STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1111

JMH Land Development Company LLC,
Respondent,

vs.

Siegle Family Limited Partnership,
Appellant.

Filed February 21, 2023
Affirmed in part, reversed in part, and remanded
Ross, Judge

Carver County District Court
File No. 10-CV-21-211

Kevin R. Coan, Anju Suresh, Hinshaw & Culbertson LLP, Minneapolis, Minnesota (for respondent)

Patrick J. Neaton, Michael L. Puklich, Neaton & Puklich, PLLP, Chanhassen, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Ross, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

This is a breach-of-contract dispute between the seller and buyer of unimproved land for residential development. A family partnership (the appellant) owning land partially inside and partially outside a city's border sold land inside the border to prior developers for a planned multiphase residential development project and, 15 years later, sold land mostly outside the border to a different developer (the respondent current developer). The

developer that bought the city land 15 years earlier had signed a contract with the city, agreeing to pay the city one-third the city's cost for a $750,000 road project and representing that the remainder would be paid through special assessments against the remainder of the multiphase development project. But the family was not a party to that contract. When the city learned about the family's planned sale of the noncity land and the current buyer-developer's application to annex that land into the city, the city demanded that the family pay what the prior developer had promised. The family refused. Based on a clause in the family and current developer's purchase agreement requiring the family to pay any special assessment and prior-development costs, the current developer sued the family for breach of contract and obtained a summary-judgment order requiring the family to pay the road-project costs. We reverse in part because the developer did not produce evidence undisputedly establishing that the city has any claim that would constitute a "special assessment" or "cost" against the property as those terms are contemplated in the purchase agreement. We affirm in part because the undisputed facts foreclose the family's counterclaim alleging that the developer delayed sending the family an environmental report in bad faith. We remand the case for further district court proceedings.

FACTS

We derive the following facts from the parties' summary-judgment submissions. Some of these facts rest directly on the undisputed documentary and testimonial evidence and some are reasonable inferences we draw from gaps in the record, favorable to the appellant as the nonmoving party. We surmise that appellant Siegle Family Limited Partnership has owned a large swath of rural land in Carver County—partly inside the City

of Waconia and partly outside the city in the Township of Waconia—since 1999. The record implies that the family made a series of real-estate deals to sell segments of the land to different developers who each intended to complete one phase in a multiphase residential development project and who separately contracted with the city to do so. The Siegle family, the developers, and the city (which is not a party in this litigation) share a common interest in the city's annexing the noncity land, connecting the eventual residential lots to city services and substantially increasing the property value. The record suggests that the family initially sold some of the land to Plowshares Development Inc. and that in 2005 Plowshares in turn entered into an agreement with the city to complete the first phase of the development project. At about the same time, the city undertook a substantial road-construction project, part of which included converting a traditional intersection into a roundabout near the development at a cost of $750,000.

The Plowshares 2005 "Developers Agreement" is the first in a series of documents from which we trace the history of the city's attempt to recoup its roundabout-construction costs and from which we develop our imprecise understanding of property ownership. Ownership of the land covered by the 2005 Developers Agreement is not clear from the record. Although the family appears to suggest that it owned the land when the agreement was signed, the agreement refers to Plowshares as "fee owner" of the covered property. The agreement read together with other evidence in the record leads us to suppose that the family sold Plowshares land within the city for residential development while the family retained its ownership of the unimproved noncity land. That 2005 agreement obligated Plowshares to pay the city $250,000 for the roundabout project, but it also contemplated

"future phases" of the development and asserted that the $500,000 balance would be assessed by the city "to the remainder of the . . . development."

The following year, the city entered into a development agreement with a different developer, Centex Real Estate Corporation, for an addition to the development identified in the 2005 Developers Agreement with Plowshares. This 2006 agreement with Centex restated the "remaining cost of $500,000" for the roundabout construction and again indicated that this cost would be recovered by the city's assessing the eventual lots in the "future phases" of the broader development. The 2006 Centex agreement likewise identifies Centex as "fee owner" of the property subject to the agreement.

