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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0284**

Eagle's Landing Owners Association,
Respondent,

vs.

Philip Cleary, et al.,
Appellants.

**Filed December 23, 2024
Reversed and remanded
Ede, Judge**

Kandiyohi County District Court
File No. 34-CV-23-98

Jon C. Saunders, Sarah L. Klaassen, Anderson Larson Saunders Klaassen Dahlager & Leitch, P.L.L.P., Willmar, Minnesota (for respondent)

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Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this dispute over the applicability of respondent homeowner association's constituent documents and fees assessed to appellant homeowners, appellants challenge a district court order granting summary judgment for respondent. Appellants argue that the district court erred by determining that respondent's restrictive covenants remain in effect

and that respondent's articles of incorporation and by-laws are a contract that appellants breached by not paying assessment fees. Because the district court erred by determining (1) that respondent's restrictive covenants are effective against appellants and (2) that there are no genuine issues of material fact as to whether appellants are required to pay assessment fees, we reverse and remand.

FACTS

Appellants Philip and Rebekah Cleary bought a residential property in 2018. Their mortgage included a planned unit development (PUD) rider, informing appellants that the property was part of a PUD called Eagles Landing. The PUD rider also informed appellants that they were required to pay all assessment fees imposed by respondent Eagles Landing Owners Association's constituent documents. Appellants made several payments toward assessment fees but ultimately ceased remitting funds to the association. Respondent filed suit against appellants to recover the outstanding fees, and appellants counterclaimed seeking declaratory relief and asserting slander of title. Both parties moved for summary judgment. The district court granted summary judgment for respondent and denied summary judgment for appellants. The following factual and procedural background stems from the summary-judgment record before the district court, viewed in the light most favorable to appellants.

Factual Background

In May 1993, a Minnesota corporation conveyed about 30.5 acres to the Carlson-Koosman Land Company. Following a survey and platting, the property became known as Eagles Landing, which includes the parcel at issue in this appeal—lot 30 of block one (the

lot). In June of that year, Carlson-Koosman's chief executive officer executed and recorded a "Declaration of Restricted Covenants for Eagles Landing."¹ The declaration provided that:

All of the covenants, conditions, and restrictions contained herein shall be deemed to run with the land [and] shall be a burden and benefit to declarants, their grantees, successors, and assigns and any person declaring or owning an interest in the real estate or any part thereof, and their grantees, heirs, legal representatives, successors and assigns. The said covenants, conditions, and restrictions shall be effective and enforceable for a period of ten (10) years from and after which time the said covenants, conditions, and restrictions shall automatically renew for a successive five (5) year period unless a petition is filed by a majority of the property owners prior to the effective expiration of the term.

In September, Carlson-Koosman conveyed the lot to two individuals;² they took possession as joint tenants.

After the creation of Eagles Landing, respondent developed other land, including a parcel called Eagles Landing First Addition. In January 1995, respondent filed its articles of incorporation with the Minnesota Secretary of State. As expressed in the articles of incorporation, one of respondent's objectives was "[t]o be and constitute the association of lot owners of the plat of Eagles Landing, Eagles Landing First Addition and such other and further development adjacent or contiguous to the plat of Eagles Landing in the future."

¹ Although the relevant document is entitled, "Declaration of Restricted Covenants for Eagles Landing," when discussing these types of covenants throughout this opinion, we generally use the more common term, "restrictive covenants."

² These individuals are not parties to this appeal.

The articles of incorporation also state that respondent's "members . . . shall be those persons as described in the by-laws of the corporation."

Respondent's by-laws became effective later that January, but they were not recorded until May 2006. Although the by-laws contain several statements that directly refer to the plat of Eagles Landing First Addition and future adjacent developments, the by-laws do not likewise include mention of the plat of Eagles Landing. In particular, the by-laws provide: that respondent "is organized for the purpose of being and constituting the association of lot owners for Eagles Landing First Addition and future adjacent developments;" that "[e]ach lot owner in Eagles Landing First Addition and each lot owner in any future development adjacent to Eagles Landing, shall be a member of the association and entitled to exercise the voting rights associated with that particular Lot;" and that "[m]embership in the association shall be established by recording . . . a deed or other instrument establishing record title to a Lot in Eagles Landing First Addition or plat of any future adjacent developments" The by-laws also specify that "[a]ll lot owners are obligated to pay assessments imposed by the association to meet all expenses." And the by-laws state that they "may be amended by the vote of a majority of directors present at a meeting of the Board at which a quorum is present."

