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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0687**

Glacier Park Iron Ore Properties, LLC,
Appellant,

vs.

United States Steel Corporation,
Respondent.

**Filed February 8, 2021
Affirmed in part, reversed in part, and remanded
Hooten, Judge**

St. Louis County District Court
File No. 69HI-CV-19-884

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Considered and decided by Smith, Tracy M., Presiding Judge; Hooten, Judge; and
Frisch, Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

This appeal arises from a dispute between appellant, a mineral estate owner, and respondent, a surface estate owner, over respondent's stockpiling of waste rock on the property from its nearby taconite mining operations. Appellant brought nuisance and trespass claims against respondent and sought a declaratory judgment setting forth the parties' rights under two deeds. Appellant now challenges the rule 12.02(e) dismissal of its nuisance and declaratory judgment claims, arguing that the district court erred in construing the deeds and, on that basis, dismissing its claims. We affirm in part, reverse in part, and remand.

FACTS

The first events relevant to this appeal—and perhaps the most important—occurred almost a century ago. On November 4, 1932, Tyler Iron Ore Mining Company (Tyler), transferred title to several tracts of land to Minnesota Colonization Company (MCC). Tyler retained the right to any minerals and ores in, under, or upon the land, as well as the rights to explore for and mine ores and minerals. That same day, Van Buren Iron Mining Company (Van Buren) transferred title to several tracts of land to MCC. This transfer contained a retention of rights identical to that contained in the Tyler deed.

Appellant Glacier Park Iron Ore Properties, LLC (Glacier Park) is the successor-in-interest to Tyler and Van Buren. Glacier Park is a Delaware limited liability company with its principal place of business in Hibbing, Minnesota. Glacier Park does not conduct mining operations itself, but instead conducts exploration and leases or sells mineral

interests to other companies that conduct mining operations. Glacier Park has the right, by virtue of the Tyler and Van Buren deeds, to any and all ores and minerals in, under, and upon five tracts of land in St. Louis County, Minnesota (Tracts 1–5). Glacier Park also has the right to explore for ores and minerals, to mine ores and minerals, and to do other things necessary for the exploration and mining of ores and minerals in, under, and upon Tracts 1–5. In the event Glacier Park decides to exercise any of its rights with respect to Tracts 1–5, it must give written notice to the owner of the surface of those tracts, and the surface owner will be required to vacate the surface without delay. Glacier Park is also required to compensate the surface owner for the reasonable value of any buildings or other structures upon the surface of any parcels of land utilized for mining.

Respondent United States Steel Corporation (U.S. Steel) is the successor-in-interest to MCC. U.S. Steel is a Delaware corporation with significant operations in Hibbing, Minnesota. U.S. Steel operates the United States Steel Minnesota Ore Operations Keetac facility (Keetac), an open-pit taconite iron ore mine in St. Louis County, Minnesota. Keetac produces six million tons of taconite pellets annually and employs approximately 420 people. U.S. Steel owns the surface rights to Tracts 1–5 and operates a stockpile for the disposal of mining waste (A-Dump) on portions of the surface of Tracts 1–5.

Sometime in 2019, U.S. Steel began expanding A-Dump beyond its previous footprint. Glacier Park had not given U.S. Steel permission to increase the portion of the surface area of Tracts 1–5 covered by A-Dump. But neither had Glacier Park provided U.S. Steel with written notice that it intended to conduct exploration or mining activities anywhere on Tracts 1–5.

On August 26, 2019, Glacier Park filed a complaint alleging that U.S. Steel's expansion of A-Dump was both a trespass and a nuisance. Glacier Park sought a declaratory judgment resolving the parties' rights under the Tyler and Van Buren deeds, an injunction barring further stockpiling on Tracts 1–5, and other relief. On September 16, 2019, U.S. Steel filed a motion under rule 12.02 of the Minnesota Rules of Civil Procedure seeking dismissal of Glacier Park's complaint on the grounds of lack of subject-matter jurisdiction and failure to state a claim on which relief could be granted.

