*This opinion is nonprecedential except as provided by Minn.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**
**A24-0464**

In re the Matter of the Trusteeships Under the Trust Indentures between the City of Edwardsville, Kansas and UMB Bank,N.A., as Successor Trustee.

**Filed April 7, 2025**
**Affirmed**
**Kirk, Judge***

Hennepin County District Court
File No. 27-TR-CV-20-52

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Considered and decided by Ede, Presiding Judge; Johnson, Judge; and Kirk, Judge.

## NONPRECEDENTIAL OPINION

**KIRK**, Judge

In this appeal from a district court's order in a trust-instruction petition, appellant argues that the district court erred by addressing matters outside of the petition in granting respondent relief and erred by interpreting the trust indentures. We affirm.

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## FACTS

### *The Hotel Project*

In 2016, the City of Edwardsville, Kansas made plans for a broad redevelopment project. This project involved plans for the construction of a Hard Rock-branded hotel. In 2018, Compass Commodity Group III, LLC, agreed to develop the hotel project pursuant to a development agreement. Compass assigned its rights and obligations with respect to this project to appellant One10 Hotel HRKC, LLC in late October 2019.

Prior to assuming the hotel project, One10 began to seek funding for the project, which was expected to cost around $80 million. In July 2019, Altos Group, LLC, approved One10 for a $50-million construction loan. One10 secured $3 million in additional funding from a mezzanine loan. Lastly, the city agreed to issue $23,280,000 in revenue bonds. These bonds consisted of guest-tax revenue bonds, special-obligation-tax-increment revenue bonds, and community-improvement-district revenue bonds. Separate indentures govern the administration of each of the three types of bonds, but the indentures are virtually identical in aspects material to this case. The city issued these bonds in late October 2019, the proceeds of which were initially held in trust with Commerce Trust Company. In November 2019, respondent UMB Bank, N.A. [1] became the successor trustee of the bond proceeds. These bonds form the basis for the underlying trust-instruction petition.

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[1] The case caption in the district court identified respondent as "UMB Bank,N.A." But respondent is identified in its appellate brief as "UMB Bank, N.A." The caption in this opinion conforms to the caption used in the district court. *See* Minn. R. Civ. App. P. 143.01. We use respondent's preferred name in the body of the opinion.

For One10 to be reimbursed from the bond proceeds for its out-of-pocket expenses, the development agreement required that One10 submit a certificate of expenditures (cost certification) to the city for approval. The development agreement also imposed as a condition precedent to disbursement that One10 "not be, in the reasonable judgment of the City, in material default under this Agreement." After certification by the city, One10 must then submit a request to the trustee for fund disbursal. The trust indentures additionally require that One10 certify to the trustee that the written request was "properly completed in all respects and in substantially the form of Exhibit D." In turn, Exhibit D requires that One10 certify that "no Event of Default under the Development Agreement has occurred and is continuing and no event or condition has occurred which, with notice of passage of time or both, would constitute an Event of Default under the Development Agreement."

One10 initially submitted two cost certifications, both of which the city approved. The trustee reviewed these certifications and approved payment of approximately $9 million in bond proceeds.

***Funding Issues***

Funding issues soon arose. On February 28, 2020, Altos (the funder of the $50-million construction loan), informed One10 that it was unable to provide funds under the loan. One10 soon suspended construction on the hotel while it sought a new lender. Shortly thereafter, One10 submitted a third cost certification to the city, in which it sought reimbursement for $829,247.32 in expenses. Although the city approved this third cost certification, UMB, as trustee, refused to release the requested bond proceeds. UMB also informed One10 of its belief that One10 breached the development agreement and demanded that it cure the breach.