In March 2018, appellants acquired the deed to the lot. Appellants' mortgage included a PUD rider, which informed appellants that the property was part of a PUD known as Eagles Landing and that appellants are required to perform all the obligations under the PUD's constituent documents, including the declaration, articles of incorporation, and by-laws. The PUD rider also required that appellants "promptly pay,

when due, all dues and assessments imposed pursuant to the Constituent Documents.” Beginning in 2019 and ending in April 2020, appellants made payments toward assessment fees.

In September 2018, respondent held a special meeting to amend the “Declaration of Restricted Covenants.” Following the amendment, the restrictive covenants provided that “all of the covenants, conditions, and/or restrictions contained within this Declaration of Restricted Covenants for Eagles Landing shall be construed to continue in full force and effect until such time, if any, that a majority of the property owners effectively revoke any such covenant(s), condition(s), and/or restriction(s).”

Underlying Litigation

In November 2022, respondent filed a statement of claim against appellants in conciliation court, alleging that appellants were in default of their obligation to pay assessment fees. After the conciliation court entered judgment for respondent, appellants filed a demand to remove the case to district court.

In May 2023, respondent filed a complaint against appellants. The complaint set forth three causes of action: (1) breach of contract; (2) violation of Minnesota Statutes section 515B.3-115 (2022); and (3) unjust enrichment. Appellants filed an answer, alleging that respondent’s covenants, by-laws, and articles are instruments that either never applied to appellants’ property or no longer apply to the property. And appellants filed two counterclaims against respondent: (1) a request for declaratory judgment (a) “under Minn. Stat. § 555.02 to determine the question of validity arising from [respondent’s] claims,” (b) “that the restrictive covenants recorded . . . [in] June . . . 1993 do not apply to

[appellants] and their property,” (c) “that the by-laws recorded by [respondent] do not apply to [appellants] and their property,” (d) “that the Articles of Incorporation recorded by [respondent] do not apply to [appellants] and their property,” and (e) “that there are no public records that create any property right interests to [respondent] for the property owned by [appellants];” and (2) a slander-of-title claim.

In August 2023, respondent moved for summary judgment. Respondent asserted that there was no dispute of fact that appellants failed to pay the assessment fees and that they had a legal obligation to do so. And respondent asked the district court to dismiss appellants’ counterclaims, contending that appellants waived “their right to challenge the 2018 amendments” because they had paid assessment fees. Lastly, respondent argued that appellants’ counterclaim was barred by Minnesota Statutes section 515B.2-118(b) (2022), “which requires litigation/challenges to be brought within two years following the Amendment to the Declaration of Restrict[ed] Covenants for Eagles Landing.” According to respondent, the deadline for appellants to have brought such a claim was in November 2020.

Appellants cross-moved for summary judgment, maintaining that respondent could not establish its claims and did not have a legal basis to collect assessment fees from appellants. Contending that the legal requirements for formation of a common interest community (CIC) were never satisfied, appellants asserted that respondent never created a CIC. And appellants argued that, even if a CIC were created, there is no CIC declaration that applies to appellants’ property. Appellants also maintained that respondent’s breach-of-contract claim fails because respondent could not establish the existence of a contract

with appellants. Although appellants acknowledged that the purchase of property within a validly formed CIC constitutes acceptance of an obligation to pay assessment fees, they contended that no such obligation exists if the purchased property is not a part of the CIC. Moreover, appellants insisted that their property was not part of the CIC.

Despite respondent's allegation in the complaint that appellants had violated Minnesota Statutes section 515B.3-115, respondent ultimately agreed with appellants at a hearing on the parties' cross-motions for summary judgment that chapter 515B does not apply because the community was created before June 1, 1994. *See* Minn. Stat. § 515B.1-102 (2022).

Order Granting Summary Judgment

In December 2023, the district court filed an order granting respondent's motion for summary judgment and denying summary judgment for appellants. The district court determined that, while appellants "report that they may not have been aware of [respondent's] complex legal structure, [appellants] received adequate notice and disclosure of the requirement to pay assessments pursuant to the PUD. [Appellants] signed the PUD and thereby accepted and agreed to the terms and covenants contained within the PUD."

Ruling that there was a valid contract between the parties and that appellants had breached that contract, the district court reasoned that "[t]he language of [respondent's] governing documents clearly demonstrates [that] the intention of the parties is to create a contract obligating property owners to pay a yearly fee and in exchange [respondent] maintains landscaped entrances and enforces community covenants." The district court

determined that, when appellants purchased their home, “at minimum, they were aware of their obligation to pay fees based upon the language contained in their signed PUD rider.” More specifically, the district court decided that appellants accepted respondent’s contractual offer “by completing their home purchase, which included the yearly fee assessment information within the PUD rider.” And the district court ruled that appellants breached that contract by not paying assessment fees. The district court therefore entered judgment for respondent in the amount of \$555.99.