The city entered into another agreement regarding the roundabout costs in 2008—the "Agreement Regarding Cost of Road Improvements." This agreement with another entity, Corona Waterford LLC, identified Corona as the contractual successor entity to both Plowshares and Centex, recognized that the city had consented to the 2005 Plowshares agreement and the 2006 Centex agreement being assigned to Corona, and indicated that Corona and the city had reached an agreement "as to how and when Corona will pay the proportionate share of the Road Improvement Costs that are allocable to [Corona's] Property." The 2008 agreement obligated Corona to pay $96,317 as its share of costs for the roundabout. This reduced the $500,000 balance on the city's costs to $403,683.

Two events in 2010 also bear on the city's effort to recoup its roundabout costs. In April Corona quitclaimed back to the family land that was subject to the development agreements. And two months later, the city and Corona formally acknowledged that the

2005 Developers Agreement "no longer affects" the city parcels, meaning that no obligation under that agreement "shall pass to any . . . future owner of" it.

Then came the contract disputed in this case. Ten years after the city acknowledged that the city parcels were no longer affected by the 2005 Developers Agreement, the family and respondent JMH Land Development Company LLC entered into a 2020 purchase agreement that included those city parcels. The family agreed to sell about 100 acres to JMH for $6,200,000. Those acres include six contiguous parcels—three small parcels inside the city and three much larger parcels just outside the city in the township. The purchase agreement made the sale contingent on the city's annexation of the township lots and included the following provision (which is the focus of this case), obligating the family to pay levied and pending special assessments and costs against the property:

> 16. **CLOSING PRORATION**.
> . . .
> (b) Assessments. On or before the Closing Date, Seller shall pay (i) all special assessments levied or pending against the Property . . . and (ii) all pending, known or identified assessments and/or fees and costs related to the development of the Property or the construction of any public improvements, including, but not limited to any roadways, highways or accessways, adjacent to or servicing the Property and the development of the Property prior to Effective Date, whether or not then due or assessed.

After the Siegle family and JMH executed the purchase agreement but before they closed on the deal, the city indicated that it planned to collect the remaining $403,683 of its $750,000 expenditure for the 2006 roundabout project. Not referencing its 2010 acknowledgment that the three city parcels could not be liable under the 2005 Plowshares

agreement, the city identified those three parcels as the obligor properties for $403,683 in a September 2020 "Special Assessment Search."

The family promptly objected to the city's attempt to assess any of the family's remaining property for the city's roundabout costs. The family's attorney wrote the city's attorney, stating, "[I]t has come as quite a shock to the Siegle family that the City of Waconia is now seeking to assess the Siegle family's land under . . . a Development Agreement that is more than 15 years old and [to] which none of the Siegle [family] were a party." Regarding the city parcels, the family's attorney highlighted the city's 2010 express acknowledgment that those parcels had no further obligation to repay the city any costs. Regarding the township parcels, he stressed that the family was not a party to the 2005 development agreement between Plowshares and the city and rejected as false the city's assumption that Plowshares had entered into that agreement acting on the family's authority. The city's attorney responded, acknowledging that the city's claimed special assessment against the city parcels was invalid and promising to have "the reference to a $403,683 special assessment" removed. But he asserted that the city "reserves all rights it may have under [the Minnesota special-assessment statute] to seek reimbursement at a later date" by assessing the township parcels, presumably after annexation.

A three-spark flashpoint then ignited the current litigation. First, the city's attorney implied that the city would hold its annexation approval hostage until it received the $403,683 balance of the roundabout costs: "At this point, the City needs to evaluate . . . whether the City can financially support annexation of the Township Parcels if it does not receive the funds at issue . . . ." Next, JMH sent the family a notice of default under the

parties' purchase agreement and the family's attorney informed JMH's attorney that the city had no legal claim to a special assessment against any of the purchase-agreement property: "[T]he City is acknowledging that it is releasing whatever assessments it had against [the city parcels], and, of course, there are no assessments against the parcels in Waconia Township." And finally, aware that the city was planning to condition annexation on payment of the $403,683 and jeopardize the deal, JMH's attorney advised the family's attorney that JMH deemed the family in default unless the family pays the city: "Seller has the sole obligation under the Agreement to pay the Prior Development Assessment in the amount required by the City."