***Legal Proceedings***

In June 2020, UMB filed a trust-instruction petition pursuant to Minn. Stat. § 501C.0202, subd. 24 (2024), in Hennepin County District Court.[2] Subdivision 24 pertains to requests "to instruct the trustee regarding any matter involving the trust's administration or the discharge of the trustee's duties, including a request for instructions and an action to declare rights." UMB sought the following instructions in the petition:

> 1. Declaring and confirming that uncured Events of Default *have occurred* under the Indentures;
> 2. Declaring and confirming the Trustee is not required to distribute additional Trust Estate funds to [One10] *while the Events of Default remain uncured*;
> 3. Confirming the Trustee's authorization to declare the principal of all Bonds outstanding and the interest accrued thereon to be due and payable pursuant to Section 902(a) of the Indentures;
> 4. Authorizing and instructing the Trustee to take such other actions as are *consistent with and reasonably necessary to protect the assets of the Trust Estates and the best interests of the Bond owners*, including upon direction from owners of the majority of the outstanding Series 2019 TGT Bonds and Series 2019 TIF Bonds, authorizing the redemption of the Series 2019 TGT Bonds and Series 2019 TIF Bonds, respectively;
> 5. Confirming that such course of conduct is prudent, authorized and in the best interest of the Bond owners and consistent with the terms of the Indentures, and that the Trustee's actions comply with all applicable duties of the

[2] Minn. Stat. § 501C.0202 was amended in 2024. 2024 Minn. Laws. ch. 87, § 1. The previous version of the statute was in effect when UMB filed the trust-instruction petition. The amendment does not change the substance of the applicable section, but only clarifies that the section 501C.0202 applies to actions filed under both the district court's in rem and in personam jurisdiction.

> Trustee and are fully authorized and protected by the Indentures and shall not subject UMB Bank, N. A., individually or as Trustee, to liability;
>
> 6. Declaring the Trustee's past and proposed actions in the administration of the Trust Estates to be consistent with the terms of the Indentures and the Trustee's duties and obligations thereunder to all Bond owners;
> 7. Granting such other relief as the Court determines lawful, just and proper.

(Emphases added.)

In February 2023, One10 filed a motion in limine seeking to prevent UMB from introducing events or conduct that are outside the scope of the petition, specifically (1) evidence related to alleged events of default other than those identified in the petition and (2) evidence or argument that relates to events and alleged defaults that postdate the petition. The district court reserved ruling on the relevant portion of the motion in limine.

In March 2023, the district court held a trial on UMB's petition. Following the trial, the district court denied One10's motion in limine. It also ordered that: (1) the trustee is not required to distribute additional funds to One10, including funds requested in connection with the third cost certification; (2) the trustee is authorized to declare the principal and interest on all bonds outstanding and due; (3) the trustee is authorized to make a distribution from the trust estates on direction from a majority of the outstanding bond owners; and (4) the trust estates and the trustee are not subject to continuing supervision of the court. The district court later denied One10's posttrial motion for amended findings and conclusions of law or a new trial.

One10 appeals.

## DECISION

### I. The district court did not address matters outside the scope of UMB's petition.

One10 argues that the district court erred by failing to hold UMB to its petition for relief in two ways. First, One10 argues that the district court improperly considered events that postdated the June 22, 2020, filing of the petition. Second, One10 argues that the district court made a conclusion outside the scope of the petition that UMB could refrain from paying the third cost certification in the absence of uncured event of default. We address each argument below.

However, we first note that the parties contest whether a de novo or abuse-of-discretion standard of review applies. Because the district court did not err under the less deferential de novo standard, we apply that standard.

Minnesota Rule of Civil Procedure 8.01 requires that a party seeking relief include a "short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought." A court cannot provide relief "based on issues that are neither pleaded nor voluntarily litigated." *Shandorf v. Shandorf*, 401 N.W.2d 439, 442 (Minn. App. 1987). This rule stems from the idea that principles of fairness require that a party have notice of claims against him or her and have an opportunity to respond. *See id.* at 442-43. However, courts "liberally and broadly construe[]" pleadings in deciding whether a pleading provides sufficient notice of a claim. *Midwest Fam. Mut. Inc. Co. v. Schmitt*, 651 N.W.2d 843, 846 (Minn. App. 2002) (quotation omitted). Courts focus this inquiry into the incident rather than the specific facts of the incident. *Walsh v. U.S. Bank,* 851 N.W.2d 598, 605 (Minn. 2014). The supreme court addressed the scope of relief as it relates to the pleadings in *Roberge v. Cambridge Co-op Creamery Co.*, holding that the district court improperly granted relief based on the theory of quantum meruit when the complaint only raised a breach-of-contract claim. *See* 67 N.W.2d 400, 402 (Minn. 1954).