After a hearing on U.S. Steel's motion to dismiss, the district court issued an order dismissing Glacier Park's complaint on the ground that it failed to state a claim upon which relief could be granted. In doing so, the district court found no indication that U.S. Steel had interfered with Glacier Park's exercise of its mineral rights and therefore dismissed Glacier Park's trespass claim.¹ The district court also concluded that the doctrine of nuisance was inapplicable and that the deeds did not support a grant of the declaratory judgment that Glacier Park sought, and it accordingly dismissed Glacier Park's nuisance and declaratory judgment claims. Glacier Park appeals.

DECISION

Appellant argues that the district court erred in dismissing its complaint. Specifically, appellant contends that its complaint sets forth legally sufficient nuisance and declaratory judgment claims.

¹ Glacier Park does not appeal from the dismissal of its trespass claim.

Rule 8.01 of the Minnesota Rules of Civil Procedure provides that “[a] pleading which sets forth a claim for relief,” such as a complaint, “shall contain a short and plain statement of the claim showing that the pleader is entitled to relief[.]” Rule 12.02(e) permits an opposing party to move for dismissal of a complaint on the grounds that the complaint fails to state a claim upon which relief can be granted. Minn. R. Civ. P. 12.02(e).

“A claim is sufficient against 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 v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014). “To state it another way, under this rule 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.” *Id.* at 602. In determining whether a complaint satisfies this standard, appellate courts “accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party.” *Id.* at 606.

“We review de novo the question of whether a complaint sets forth a legally sufficient claim for relief.” *Id.* at 603. The question before us is a limited one: whether there are any facts which could be introduced consistent with appellant’s complaint that would support granting appellant the relief it seeks under a theory of nuisance or would support granting appellant a declaratory judgment including the declarations it seeks. For the reasons that follow, we conclude that appellant’s complaint sets forth a legally sufficient nuisance claim but does not set forth a legally sufficient declaratory judgment claim.

A. Nuisance

“An action for private nuisance is governed by Minn. Stat. § 561.01[.]” *Hagen v. Windemere Twp.*, 935 N.W.2d 895, 901 (Minn. App. 2019), *review denied* (Aug. 6, 2019).

The statute provides:

Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance. An action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

Minn. Stat. § 561.01 (2018). Because section 561.01 “codifies an equitable cause of action[,] it implicitly recognizes a need to balance the social utility of [the defendant’s] actions with the harm to the plaintiff.” *Highview N. Apartments v. Ramsey Cty.*, 323 N.W.2d 65, 71 (Minn. 1982); *see also Johnson v. Paynesville Farmers Union Co-op. Oil Co.*, 817 N.W.2d 693, 706 (Minn. 2012).

We have previously held, in reviewing a grant of summary judgment, “that a plaintiff states an actionable claim for nuisance when he or she presents evidence that the defendant intentionally maintains a condition that is injurious to health, or indecent or offensive to the senses, or which obstructs the free use of property.” *Hagen*, 935 N.W.2d at 901 (quotation omitted). For a nuisance claim to survive a motion to dismiss, there must be some facts which could be introduced consistent with the plaintiff’s complaint that would establish three elements. First, private nuisance claims may only be brought on the basis of the defendant’s alleged interference with the plaintiff’s real property interests. *See*

Anderson v. State, Dep't of Nat. Res., 693 N.W.2d 181, 192 (Minn. 2005). There must be some facts which could be introduced consistent with the complaint that would establish that the plaintiff has an interest in real property. See *Walsh*, 851 N.W.2d at 602. Second, there must be some facts which could be introduced consistent with the complaint that would establish that the defendant intentionally maintains a nuisance—a condition “which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property.” Minn. Stat. § 561.01; *Hagen*, 935 N.W.2d at 901; see *Walsh*, 851 N.W.2d at 602. Third, there must be some facts which could be introduced consistent with the complaint that would establish that the plaintiff’s property is injuriously affected, or plaintiff’s personal enjoyment of that property is lessened, by the nuisance. Minn. Stat. § 561.01; see *Walsh*, 851 N.W.2d at 602.

