

*This opinion is nonprecedential except as provided by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
A22-0002**

The Gables at the Reserve Homeowners Association,
Respondent,

vs.

Advanced Home Improvement, LLC,
Appellant.

**Filed November 7, 2022
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CV-20-5280

James A. Reichert, James A. Reichert, LLC, Minneapolis, Minnesota (for respondent)

Paul V. Kieffer, Kieffer Law Office, LLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and
Larkin, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Following a bench trial in this breach-of-contract action, appellant-contractor argues that the district court erred in determining that approval of a sample deck was a condition precedent to performance under the contract. We affirm.

FACTS

The facts of this case are undisputed. In April 2018, appellant Advanced Home Improvement, LLC (AHI) submitted a proposal to respondent The Gables at the Reserve Homeowners Association (Association) for the removal and replacement of decking and stairs and related work. The proposal called for a down payment, which consisted of one half of the total proposed contract price. The proposal also provided that “AHI will complete all construction within 10 weeks after approval of sample deck is finished.”

The Association’s management company, FirstService Residential (FirstService), accepted the proposal on behalf of the Association and made the down payment on behalf of the Association. AHI subsequently began building a sample deck. During construction of the sample deck, AHI allegedly discovered additional rot, prompting AHI to submit a change order, which increased the total contract price.

After AHI finished the sample deck, FirstService informed AHI that the Association’s Board of Directors unanimously decided to terminate the contract “due to the scope of work changes and lack of performance.” At about the same time, the Association received a fully executed contract for the first time. The contract contains several handwritten notes added by AHI, including one that states: “Need approval of sample deck, so we can continue!”

The Association commenced this action, alleging that the sample deck was not approved because AHI’s workmanship was substandard. Thus, the Association claimed that it was entitled to a refund of its down payment because the condition precedent to performance under the contract was not satisfied. AHI responded, asserting a counterclaim for breach of contract.

Following a trial on written submissions, the district court found that photographs of the sample deck show that “certain areas [of the deck] were unpainted and unfinished and that the top board on the stairs does not match the rest of the boards.” (footnote omitted). The district court then determined that “AHI had no obligation to perform its work and the Association had no obligation to pay for the work until the occurrence of the condition precedent—namely, the construction of a sample deck that received approval from the Association.” The district court concluded that because “the condition precedent to performance never occurred, the Association is not obligated to pay AHI under the terms of the contract, and they are entitled to a refund of the down payment.” But the district court also determined that “AHI is entitled to recover in quantum meruit for its construction of the sample deck.” This appeal follows.

DECISION

AHI challenges the district court’s decision that approval of the sample deck was a condition precedent to AHI’s performance under the contract. “Absent ambiguity, the interpretation of a contract is a question of law.” *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *rev. denied* (Minn. July 19, 2011).

“A condition precedent is a contract term that calls for the performance of some act or the happening of some event after the contract is entered into, and upon the performance or happening of which the promisor’s obligation is made to depend.” *Capistrant v. Lifetouch Nat’l Sch. Studios, Inc.*, 916 N.W.2d 23, 27 (Minn. 2018) (quotation omitted); *see also Nat’l City Bank of Minneapolis v. St. Paul Fire & Marine Ins. Co.*, 447 N.W.2d 171, 176 (Minn. 1989) (defining a condition precedent as “any fact or event, subsequent to

the making of a contract, which must exist or occur before a duty of immediate performance arises under the contract”). “[T]here are no particular code words needed to form an express condition.” *Carl Bolander & Sons, Inc. v. United Stockyards Corp.*, 215 N.W.2d 473, 476 (Minn. 1974). “[I]f the event required by the condition does not occur, there is no breach of contract.” *Capistrant*, 916 N.W.2d at 27 (quotation omitted). The general rule is that “conditions must be literally met or exactly fulfilled, or no liability can arise on the promise qualified by the condition.” *Id.* at 27-28 (quotation omitted).

AHI asserts that the “parties concur [that] a contract was formed between the parties.” But AHI argues that the district court was “incorrect” in concluding that the “approval of the construction of the [sample] deck was a condition precedent” to the performance of the contract. AHI contends that, instead, “[t]he condition precedent, if any, was the performance of a condition (deck review) by [t]he [Association,] not [AHI].” AHI claims that the Association “had a duty to accept or deny the deck so [AHI] could proceed with the contracted work agreed to by [t]he [Association] with any modifications required,” and, therefore, the district court incorrectly concluded that AHI did not satisfy the condition precedent.

We are not persuaded. The contract provides that “AHI will complete all construction within 10 weeks after approval of sample deck is finished.” This language is unambiguous and plainly requires the Association’s approval of the sample deck *before* construction of the remaining decks can begin. In fact, AHI’s brief concedes that the Association “had a duty to accept *or deny the deck* so [AHI] could proceed with the contracted work.” (Emphasis added.) As the district court determined, the contract’s

language created a condition precedent to performance under the contract. *See Nat'l City Bank*, 447 N.W.2d at 176 (defining a condition precedent as “any fact or event, subsequent to the making of a contract, which must exist or occur before a duty of immediate performance arises under the contract”). And the handwritten note on the contract signed by AHI, which states: “Need approval of sample deck, so we can continue,” does not change the contract. Rather, it simply reiterates the condition precedent.

AHI appears to contend that the Association breached the contract when it declined to approve the sample deck. But no such breach occurred because the Association satisfied its duty under the contract when it declined to approve the sample deck. And when the Association declined to approve the deck, the condition precedent to further performance was not satisfied. Thus, the district court did not err by concluding that the Association did not breach the contract because the plain language of the contract created a condition precedent that did not occur when the Association declined to approve the sample deck.

AHI further contends that the district court’s decision is erroneous because the Association “failed to plead the existence of a condition precedent” as “required” by Minn. R. Civ. P. 9.03. But it is well settled that this court generally only considers issues presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). As the Association points out, AHI has raised this issue for the first time on appeal. Because this issue was never presented to or considered by the district court, it is not properly before us.

Moreover, a review of the pleadings indicates that the Association properly pleaded the existence of a condition precedent as required by rule 9.03. That rule provides: “In

pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.” Minn. R. Civ. P. 9.03.

Here, paragraph 5 of the Association’s complaint states: “The contract on page 3 required construction of a sample deck which would then be approved by the management company on behalf of the Board *prior to* commencement of the full scope of [the] work.” (Emphasis added.) And paragraph 7 of the complaint provides: “The contract now contained a handwritten note on page 3 below the sample deck approval language which stated, ‘Need approval of sample deck, so we can continue!’ This evidences the contingency of approval of the sample deck prior to the contract being performed.” Paragraphs 5 and 7 of the Association’s complaint describe the condition precedent, which was that approval of the sample deck by the Association must take place before AHI was obligated to perform the under the contract. Accordingly, AHI cannot meet its burden to show that the Association failed to properly plead the existence of a condition precedent as required by rule 9.03.

Affirmed.