This appeal follows.

DECISION

Appellants challenge the district court’s order granting summary judgment for respondent, contending that the court erred by determining (1) that respondent’s restrictive covenants remain in effect and (2) that respondent’s articles of incorporation and by-laws are a contract that appellants breached by not paying assessment fees.

Appellate courts “review a district court’s grant of summary judgment de novo and, in doing so, view the evidence in the light most favorable to the party against whom the district court granted summary judgment.” *Windcliff Ass’n, Inc. v. Breyfogle*, 988 N.W.2d 911, 916 (Minn. 2023). “Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Southcross Com. Ctr., LLP v. Tupy Props., LLC*, 766 N.W.2d 704, 707 (Minn. App. 2009) (quotation omitted). We address each of appellants’ arguments in turn.

I. The district court erred by determining that respondent’s restrictive covenants are effective against appellants.

Appellants contend that the district court erred in granting summary judgment because respondent’s restrictive covenants were extinguished by their own terms in June 2008, 15 years from their creation in June 1993. In the alternative, appellants assert that respondent’s “attempt to restore the covenants in 2018 [was] ineffective because perpetual covenants running with the land are prohibited by the 30-year rule in Minnesota Statutes, section 500.20 . . . [a]nd even if the covenants were restored, they were extinguished again by section 500.20 [in] June . . . 2023.” According to appellants, “the extinguishment of the covenants means that . . . [respondent] has no basis for demanding that [appellants] abide by the restrictions imposed by the covenants.” Respondent counters that, because the covenants were amended in 2018 and appellants paid assessment fees in 2019 and 2020, appellants waived any challenge to the 2018 amendments.³ We are persuaded by appellants’ alternative argument.

Barring certain exceptions that respondent has not argued apply,⁴ Minnesota law provides that all private covenants “created by which the title or use of real property is

³ Respondent also suggests that, because appellants “have not provided any evidence of what their vote was at the duly called meeting approving the establishment and extension of the covenants,” appellants’ statutory-expiration argument “is not ripe for discussion since they failed to establish at the summary judgment level that they did not accept the amendment to the declarations.” Because respondent cites no authority in support of this argument, it is waived. *See Cambria Co., LLC v. M&M Creative Laminants, Inc.*, 995 N.W.2d 426, 437 n.3 (Minn. App. 2023) (“Inadequately briefed issues are waived on appeal.”), *aff’d*, 11 N.W.3d 318 (Minn. 2024).

⁴ “A party’s failure to brief and argue an issue on appeal results in forfeiture of that issue” *Jundt v. Jundt*, 12 N.W.3d 201, 204 (Minn. App. 2024).

affected, cease to be valid and operative 30 years after the date of the deed, or other instrument, or the date of the probate of the will, creating them, and may be disregarded.” Minn. Stat. § 500.20, subd. 2a (2022); *see also Haugen v. Peterson*, 400 N.W.2d 723, 726 (Minn. 1987) (explaining that “Minn. Stat. § 500.20, subd. 2 (1980) states fairly clearly that covenants ‘shall cease to be valid and operative’ after 30 years;” that “[t]hese words denote termination, not suspension;” that “the statute did not permit an automatic renewal;” and that, after the “covenants [at issue] became void[,] . . . [they] remain void and cannot be resurrected”). “The statute itself is notice to all those who place any restriction on the use of land that such restriction will become invalid 30 years after its creation.” *In re Turners Crossroads Dev. Co.*, 277 N.W.2d 364, 373 (Minn. 1979). There is no waiver exception to Minnesota Statutes section 500.20, subdivision 2a.

Here, the declaration created the restrictive covenants in June 1993. And 30 years after June 1993 was June 2023. Because subdivision 2a of section 500.20 specifies that the 30-year period runs from “the date of the . . . instrument . . . creating” the covenants, the 2018 amendments do not affect the date that the covenants expired. Minn. Stat. § 500.20, subd. 2a. Nor is there any applicable waiver exception. *See id.* We therefore conclude that the district court erred by granting summary judgment for respondent because the covenants ceased to be valid and operative in June 2023. *Id.*

II. The district court erred by determining that there are no genuine issues of material fact as to whether appellants are required to pay assessment fees.

Appellants contend that the district court erred in determining that they breached a contract by failing to pay assessment fees. Respondent, however, asserts that the district

court correctly ruled that the articles and by-laws are a contract that appellants breached by not paying the subject fees.⁵ We agree with appellants.