i. Appellant’s Interest in Real Property

First, appellant’s complaint alleges facts sufficient to establish an interest in real property. The complaint alleges that appellant owns the mineral estates underlying Tracts 1–5. A mineral estate is a separate real property estate apart from the surface estate from which it has been severed. *St. Louis Cty. v. Fed. Land Bank of St. Paul*, 338 N.W.2d 741, 742 (Minn. 1983) (“The severed mineral interest is a type of estate in real property.”). By alleging ownership of the mineral estate’s underlying Tracts 1–5, appellant’s complaint alleges facts that, when assumed to be true, establish that appellant has an interest in real property.

ii. *Respondent's Intentional Maintenance of a Nuisance*

Second, there must be some facts which could be introduced consistent with appellant's complaint that would establish that respondent intentionally maintains a nuisance—a condition “which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property.” Minn. Stat. § 561.01; *Walsh*, 851 N.W.2d at 602; *Hagen*, 935 N.W.2d at 901.

All of appellant's allegations center on respondent's maintenance of A-Dump. Appellant's complaint does not allege that respondent's maintenance of A-Dump is injurious to health or indecent or offensive to the senses. The question, then, is whether appellant's complaint alleges facts that establish that respondent's maintenance of A-Dump is an obstruction to appellant's free use of its property. See Minn. Stat. § 561.01; *Walsh*, 851 N.W.2d at 603; *Hagen*, 935 N.W.2d at 901.

It does. Appellant's complaint alleges (1) that respondent intentionally maintains A-Dump on land in which appellant owns the mineral estate; (2) that there are millions of tons of taconite iron resource under Tracts 1–5; (3) that respondent's maintenance of A-Dump increases the costs to appellant of exploration and mining of this resource; and (4) that respondent's maintenance of A-Dump has diminished the value of appellant's mineral resource. These factual allegations, when assumed to be true, establish that respondent's stockpiling at A-Dump is an obstruction to appellant's free use of its property.

Respondent argues that a private nuisance action “may only be premised on ‘wrongful’ conduct,” and that, “[b]ecause U. S. Steel's stockpile is authorized by the Deeds, it is not ‘wrongful.’” It is true, as the district court found, that nothing in the deeds

explicitly restricts respondent's use of the land. But neither does anything in the deeds explicitly authorize stockpiling of mining waste. More to the point, the deeds do not absolve respondent of nuisance liability on the basis of such stockpiling simply because they grant respondent outright ownership of the surface. No grant of title gives the grantee the right to do whatever it pleases with its property, without consequence—the laws of this state, including section 561.01, continue to apply. A nuisance is a nuisance, no matter the freehold estate.

Second, respondent argues that “[b]ecause U. S. Steel’s stockpiling is a lawful exercise of its rights as the fee simple surface owner . . . by definition that stockpiling cannot be ‘wrongful.’” This argument misapprehends the meaning of the word “wrongful” in the context of Minnesota nuisance law. Minn. Stat. § 561.01 “defines a nuisance in terms of the resulting harm rather than in terms of the kind of conduct by a defendant which causes the harm.” *Sletten v. Ramsey Cty.*, 675 N.W.2d 291, 301 (Minn. 2004). It is true that “there must be some kind of conduct causing the nuisance harm which is ‘wrongful.’” *Highview*, 323 N.W.2d at 70 (quoting *Randall v. Village of Excelsior*, 103 N.W.2d 131, 134 (1960)). In this context, however, wrongful conduct can be “intentional conduct, negligence, ultrahazardous activity, violation of a statute or some other tortious activity.” *Id.* “Used in this way, the word ‘wrongful’ is meant simply to limit the scope of nuisance liability to situations in which the defendant can be said to be at fault.” *Wendinger v. Forst Farms, Inc.*, 662 N.W.2d 546, 551 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003). Accordingly, “a plaintiff who presents evidence that the defendant intentionally maintains a condition that is injurious to health, or indecent or offensive to the senses, or which

obstructs free use of property, states an actionable claim in nuisance,” even where the conduct complained of is not negligent, unlawful, or otherwise ‘wrongful’ as that term is used elsewhere. *See id.* at 552.

