, 272 (Minn. 2008); *Hughes v. Micka*, 130 N.W.2d 505, 510-11

business entity, not a natural person. 15 U.S.C. § 1639c(a); 12 C.F.R. § 1026.43(a)(1), .2(a)(11) (2020). And, because Unity Bank owed no duty to Hansen, his negligence claim fails. Hansen was not a customer of Unity Bank, nor a party to or a beneficiary of the transactions between Unity Bank and Steen. *Schmanski v. Church of St. Casimir of Wells*, 67 N.W.2d 644, 646 (Minn. 1954) (explaining that the first element of a negligence claim is whether a duty was owed to the injured party).

⁷ Although the district court noted that an amended complaint modifying the court’s scheduling order should not be granted without “good cause,” we do not rely on that standard here. Instead, we apply Minnesota Rule of Civil Procedure 15.01 and consider timeliness, prejudice, and futility in determining whether the district court abused its discretion.

(Minn. 1964); *U.S. Bank Nat'l Assoc. v. RBP Realty*, 888 N.W.2d 699, 705 (Minn. App. 2016), *review denied* (Minn. Apr. 18, 2017). Focusing on Hansen's civil conspiracy claim, we consider whether the district court abused its discretion by determining that Hansen's motion was untimely, prejudicial, and futile.

Timeliness

Hansen claims that he learned about Steen's emails to Unity Bank in the fall of 2018. Because of this, Hansen argues, his December 19, 2018 motion for leave to amend was timely. But at oral argument before this court, neither party was able to identify an exact date on which Hansen received copies of the emails. Hansen estimated that he received discovery documents containing the emails in September 2018, while Unity Bank reported producing the emails in July 2018. Even assuming Hansen's estimation is accurate, he knew about the emails three months before filing his motion for leave to amend. As such, the district court did not abuse its discretion in determining that his motion was untimely.⁸

Prejudice

Hansen also argues that because Unity Bank was already a party to the proceeding, the addition of new claims to defend could not have come as a surprise to or prejudiced

⁸ Hansen further claims that his motion was timely because the proceedings were stayed until January 2018, information about the loans was not obtained until Steen's deposition in November 2018, and trial did not begin until eight months after the request. We are not persuaded. As Hansen concedes, he received copies of the emails in September 2018, three months before filing his motion and two months before Steen's "critical" deposition. And although trial was held eight months later, the trial had been scheduled to accommodate the existing claims against Steen and Teleplus and did not contemplate the additional delays that adding a claim against Unity Bank might cause. As such, we discern no abuse of discretion in the district court's determination that Hansen's motion was untimely.

Unity Bank. We agree that typically, “defending an additional claim is not sufficient prejudice to disallow amendment.” *Bridgewater Tel. Co. v. City of Monticello*, 765 N.W.2d 905, 916 (Minn. App. 2019), *review denied* (Minn. June 16, 2019). But the burdens faced by Unity Bank, had Hansen been allowed to amend his complaint, would have gone beyond merely defending additional claims.

This case began in early 2017. Hansen filed his first amended complaint a year later. Then, after another year passed, Hansen moved for leave to amend a second time. His motion came after the close of discovery, after dispositive motions had been filed, and after trial had been scheduled. And the civil conspiracy claim was based on facts and transactions not previously the focus of Hansen’s case. Amending the complaint to include the conspiracy claim likely would have required additional discovery, further delaying the proceedings and burdening Unity Bank. As such, the district court acted within its discretion when it concluded that amendment of Hansen’s complaint would have been prejudicial to Unity Bank.

Futility

Finally, we consider whether Hansen’s civil conspiracy claim was futile; that is, whether it “would serve no useful purpose,” or could not withstand summary judgment. *U.S. Bank Nat’l Assoc.*, 888 N.W.2d at 705; *see also Voicestream*, 743 N.W.2d at 272. Civil conspiracy is not an individual tort but a theory of agency which requires the party alleging the conspiracy to show that one of the defendants is vicariously liable for the acts of another. 5A Roger S. Haydock & Peter B. Knapp, *Minnesota Practice* § 2.25 (4th ed. Supp. 2020); *see also Harding v. Ohio Cas. Ins. Co.*, 41 N.W.2d 818, 824-25 (Minn. 1950).

As such, a civil conspiracy claim must accompany a claim alleging a substantive wrong. *Harding*, 41 N.W.2d at 825. Here, Hansen’s conspiracy claim accompanies his assertion that Unity Bank’s conduct in providing the 2017 loans was illegal. But as we noted above, Hansen lacks sufficient evidence for those claims to survive summary judgment.

Nor could the emails alone prove that Unity Bank conspired with Steen. In the emails, Steen only expresses a desire to talk with Unity Bank about Hansen’s arbitration award and his intent to declare bankruptcy. But there is no evidence in the record to suggest that Unity Bank then conspired with Steen to hinder Hansen’s ability to obtain payment. In fact, the vice president of Unity Bank explained that his subsequent conversation with Steen only involved Steen reassuring the bank that he would be able to repay his remaining debt. Hansen has not provided evidence to dispute this. As the district court noted, while Unity Bank may have made an unwise credit decision related to Steen, the “innocuous and cryptic emails” fail to create a material fact issue with respect to an agreement between Steen and Unity Bank. As a result, the district court did not abuse its discretion by concluding that the civil conspiracy count was futile.

In sum, Hansen did not move to amend his complaint until several months after receiving copies of Steen’s emails. Allowing Hansen to amend his complaint would have delayed an already lengthy case, thereby prejudicing Unity Bank. Nor was there sufficient evidence to support the claim that Unity Bank conspired with Steen to deplete Steen’s assets. And the mortgage payments were not fraudulent as a matter of law because Steen, who effectively made the payments, received reasonably equivalent value from Unity

Bank. The district court acted within its broad discretion to deny Hansen's motion for leave to amend and did not err by granting Unity Bank's motion for summary judgment.

Affirmed.