

STATE OF MINNESOTA

IN SUPREME COURT

A22-0288

Court of Appeals

McKeig, J.

Took no part, Hudson, J.

City Bella Commercial, L.L.C., et al.,

Respondents,

vs.

Filed: August 16, 2023
Office of Appellate Courts

City Bella on Lyndale,

Appellant.

Mark W. Vyvyan, Devin T. Driscoll, Sarah Theisen, Fredrikson & Byron, P.A.,
Minneapolis, Minnesota, for respondents.

Karl J. Yeager, Julia J. Nierengarten, Meagher + Geer P.L.L.P., Minneapolis, Minnesota,
for appellant.

Anthony T. Smith, Smith Jadin Johnson, PLLC, Bloomington, Minnesota, for Amicus
Curiae Community Associations Institute.

S Y L L A B U S

The statute of limitations contained in the Minnesota Common Interest Ownership Act, Minn. Stat. § 515B.2-118 (2022), for challenging the validity of an amendment or a supplemental declaration does not bar an action that does not challenge the underlying

validity of an amended declaration, but instead broadly challenges whether severance occurred.

Reversed.

OPINION

McKEIG, Justice.

This case involves the interpretation of the Minnesota Common Interest Ownership Act (“the Act”), Minn. Stat. §§ 515B.1-100–.4-118 (2022). Appellant City Bella on Lyndale (“the Cooperative”) owns and operates a common interest community (“the community”) in Richfield. The community was registered under the Act in 2004. The Cooperative alleges that the original community included respondent City Bella Commercial, LLC (“Commercial”), but that the parties believed Commercial was severed from the community later in 2004. Both parties have operated under the assumption that Commercial was not a part of the community since 2004.

Following a multi-million-dollar repair project, the Cooperative sought financial contributions from Commercial for the repairs. Commercial refused because it believed its property interest had been severed from the community. Upon a review of the history of the community, the Cooperative realized that no documentation existed showing that Commercial was severed in accordance with the requirements of the Act.

The parties each brought actions for declaratory judgment seeking a decision on whether Commercial was required to contribute to the repair project and filed cross-motions for summary judgment. Commercial pointed to an Amended Declaration recorded in 2007 as reflecting that they were not members of the community and were not

responsible for any contributions. The Cooperative, in contrast, argued that Commercial had still never been properly severed from the community, and thus Commercial was still part of the community. The district court and court of appeals both concluded that a statute of limitations contained within the Act, which provides that “[n]o action to challenge the validity of an amendment or a supplemental declaration may be brought more than two years after the amendment or supplemental declaration is recorded,” applied to bar the Cooperative’s claims. We reverse.

FACTS

Appellant City Bella on Lyndale, the Cooperative, is a common interest community located in Richfield. The community was registered as Common Interest Community No. 1174 in 2004, pursuant to the Minnesota Common Interest Ownership Act. The original community allegedly included two buildings comprised of a mix of residential units and commercial space.

Later in 2004, the community discovered that the inclusion of commercial units could prevent members of the community from being able to deduct their share of mortgage interest and real estate taxes due to Internal Revenue Service regulations. To address this issue, a decision was made to transfer commercial properties out of the community. The transfer was purportedly accomplished by conducting a registered land survey that divided the property into tracts. Tract A included the grounds of the community and the residential units, while tracts B, C, and D included the commercial spaces and two storage rooms in the underground garage. The current president of the Cooperative acknowledged that he was aware that a warranty deed existed purporting to transfer property from the

Cooperative to Commercial but stated that the Cooperative found nothing in their records of any other documents memorializing that real estate transaction or demonstrating compliance with the severance provisions of the Act.

In 2007, the Cooperative recorded an Amended Declaration that described the property as “Tract A, Registered Land Survey No. 1745, Hennepin County, Minnesota.” Tracts B, C, and D are not listed as part of the legal description of the property, nor were they listed as property being severed from the Cooperative. The Amended Declaration did contain a reference to retail spaces, and an exhibit attached to the Declaration shows the location of those spaces.

As of 2019, Commercial had no representation on the board of the Cooperative. It also did not have a vote on the decisions made by the Cooperative regarding common expenses and other financial decisions.