A CIC

means contiguous or noncontiguous real estate within Minnesota that is subject to an instrument which obligates persons owning a separately described parcel of the real estate, or occupying a part of the real estate pursuant to a proprietary lease, by reason of their ownership or occupancy, to pay for (i) real estate taxes levied against; (ii) insurance premiums payable with respect to; (iii) maintenance of; or (iv) construction, maintenance, repair or replacement of improvements located on, one or more parcels or parts of the real estate other than the parcel or part that the person owns or occupies.

Minn. Stat. § 515B.1-103(10) (2022). At the hearing on the parties' cross-motions for summary judgment, respondent and appellants agreed that chapter 515B does not apply because the community was created before June 1, 1994. *See* Minn. Stat. § 515B.1-102. But "[r]eal estate which satisfies the definition of a [CIC] is a [CIC] whether or not it is subject to . . . chapter [515B]." Minn. Stat. § 515B.1-103(10).

"A common interest association's governing documents constitute a contract between the association and its individual members." *Harkins v. Grant Park Ass'n*, 972 N.W.2d 381, 388 (Minn. 2022) (quotation omitted). Contract interpretation is "a question

⁵ Because the obligation to pay assessment fees arises from the by-laws and not the covenants, respondent argues that "the question of whether the 2018 resolution was ineffective in restoring the covenants is not relevant to whether [appellants] were in breach of their obligation to pay annual membership fees." Appellants do not dispute this claim, and we agree. Our conclusion that, per Minnesota Statutes section 500.20, subdivision 2a, the restrictive covenants have ceased to be valid and operative does not affect our analysis of whether there are no genuine issues of material fact related to appellants' alleged obligation to pay assessment fees.

of law unless the contract is ambiguous.” *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003). “A contract is ambiguous if, based upon its language alone, it is reasonably susceptible of more than one interpretation.” *Id.* (quotation omitted). “The determination of whether a contract is ambiguous is a question of law, . . . but the interpretation of an ambiguous contract is a question of fact for the jury.” *Id.*

We conclude that respondent’s governing documents are ambiguous because they are susceptible to more than one reasonable interpretation. Respondent’s articles of incorporation provide that the “purposes for which the corporation is formed” include “[t]o be and constitute the association of lot owners of the plat of Eagles Landing, Eagles Landing First Addition and such other and further development adjacent or contiguous to the plat of Eagles Landing in the future.” But the articles also provide that “[t]he members of [the] corporation shall be those persons as described in the by-laws of the corporation.” And the by-laws state: that respondent “is organized for the purpose of being and constituting the association of lot owners for Eagles Landing First Addition and future adjacent developments;” that “[e]ach lot owner in Eagles Landing First Addition and each lot owner in any future development adjacent to Eagles Landing, shall be a member of the association and entitled to exercise the voting rights associated with that particular Lot;” and that “[m]embership in the association shall be established by recording . . . a deed or other instrument establishing record title to a lot in Eagles Landing First Addition or plat of any future adjacent developments” Nevertheless, the by-laws also provide—without specific reference to the lot owners of Eagles Landing, Eagles Landing First Addition, or any future adjacent developments—that “[a]ll lot owners are obligated to pay

assessments imposed by the association to meet all expenses.” Because this imbroglio of provisions is susceptible to two reasonable interpretations—one in which Eagles Landing lot owners, like appellants, are subject to assessment fees, and one in which they are not—we conclude that the interpretation of these ambiguous provisions is a question of fact for the jury. *See Denelsbeck*, 666 N.W.2d at 346.

Respondent insists that the failure of the by-laws to include Eagles Landing lot owners as members subject to assessment fees was a “clear scrivener’s error.” This argument is unconvincing. A scrivener’s error, or a clerical error, is defined as “[a]n error resulting from a minor mistake or inadvertence and not from judicial reasoning or determination[.]” *Black’s Law Dictionary* 682 (12th ed. 2024). Examples of such errors include: “omitting an appendix from a document; typing an incorrect number; mistranscribing or omitting an obviously needed word; and failing to log a call.” *Id.* The omission of Eagles Landing lot owners as members subject to assessment fees in the by-laws does not appear to be a small mistake. Indeed, while the by-laws specifically reference Eagles Landing First Addition in several sections, Eagles Landing is not likewise included. We cannot say that such repeated omissions are a scrivener’s error that would support affirmance of the district court’s grant of summary judgment for respondent. *See Alpha Real Est. Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 314 (Minn. 2003) (holding that the “district court erred when it found that the absence of language in the 1997 lease regarding the survival of the five percent additional rent after the closing of the option was a result of mutual mistake or scrivener’s error”).