JMH sued the family in March 2021 for breach of contract. The parties had anticipated closing in April 2021. To salvage the deal, JMH entered into a "Settlement Agreement" with the city. In that agreement, the city reduced its $403,683 claim to $343,683 and conditioned its annexation approval of the township parcels on receiving the $343,683. The parties closed on the property in May 2021. JMH paid the city the $343,683 and moved for summary judgment on its breach-of-contract claim to recover that amount from the family. The family filed a counterclaim, alleging that JMH's failure to deliver an environmental report for two-and-a-half months after it received the report was in bad faith and caused the family to incur additional costs.

The district court granted summary judgment for JMH on its breach-of-contract claim and correspondingly ordered the family to pay JMH $343,683 in damages and $93,976.97 in costs and attorney fees. It also dismissed the family's counterclaim.

This appeal follows.

DECISION

The Siegle family argues on appeal that the district court should not have granted summary judgment to JMH on JMH's breach-of-contract claim or on the family's counterclaim alleging breach of the implied covenant of good faith and fair dealing. The family correspondingly challenges the district court's award of costs and attorney fees. We address each argument in turn.

I

We must decide whether the district court appropriately granted summary judgment favoring JMH. A district court shall grant summary judgment when there is no genuine issue as to any material fact of the claim and judgment as a matter of law is proper. Minn. R. Civ. P. 56.01. We review a grant of summary judgment to determine de novo whether genuine issues of material fact exist and whether the district court erred in applying the law. *Montemayor v. Sebright Prod., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). We undertake our de novo review based on the record viewed in the light most favorable to the nonmoving party. *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019). The record as it regards property ownership, the variously described parcels subject to the different agreements with different developers, and the full relationship between developers and the family is sketchy. Recognizing that a more developed record in a different procedural setting might lead to fact findings that differ from our understanding of these things, at this stage we have filled in missing parts by drawing reasonable inferences favoring the family, and in doing so we conclude that summary judgment favoring JMH cannot stand.

Based on the purchase agreement's assignment of payment obligations, summary judgment favoring JMH is appropriate only if the payment the city demanded fits any of the several categories the purchase agreement identifies as seller obligations. We must therefore decide whether the undisputed facts establish that the alleged duty to pay qualifies as a levied special assessment against the property, a pending special assessment against the property, or a fee or cost against the property "related to the development of the Property or the construction of any public improvements."

A. The City's Demand is not a Levied Special Assessment

The record does not establish that the city's demand for payment qualifies as a levied special assessment. The district court seems to have accepted the existence of a levied assessment by the city against the family's property. It did so by treating as binding the city's September 2020 report, which had identified the family's three city parcels as subject to a $403,683 levied special assessment. But it rejected the family's primary contention that the city's reported special assessment was erroneous and without any legal effect, reasoning that this case "is not about determining whether the 'special assessment' was properly . . . assessed by the City" because no one "has challenged the legitimacy of the assessment by including the City in this or another action." On that rationale, the district court concluded simply that the purchase agreement plainly required the family "to pay the assessment" listed in the city's report. The district court did not say why the city must be a party for the family to challenge the breach-of-contract allegation that a special assessment (as that term is contemplated in the purchase agreement) in fact burdens the property. Because the operative provision of the purchase agreement implicitly requires the family

to pay the listed presale obligations to the governmental entity entitled to payment, JMH can prevail on its claim only by proving governmental entitlement. And the existence of that entitlement is a matter of law and fact in this case regardless of whether the city is a party.

The law and facts as presented at summary judgment do not support the conclusion that the city is entitled to payment by a levied special assessment against the family's property. Regarding the law, the city's authority to assess the family's property with the duty to pay is limited. Municipalities generally "have no inherent powers and possess only such powers as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred." *State v. Kuhlman*, 729 N.W.2d 577, 580 (Minn. 2007) (quotation omitted). The constitution allows the legislature to authorize cities "to levy and collect assessments for local improvements upon property benefited" by the improvements. Minn. Const. art. X, § 1. The legislature so authorizes statutory cities, like the City of Waconia, to levy assessments against improved property in a specific process outlined in Minnesota Statutes chapter 429. Minn. Stat. § 429.111 (2022). So we look to the record for evidence that the city followed that process here.