In 2019, Cooperative completed a repair project to address water leaking into the building. The project included replacement of the roofing system, insulation and sealant replacement, and mold remediation, among other expenses. The project cost approximately \$2.1 million. The Cooperative requested that Commercial pay for a portion of the repair proportionate to the space it owns in the City Bella complex. Commercial refused.

In spring 2020, the Cooperative discovered that Commercial may never have been properly severed from the Cooperative. Accordingly, the Cooperative informed

Commercial that as part of the community, Commercial was required to pay for the completed repairs.¹

In October 2020, Commercial filed an action for declaratory judgment against the Cooperative claiming that Commercial has no responsibility to contribute to the cost of the roof replacement project. Cooperative filed a counterclaim, seeking a declaratory judgment that Commercial was required to pay common expenses within the Association. The Cooperative recognized that the Amended Declaration was filed on January 31, 2007. But the Cooperative argued that “the Amended Declaration did not comply with the requirements of Minnesota Statutes 515B.2-124 regarding the severance of th[e commercial] units from the Common Interest Community, so the commercial units are subject to the Amended Declaration.” The district court granted summary judgment in favor of Commercial, concluding that Commercial was not part of the community based on the 2007 Amended Declaration, and that the statute of limitations in Minn. Stat. § 515B.2-118(b) barred any claims to the contrary. The district court did not address any of Commercial’s other arguments because it found that Commercial was not part of the community.

The court of appeals affirmed the grant of summary judgment in favor of Commercial. *City Bella Com., L.L.C. v. City Bella on Lyndale*, No. A22-0288, 2022 WL 16729190, at *1 (Minn. App. Nov. 7, 2022). The court stated that it did not

¹ The Cooperative also billed for common area expenses in 2021 for six previous years based on the understanding that Commercial had not actually been severed from the community as previously assumed.

matter whether the 2007 Amended Declaration was the instrument severing the community, or simply contained a description of the property that did not include tracts B, C, or D. *Id.* at *2. “[R]egardless of whether the [2007] Amended Declaration severed the commercial tracts from the [common interest community], the Cooperative’s right to challenge the Amended Declaration terminated two years after it was recorded.” *Id.* The court therefore agreed with the district court that the statute of limitations in Minn. Stat. § 515B.2-118(b) applied to bar the action. *City Bella Com., L.L.C.*, 2022 WL 16729190, at *2.

The Cooperative appealed.

ANALYSIS

This case is before our court on a grant of summary judgment in favor of Commercial. We review grants of summary judgment de novo. *Justice v. Marvel, LLC*, 979 N.W.2d 894, 898 (Minn. 2022). Summary judgment is only appropriate if “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01.

The Minnesota Common Interest Ownership Act provides standard rules for the governing and maintenance of common interest communities. *See generally* Minn. Stat. §§ 515B.1-100–4-118. At issue here are the requirements within the Act for severing a common interest community and the statute of limitations for challenging the validity of amendments to the declaration of the community. *See* Minn. Stat. §§ 515B.2-124, 2-118(b).

Severing part of a common interest community is essentially a two-step process: first, the community must approve and record a written severance agreement, and second, an amended declaration must be recorded to complete the severance. Minn. Stat. § 515B.2-124. The statute contains many requirements regarding the form of both the agreement and amended declaration, such as specifying a percentage of votes that must be cast to approve severance and mandating the information that must be contained within the severance agreement and amended declaration. *See generally id.* Among these requirements is an obligation of the community to provide a deadline in the severance agreement by which time the amended declaration “shall be recorded.” *Id.* (c), (f). Any proposed severance not recorded by that deadline is “void.” *Id.* The severance agreement must also be recorded, which constitutes “notice to all persons subsequently acquiring an interest in the common interest community.” *Id.* (e).

The Act also provides a time limitation on challenges to the validity of any amended declaration. Under Minnesota Statutes section 515B.2-118(b), “[n]o action to challenge the validity of an amendment or a supplemental declaration may be brought more than two years after the amendment or supplemental declaration is recorded.” We review the construction and applicability of statutes of limitations de novo. *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54 (Minn. 1998).