But even if there were such a scrivener's error, a party seeking reformation of a contract based on mutual mistake must prove, among other things, that "there was a valid agreement sufficiently expressing in terms the real intention of the parties." *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 779 N.W.2d 865, 870 (Minn. App. 2010), *aff'd*, 795 N.W.2d 855 (Minn. 2011). At the summary-judgment stage of these proceedings, respondent cannot establish the absence of a genuine issue of material fact as to whether there was a valid agreement with express terms that sufficiently conveys the parties' real intentions. *See id.*; *see also Southcross Com. Ctr., LLP*, 766 N.W.2d at 707. This is particularly so because it is undisputed that appellants—who did not acquire the deed to the lot until 2018—were not a party to the by-laws, which became effective in 1995 and were recorded in 2006.

Respondent also asserts that "[t]he by-laws outline all the subject property, including Lots 1-33 of Block 1." In support of this contention, respondent cites a handwritten document, which appears to have been recorded with the by-laws in 2006 and lists several lots, including the lot owned by appellants. While the handwritten document might be an amendment to the by-laws, it is unclear from the summary-judgment record whether a majority of the board of directors voted to adopt such an amendment. Nor does the handwritten document specify that it amended the membership provision of the by-laws to include the lot. The interpretation of respondent's constituent documents therefore presents a factual dispute about whether Eagles Landing lot owners are members of the homeowner association.

Appellants also argue that, because the articles and by-laws “were executed in January 1995 by grantors who had already surrendered title to [appellants’] property in September 1993[,]” they are not bound by either document, and the duty to pay fees was never imposed on their property. Respondent counters that appellants’ conduct formed a contract and that they have waived their right to object because they bought the property, participated in the association, and paid dues.⁶ In support of this argument, respondent relies on an opinion of the Utah Supreme Court. *See Hi-Country Ests. Homeowners Ass’n v. Frank*, 533 P.3d 1142, 1144 (Utah 2023).

Frank is distinguishable. There, the Utah Supreme Court examined “whether a homeowners association [(HOA)] ha[d] the authority to assess property within its boundaries.” *Id.* Significantly, it was undisputed in *Frank* that the lots at issue—two of which were owned by the appellant—were within the boundaries of the HOA. *Id.* at 1145. In his motion for summary judgment, the appellant argued that “the HOA’s governing documents were invalid because” the person who signed and recorded the constituent documents (i.e., protective covenants and a certificate of incorporation for the association) “had not owned most of the property he had included within the HOA’s boundaries, and

⁶ Respondent also asserts that appellants waived any objection to purported defects in the by-laws and formed a unilateral contract with respondent because, among other things, payment of the assessment fees was a condition of default on appellants’ mortgage through the PUD rider. As much as the district court determined that appellants’ purchase of the home constituted acceptance of the terms of the PUD rider, we conclude that the plain language of the PUD rider limits its application to the extent that an obligation existed in respondent’s constituent documents. And as explained above, there is a genuine issue of material fact as to whether the constituent documents—including the by-laws—define Eagles Landing lot owners as members of the homeowner association. For that reason, the district court erred by granting summary judgment for respondent based on the PUD rider.

no owner of the Lots had signed the governing documents.” *Id.* at 1146. The district court denied appellant’s summary-judgment motion. *Id.*

On appeal, appellant argued that the HOA had no authority “to assess the Lots because the governing documents that established the HOA [were] absolutely void, and therefore, [could not] be ratified.” *Id.* at 1148. The Utah Supreme Court concluded that the documents were voidable but that the conduct of the association’s members “over an extended period of time—generally, the members’ acquiescence to and acknowledgment of the authority of the HOA, payment of assessments to the HOA, and acceptance of benefits provided by the HOA—constitute[d] ratification of the HOA’s authority to levy assessments against its members.” *Id.* at 1154. But here, unlike in *Frank*, respondent’s constituent documents are ambiguous as to whether Eagles Landing lot owners are members of the association and whether appellants have any obligation to pay assessment fees. Thus, despite appellants’ payment of assessment fees and attendance of homeowner association meetings, we conclude that *Frank* is neither instructive nor persuasive authority.

In sum, the district court erred by determining that respondent’s restrictive covenants are effective against appellants and that there are no genuine issues of material fact as to whether appellants are required to pay assessment fees. We therefore conclude that the district court erred in granting summary judgment for respondent, and we reverse and remand for further proceedings not inconsistent with this opinion.

Reversed and remanded.