The record includes no evidence indicating that the city completed a special assessment process before indicating in September 2020 that the family's city parcels were subject to a special assessment. And if the city did not comply with the statutory scheme, no levied assessment exists under the purchase agreement as a matter of law. An assessment denotes the city's legal right to collect the claimed amount as established through the appropriate statutory procedure. *See* Minn. Stat. § 429.061, subds. 1, 2 (2022)

("[T]he council *shall determine by resolution* . . . the amount to be assessed . . . . The assessment . . . shall be a lien upon all private and public property included therein, *from the date of the resolution* adopting the assessment.") (emphasis added). If no resolution is adopted under section 429.061, no valid lien exists, even when contracting parties agree to the assessment and waive hearing and notice rights. *See Metro. Airports Comm'ns v. Bearman*, 716 N.W.2d 403, 405 (Minn. App. 2006), *rev. denied* (Sept. 19, 2006). The record does not indicate whether the city followed the statutory procedure to make the purported assessment. Lacking evidence that the city followed the statutory procedure, we cannot affirm summary judgment based on the existence of a special assessment levied against the family parcels.

In addition to lacking evidence that the city engaged in the required procedure, the record includes evidence contradicting the existence of a levied assessment against the property. In contrast to the September 2020 report that the district court relied on in granting summary judgment to JMH, in 2010, the city appeared to formally acknowledge that the parcels identified in that so-called special assessment could never be subject to a special assessment for the prior roundabout construction. And in January 2021, the city's attorney expressly "agree[d] [that] the three City Parcels have been released" from any liability and promised to take steps "to remove the reference to a $403,683 special assessment from any future reports." Given the unchallenged evidence that the city unambiguously disclaimed the existence of the purported "special assessment" reported in September 2020, that assessment cannot form the basis of the family's liability to JMH to

repay the city's roundabout costs. Summary judgment therefore cannot rest on the September 2020 special-assessment report.

The record contains an additional, new report of a levied special assessment, but it too fails to constitute a special assessment within the meaning of the purchase agreement. After the city threatened not to approve the annexation application for the township parcels unless it was paid the balance of its roundabout costs, shortly before this litigation JMH and the city executed their "Settlement Agreement" in which JMH assured the city that it would be paid $343,683 at closing. JMH also agreed that, if the city was not paid that amount at closing, the city would initiate a special-assessment process to which JMH would consent without any substantive or procedural objection. After garnering that agreement from JMH, the city then listed the family's township parcels as subject to a levied special assessment in the amount of $343,683. But for two reasons, JMH cannot, by virtue of simply entering into a contract to which the family is not a party, manufacture the kind of special-assessment obligation contemplated in the purchase agreement. The first reason is that the purchase agreement, like all contracts, includes each party's covenant of good faith and fair dealing. *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 502 (Minn. 1995). This duty prevents either from unjustifiably hindering the other contracting party's performance of the contract. *Id.* A party's contracting with a nonparty so as to burden the other party with an obligation that otherwise would not exist would violate that covenant. The second reason is that the newly levied special assessment against the township parcels identifies JMH's deal with the city as the true basis, stating, "Type of Improvement: . . . PAYABLE TO CITY UPON SALE – DUE AT CLOSING ON

DEFERRED SPECIAL ASSESSMENTS *PLEASE SEE ATTACHED SETTLEMENT AGREEMENT." We emphasize that JMH has not argued that this later special-assessment report supports summary judgment, and we address the report only to cover any potentially relevant evidence we have found in the record.