Commercial claims that this two-year statute of limitations bars the Cooperative’s claim. We disagree. A statute of limitations applies to bar a certain kind of claim or cause of action from being asserted after a certain designated time period. *Statute of Limitations*, *Black’s Law Dictionary* (11th ed. 2019); *see also* 51 Am. Jur. 2d *Statutes of limitation as*

time limitations for actions § 2, Westlaw (database updated May 2023) (“A statute of limitations, as a practical and pragmatic device crafted by the legislature, establishes the time period, after a cause of action arises, within which a claim or suit must be filed.”). Because it is created by the legislature, the meaning and scope of a statute of limitations is a question of statutory interpretation, dictated in the first instance by its plain language. See *328 Barry Ave., LLC v. Nolan Properties Group, LLC*, 871 N.W.2d 745, 749 (Minn. 2015).

The plain language of the statute applies only to bar claims to “challenge the *validity* of an amendment or a supplemental declaration.” Minn. Stat. § 515B.2-118(b) (emphasis added). But the Cooperative has never challenged the *validity* of the Amended Declaration. It has only questioned whether severance ever occurred under the Act for reasons distinct from the terms of the Amended Declaration. Here, the Cooperative’s challenge to severance is grounded in Commercial’s failure to satisfy other legal requirements to effect a severance beyond merely the requirements pertaining to amended declarations.² And reading the statute of limitations in § 515B.2-118(b) for amended declarations as a broad bar to challenging severance as a whole—a process which includes not only recording an amended declaration, but filing and recording a severance agreement as well—is adding

² The Cooperative in its counterclaim was clear in this regard; it did not allege that the Amended Declaration was invalid, but only that it did not sever Commercial, such that Commercial was in fact *subject* to the Amended Declaration. The Cooperative’s counterclaim alleged that “the Amended Declaration did not comply with the requirements of Minnesota Statutes 515B.2-124 regarding the severance of those units from the Common Interest Community, so the commercial units are subject to the Amended Declaration.”

words to the statute that are not there. This we cannot do. *See Gen. Mills, Inc. v. Comm’r of Revenue*, 931 N.W.2d 791, 800 (Minn. 2019). Consequently, the Cooperative’s claim is not subject to the time limitation contained in section 515B.2-118(b).

Commercial attempts to bar the Cooperative’s claim by utilizing the section 515B.2-118(b) limitations period, based solely on the fact that the property description contained in the Amended Declaration—which was recorded in 2007 and did not mention or address severance—does not mention the Commercial tracts. This attempt to bootstrap the Cooperative’s claim to the limitations period fails. A challenge to severance broadly is not the same as a specific challenge to the validity of an amended declaration, which may or may not be part of that severance. Section 515B.2-118(b) by its terms does not apply. Amended declarations are part of the process to sever a property under the Act, but they are not the sole component. For example, the statute of limitations in Minn. Stat. § 515B.2-118(b) does not mention severance agreements, which are also a vital part of the severance process.

Commercial also claims that it would be unfair to determine that the property has not been severed, as Commercial has been treated as having been effectively severed. It has therefore not had any position on the board of the community, has had no influence on any decisions made by the community, and is now being expected to pay for decisions in which it had no say. We are not insensitive to these concerns. But they are equitable

arguments that are not properly before us, rather than arguments based on statutory interpretation of Minn. Stat. § 515B.2-118(b).³

Fundamentally, a statute of limitations, like all statutes, is limited by its plain language. *See 328 Barry Ave.*, 871 N.W.2d at 749. In cases such as the one currently before us, when the statute of limitations only applies to actions “to challenge the validity of an amend[ed]” declaration, the statute of limitations contained in Minn. Stat. § 515B.2-118(b) cannot bar a party’s claim that does not challenge an amended declaration’s validity, but instead argues that neither the amended declaration nor anything else effectuated a severance under the statute.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals.

Reversed.

HUDSON, J., took no part in the decision of this case.

³ A number of outstanding issues remain in this case. We offer no opinion on the substantive merits of any of the claims and leave them for the district court to address on remand as it deems appropriate.