Third, respondent argues that its maintenance of A-Dump is not a nuisance because it does not interfere with any present, ongoing use or enjoyment by appellant of its mineral estate. Specifically, respondent contends that because appellant is not currently exploring or mining its mineral estate, it would be impossible for A-Dump to interfere with appellant’s use or enjoyment of its mineral estate. This argument also fails. Respondent’s argument rests on a faulty premise—that a landowner must currently be engaged in some use of its property that is obstructed in order to bring a suit for nuisance. This premise is faulty because it is also an obstruction to the free use of property to prevent a landowner from beginning to make some use of its land. *See, e.g., Schmidt v. Village of Mapleview*, 196 N.W.2d 626 (Minn. 1972) (maintenance of a fire hydrant was a nuisance because it restricted plaintiff’s ability to use its driveway as a passage for modern, wide motor vehicles, even though plaintiffs do not appear to have been driving such a vehicle along their driveway); *Colstrum v. Minneapolis & St. L. Ry. Co.*, 24 N.W. 255 (Minn. 1885) (“Defendant’s entrance upon and occupation of the half of the streets adjacent to plaintiff’s tract was an obstruction to the free use of plaintiff’s property, and therefore, as respects plaintiff, a nuisance,” even without any indication that plaintiff was poised to put the land to some use.). Appellant need not be poised to excavate before it may bring a nuisance claim against respondent. Also, appellant’s complaint does in fact allege a present interference. The complaint alleges that respondent’s maintenance and expansion of A-

Dump has resulted in “the decreased value of [appellant]’s mineral and mining rights.” Diminution in property value is a harm sufficient to support a finding that the maintenance of a condition constitutes a nuisance. See *Robinson v. Westman*, 29 N.W.2d 1, 5 (1947) (identifying decreased property value of homes as a nuisance); *Colstrum*, 24 N.W. at 255. It is also reasonable to infer that this diminution in value obstructs appellant’s ability to sell or lease its mineral interests, and making such a conveyance is certainly a use to which real property may be put.

iii. *Nuisance Harm*

Third, there must be some facts which could be introduced consistent with appellant’s complaint that would establish that appellant’s property is injuriously affected, or appellant’s personal enjoyment of that property is lessened, by the nuisance. Minn. Stat. § 561.01; *Walsh*, 851 N.W.2d at 603. Appellant’s complaint contains the following relevant factual allegation: “[Glacier Park] has suffered damages caused by the nuisance. Those damages include, but are not limited to . . . (2) the decreased value of [Glacier Park’s] mineral and mining rights due to the improper stockpiling to date.”

Appellant’s complaint alleges facts sufficient to establish that appellant’s property is injuriously affected by the maintenance of A-Dump. Specifically, appellant’s complaint alleges that it has suffered a decrease in the value of its mineral estate due to the maintenance of A-Dump. If true, this allegation would establish that appellant’s property has been injuriously affected by the maintenance of A-Dump.

At the present stage in the proceedings, all we must decide is whether appellant’s complaint meets the minimal standard for pleadings established by rule 8.01 of the

Minnesota Rules of Civil Procedure. To do so, the complaint need only set forth a legally sufficient claim for nuisance by alleging facts that, when assumed to be true, establish (1) that appellant has an interest in real property; (2) that respondent intentionally maintains a nuisance on its property; and (3) that appellant's property is injuriously affected, or appellant's personal enjoyment of that property is lessened, by the nuisance. Minn. Stat. § 561.01; *Walsh*, 851 N.W.2d at 603; *Anderson*, 693 N.W.2d at 192; *Hagen*, 935 N.W.2d at 901. Because appellant's complaint alleges facts that, when assumed to be true, establish all three of the above elements, we conclude that the district court erred in dismissing appellant's nuisance claim.

B. Declaratory Judgment

Appellant argues that its complaint sets forth a legally sufficient declaratory judgment claim. In essence, appellant's complaint seeks a declaration that the deeds require respondent to obtain appellant's consent before dumping mining waste on Tracts 1–5. For the reasons that follow, the district court did not err in dismissing appellant's declaratory judgment claim.