B. The City's Demand is not a Pending Special Assessment

The record also does not establish that the city's demand for payment qualifies as a pending special assessment. Neither the purchase agreement nor the assessment statute defines "pending," and the parties offer no definition. The district court, quoting a JMH executive, appears to have adopted the idea that a "pending" special assessment is an anticipated assessment that "is 'buried in the City's paperwork.'" We believe that the statutory assessment process combined with customary development-contract terms better informs our understanding of what the contract means by "pending special assessment."

By contrast to the meaning of a levied assessment, which indicates the end of a municipality's legislative process for imposing a special assessment, a "pending" assessment would indicate the beginning of that process. Although the statute also does not directly define "levied," it requires a city council to adopt a proposed assessment by resolution, and it speaks of that adopting resolution as "the resolution *levying* the assessment." Minn. Stat. § 429.061, subd. 2 (emphasis added). Before that adoption resolution occurs, the council must calculate the amount of the contemplated assessment, the assessment roll must be filed with the clerk for public review, and then notice of the proposed assessment must be mailed to the property owner informing the owner that the city council will meet to consider the proposed assessment at a specified date, time, and

location, among other things. *Id.*, subd. 1. Reading the contractual term in the context of the statutory framework for special assessments, we believe that a special assessment becomes "pending" on at least two occasions. It becomes pending when the city council by resolution "publish[es] notice that the council will meet to consider the proposed assessment." *Id.* And because a city and an affected landowner might preliminarily agree to a proposed assessment amount by contract in a development agreement, we believe that a special assessment also becomes "pending" upon such an agreement.

Applying that understanding of "pending" here, the evidence presented by the parties with their summary-judgment pleadings fails to establish that any special assessment was pending against the family's property before closing. The record includes no evidence indicating that the city ever initiated a formal special-assessment process through the city council. And the record includes no evidence that the family entered into any contract with the city for any purpose, let alone to agree that its property is subject to special assessment by the city.

C. The City's Demand is not a Cost Ascribable to the Property

We similarly conclude that the undisputed evidence does not establish that JMH is entitled to judgment as a matter of law on the theory that the city's claim to recover its costs for constructing the roundabout constitutes a cost against the property "related to the development of the Property or the construction of any public improvements." Without question, the city's claim represents a "cost" related to the construction of a public improvement—the city's 2006 roundabout construction. But the 2020 purchase agreement's framing of the seller's duty to pay for governmental projects as a "cost"

implicitly refers to a cost attributable *to the property*, not just any cost *to the city*. That is, to constitute a cost the buyer can require the seller to pay under the purchase agreement, it must be a cost for which the city has an enforceable legal claim against the seller by virtue of the seller's property ownership.

JMH attempts to link the family's parcels in 2020 to the 2005 Plowshares agreement through a chain of agreements that supposedly binds the family's parcels to the duty the Plowshares agreement purported to create in 2005. JMH accurately observes that the 2005 city–Plowshares agreement highlights the city's expectation that it will be reimbursed its cost of the roundabout through assessment against future development; that the 2006 city–Centex agreement also highlights the city's expectation that the city will be reimbursed its cost of the roundabout through assessment against future development; that the 2008 city–Corona agreement identifies Corona as a successor to the Plowshares and Centex agreements and likewise highlights the city's expectation that it will be reimbursed its cost of the roundabout through assessment against future development; and that the 2010 Corona–Siegle Family limited warranty deed quitclaimed some of Corona's property back to the family specifically subject to the 2008 city–Corona agreement and that the agreement refers to a "levy of private charge or assessment." The chain is almost compelling, but it seems to include a critical break.

What JMH does not discuss, and the district court's summary-judgment order does not address, is language in the 2008 city–Corona agreement that, on its face, appears to contradict the theory that Corona's deed subjected the family property to a duty to pay the city's roundabout costs. In that 2008 agreement, the city and Corona agreed that Corona

owned "certain real property" outside the city in the township, that Corona planned to further develop *that property* and seek to have it annexed into the city, that the city constructed a roundabout and incurred costs allocable to *that property*, that Corona must pay $96,317 for its share of the roundabout costs for its prior development of part of *that property*, but that (and here's the critical break) "in regard to" *that property*, "The City agrees that . . . no additional assessment or costs will be imposed for the [roundabout]." Corona's conveyance of this same property, which apparently included some or all the family's township property, back to the family therefore did not carry with it the duty to pay any "additional assessment or cost" for the roundabout.