“Minnesota's Uniform Declaratory Judgments Act grants courts the power to declare a party's legal rights, status, and relations through the issuance of a declaratory judgment.” *Weavewood, Inc. v. S & P Home Inv., LLC*, 821 N.W.2d 576, 579 (Minn. 2012) (quotation and alteration omitted). Under the Act, “[a]ny person interested under a deed . . . may have determined any question of construction or validity arising under the instrument . . . and obtain a declaration of rights, status, or other legal relations thereunder.” Minn. Stat § 555.02 (2018). For a declaratory judgment claim to survive a motion to

dismiss for failure to state a claim, there must be some facts which could be introduced consistent with the complaint that would establish that appellant is entitled to the declaration it seeks. *See Walsh*, 851 N.W.2d at 602.

The district court concluded that appellant’s complaint failed to set forth a legally sufficient declaratory judgment claim and accordingly dismissed that claim.² The district court found the deeds to be unambiguous. The district court found that “the conveying deeds did not place any restrictions on the grantee other than preventing the grantee from taking or using any ores or minerals that may be in, under, or upon the subject property.” The district court also found that “there is no provision in the deeds at issue that requires the [respondent] to seek consent from the [appellant] to dump waste rock or other material on the subject property.” Finally, the district court concluded that while “plaintiff [was] asking the court to determine that the two deeds include an implied restriction on [respondent’s] use of the land . . . [t]here is no precedent in Minnesota law” that gave the district court the authority to do so. On the basis of these findings and conclusions, the district court dismissed appellant’s declaratory judgment claim.

As noted, we review de novo whether a complaint sets forth a legally sufficient claim for relief. *Walsh*, 851 N.W.2d at 602. Whether contract language is ambiguous is

² In doing so, the district court does not appear to have considered the additional materials that the parties presented on appellant’s motion for a preliminary injunction. Instead, the district court’s order and the attached memorandum indicate that the district court based its conclusion that appellant’s complaint failed to set forth a legally sufficient declaratory judgment claim solely on the district court’s construction of the Tyler and Van Buren deeds. Accordingly, the district court did not convert respondent’s motion to dismiss into one for summary judgment. Minn. R. Civ. P. 12.02; *Ward v. El Rancho Manana*, 945 N.W.2d 439, 444–45 (Minn. App. 2020), *review denied* (Minn. Oct. 1, 2020).

another question of law that we review de novo. *Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). “The language of a contract 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). “When the language is clear and unambiguous, we enforce the agreement of the parties as expressed in the language of the contract.” *Dykes*, 781 N.W.2d at 582. These rules also apply to the construction of deeds. See *La Cook Farm Land Co. v. N. Lumber Co.*, 200 N.W. 801, 802 (Minn. 1924).

The Tyler and Van Buren deeds both contain the following relevant language:

The Grantor expressly saves, excepts and reserves all ores and minerals which may be in, under or upon said lands and premises above described, or any part thereof, and the right to open, develop and work mines thereon and therein, and to take out and remove all such ores and minerals; and, to that end, it reserves the right to enter upon the lands and premises above described, or part thereof, by its agents, servants or attorneys, for the purpose of prospecting and exploring the same for such ores and minerals, and also the right to erect buildings and other structures thereon, and to construct machinery, roads, ways, railroads and bridges, and sink shafts, and remove soil, rock and other material, and to possess and occupy so much of the surface of said land as may from time to time be necessary or convenient for the successful and complete enjoyment of the rights hereby excepted and reserved, and to remove, cave and/or sink the surface of said premises to the extent it may deem necessary or convenient. No right, title or interest in and to ores or minerals, which may be in, under or upon said lands, shall, by virtue hereof, pass to or become vested in the Grantee; PROVIDED HOWEVER, that in the event that the surface shall be so removed, caved and/or sunk, payment shall be made to the owner or owners of the surface for damages to, or destruction of, the surface by reason thereof, or in the alternative, at the option of the grantor herein, payment shall be made to said owner or owners of the sum of twenty-five Dollars (\$25.00) per acre in lieu of such damages.

Should the grantor open, develop, and work mines upon the land and premises above described, or any part thereof, it will give written notice from time to time to the owner or owners of the surface thereof, describing the parcel or parcels of land necessary or convenient for the purpose, and the owner or owners shall thereupon immediately vacate said parcel or parcels without delay.

The Grantor shall not be required to pay compensation of any kind for entering upon said lands or injury to the same, in consequence of prospecting or exploring work or operations which may be conducted thereon, whether mines are developed or not.

If at any time of giving such notice the Grantee shall have erected buildings or other structures upon the parcels of land described in such written notice, the Grantor shall pay the Grantee the reasonable value thereof.

This language is unambiguous and susceptible to only one reasonable interpretation: the deeds do not require the grantee—or at present, the grantee’s successor-in-interest, respondent—to seek the consent of the grantor—or the grantor’s successor-in-interest, appellant—before making any use of the surface of Tracts 1–5. This is so because the deeds contain neither an express requirement of consent, as is apparent, nor any implied requirement of consent, as is discussed below.

Of particular importance is the fact that the deeds expressly require appellant to compensate respondent for any of respondent’s buildings or other structures on the surface of Tracts 1–5 that are disturbed by appellant’s exploration or mining activities. This compensation requirement implies that respondent may erect buildings and other structures on its surface estate without appellant’s consent; otherwise, appellant would simply refuse consent to any construction in order to avoid the future cost of compensation.

Therefore, respondent would not need appellant's consent to construct a multi-million-dollar taconite processing plant on the surface of Tracts 1–5, even though doing so would increase the cost to appellant of mining by requiring appellant to pay the full, reasonable value of the plant. By the same logic, respondent may stockpile mining waste on the surface of Tracts 1–5 without appellant's consent, even though doing so would increase the cost to appellant of mining. The fact that such stockpiling makes mineral exploration and extraction more costly, and thus potentially less profitable, is of no consequence in construing the deeds.

Further, nothing about the specific exploration and mining rights reserved to appellant by the deeds implies that respondent is required to obtain appellant's consent for surface activities. Appellant's reserved rights empower it to enter the surface and begin removing A-Dump in order to prepare for exploration or mining. But it would be unreasonable to infer from this that the deeds empower appellant to preempt any use of the surface merely because such use would require appellant to perform more preparatory work before exploration or mining could begin. Appellant is free to exercise its rights under the deeds, but the deeds do not require respondent to obtain appellant's consent for surface activities simply because such activities would make appellant's exercise of its rights more burdensome.

Finally, appellant draws this court's attention to the fact that, in the past, respondent has apparently sought appellant's consent before stockpiling mining waste on the surface of Tracts 1–5. This assertion, if true, does not impact our construction of the deeds. Even

if respondent has previously sought appellant's consent for surface activities of its own volition, that fact alone does not contractually obligate it to seek consent going forward.

In short, the plain language of the deeds makes clear that respondent is not required to obtain appellant's consent before engaging in any use of the surface of Tracts 1–5, so long as such use does not interfere with any active exercise by appellant of the exploration and mining rights reserved to it by the deeds.

Having construed the deeds, we must decide whether appellant's complaint sets forth a legally sufficient declaratory judgment claim—that is, whether there are any facts, which could be introduced consistent with the complaint and the deeds that would entitle appellant to the declarations it seeks. *Walsh*, 851 N.W.2d at 602. Respondent does not contest that appellant possesses all the rights alleged in the complaint that are set forth in the deeds, making a grant of declaratory judgment on those matters unnecessary and improper. See *Otto v. Wright Cty.*, 899 N.W.2d 186, 197 (Minn. App. 2017), *aff'd*, 910 N.W.2d 446 (Minn. 2018) (“The policy behind the declaratory judgment act is to allow parties to determine certain rights and liabilities pertaining to an actual controversy before it leads to repudiation of obligations, invasion of rights, and the commission of wrongs.”) (quotation and alteration omitted). But, respondent persuasively argues that there is no provision in the deeds supporting appellant's request that the district court declare the following:

[Respondent] does not have right to stockpile waste rock or other material on Tracts 1, 2, 3, or 4 without the consent of [appellant].

The deeds contain neither an express nor an implied requirement that respondent obtain appellant's consent before making any use of the surface, such as by stockpiling mining waste or other material thereon. Because there are no facts which could be introduced consistent with the complaint and the deeds that would entitle appellant to the declaration that the deeds require respondent obtain the consent of appellant before making use of the surface of the property, the district court did not err in dismissing appellant's declaratory judgment claim.

Affirmed in part, reversed in part, and remanded.