We add that we reach this conclusion notwithstanding a line in the 2008 city–Corona agreement that declares, "[N]othing herein shall be construed as preventing the City from assessing other properties for [the city's roundabout] Costs, including those portions [of township property] that are not part of [the Corona property] . . . ." This line cannot effectively alter the conclusion that the agreement released any duty to pay future assessments. It is long settled that "[a] deed of quitclaim and release shall be sufficient to pass all the estate which the grantor could convey by a deed of bargain and sale." Minn. Stat. § 507.06 (2022). The supreme court has elaborated that a quitclaim deed "passes only the estate which the grantor could *lawfully* convey." *Laymon v. Minn. Premier Props., LLC*, 913 N.W.2d 449, 451 n.2 (Minn. 2018) (quoting *Everest v. Ferris*, 16 Minn. 26, 32 (1870)). When Corona quitclaimed its property interest to the family in 2010, the family therefore received the Corona property with all encumbrances attached to *that* property, not with any additional encumbrances on neighboring property, even though the encumbrance language

in the deed ostensibly suggests this extension expressly and by referencing the 2008 city–Corona agreement.

We hold that the record includes insufficient support to determine as a matter of law that the city's roundabout cost is a "cost" against the property that the family had a duty to pay. The record lacks evidence that the family contracted with the city to require the family's township parcels to pay the roundabout costs. It lacks evidence that any of the contracting parties acted on the family's authority when purportedly obligating the family's township parcels to pay those costs. And it includes evidence that the city expressly agreed that Corona's property (later conveyed back to the family) could not be assessed any additional cost for the roundabout.

In sum, although a more complete record might prompt a different conclusion, the current record does not support summary judgment on JMH's claim that the family breached the purchase agreement by refusing to pay the city, or reimburse JMH, to cover the city's 2006 roundabout-construction cost. The undisputed facts do not establish that the city's claim qualified as a levied special assessment against the property, a pending special assessment against the property, or a cost against the property related to the property's development or the construction of any public improvement developing the property.

II

The Siegle family contends that a genuine issue of material fact also prevents summary judgment on its counterclaim that JMH breached the implied covenant of good faith and fair dealing. The purchase agreement permitted JMH to retain the services of engineering firms to environmentally inspect the property and required the family to

remediate environmental problems. The family alleges that JMH received an engineering report detailing environmental concerns in early December 2020, but that JMH did not provide the report until late February 2021, when ground conditions were less favorable for the remediation project, requiring the family to incur an additional $2,600 in remediation costs. This delay "in and of itself," argues the family, evidences bad faith and unfair dealing. The argument is not compelling.

It is true that every Minnesota contract includes an implied covenant of good faith and fair dealing, meaning that one party cannot "unjustifiably hinder" the other party's performance. *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d at 502 (quotation omitted). But a claim of bad faith requires evidence that the accused party refused to fulfill a duty or contractual obligation based on an ulterior motive, not based on simply a mistake or negligence. *Sterling Cap. Advisors, Inc. v. Herzog*, 575 N.W.2d 121, 125 (Minn. App. 1998). The purchase agreement does not specify any period for the disclosure, and even if it did, the family identifies no evidence that an improper motive inspired JMH's alleged more than two-month delay in providing the report. Because the family offered no proof of bad faith, we affirm the district court's grant of summary judgment on the family's counterclaim.

III

The family challenges the district court's decision ordering it to pay litigation costs and attorney fees. The parties' purchase agreement imposes the duty to pay costs and attorney fees on the losing party in breach-of-contract litigation:

> If either Buyer or Seller commences an action against the other to enforce any of the terms of this Agreement or because of the breach by the other party of any of the terms hereof, the losing or defaulting party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such an action.

Because the district court awarded attorney fees based on JMH's summary-judgment victory and we have in part reversed that decision, we also reverse the district court's award of costs and attorney fees to JMH.

Affirmed in part, reversed in part, and remanded.