### A. The district court did not err by considering events that postdated the petition.

In support of its argument that the district court erred by considering events that postdated the petition, One10 contends that (1) UMB failed to give adequate notice under Minn. R. Civ. P. 8.01 that it sought relief based on postpetition events and none of the events that predated the petition warranted relief; (2) granting UMB relief based on postpetition events will nullify the supplemental-pleadings rule under Minn. R. Civ. P. 15.04; (3) the district court's decision is inconsistent with Minnesota's res judicata jurisprudence; and (4) the postfiling events were not ripe when UMB filed the petition.

We must first determine whether the district court considered events outside the scope of pleadings when issuing its order, meaning that One10 lacked the requisite notice under rule 8.01. In its order, the district court wrote that the issue of whether events of default existed at the time UMB filed the petition "is not critical to the court's analysis," adding that "even if an Event of Default did not exist when the Petition was filed, it is undisputed that several uncured Events of Default have now occurred under the Indentures." Looking at the instructions that UMB sought, it is true that UMB sought instructions declaring that "uncured Events of Default *have occurred* under the Indentures." (Emphasis added.) However, other portions of the petition contemplate a broader request. The second instruction that UMB requested, in which it sought declaration that it is not required to distribute trust funds "while Events of Default remain uncured," broadly refers to events of default without requiring these events of default to have existed at the time of filing the petition. Such a reading is consistent with the idea that courts are to liberally construe pleadings. *See Schmitt*, 651 N.W.2d at 846. Similarly, UMB's broad fourth request, in which it sought "authoriz[ation] and instructi[on] . . . to take such other actions as are consistent with and reasonably necessary to protect the assets of the Trust Estates" does not limit the district court to consider only prepetition events. Taken as a whole, UMB's requested instructions put One10 on notice that UMB broadly sought to avoid having to disburse additional bond funds. *See Padco, Inc. v. Kinney & Lange*, 444 N.W.2d 889, 891 (Minn. App. 1989) ("A specific legal theory does not need to be stated if the pleadings contain factual notice of the claim and a request for relief."), *rev. denied* (Minn. Nov. 15, 1989).

Because postpetition events are within the scope of the pleadings, One10's argument that considering postpetition events "effectively nullifies" the supplemental-pleadings rule, which allows a party to serve a supplemental pleading setting forth events that happened since the date of the original pleading, is unpersuasive. *See* Minn. R. Civ. P. 15.04. Regarding res judicata, One10 argues that the district court's reasoning conflicts with res judicata jurisprudence. Res judicata is a doctrine that prohibits a party from relitigating a claim arising from the circumstances of a dispute that was finally litigated between the parties. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004). One10, relying on *Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 240 (Minn. 2007), argues that, because res judicata does not bar a litigant from asserting claims based on events that happened after the filing of a complaint even if those events related to the subject of the original complaint, treating the postpetition events as within the scope of the petition conflicts with res judicata caselaw. One10's concerns are misplaced because UMB's petition broadly invites the district court to consider the trustee's obligations without restricting the district court from considering postpetition events.

We additionally conclude that the district court's order does not raise concerns with respect to ripeness. That doctrine stems from the principle that courts cannot exercise jurisdiction over claims unless a justiciable controversy exists, meaning that there is a claim that is "capable of specific resolution by judgment rather than by presenting hypothetical facts that would form an advisory opinion." *Growe v. Simon*, 2 N.W.3d 490, 499 (Minn. 2024) (quotation omitted). A claim can be ripe if it seeks relief based on the "ripe or ripening seeds of an actual controversy." *See Harstad v. City of Woodbury*, 902 N.W.2d 64, 71 (Minn. App. 2017) (referencing the Declaratory Judgments Act, Minn. Stat. § 555.01-.16 (2016)), *aff'd*, 916 N.W.2d 540 (Minn. 2018). When UMB filed its petition in June 2020, One10 had already suspended construction and let its building permit expire. Further, UMB and One10 had already exchanged letters confirming a dispute as to UMB's obligations to disburse additional trust proceeds. Here, an actual controversy existed with respect to the bond disbursements and UMB's petition broadly sought an instruction as to whether it is justified in refusing to disburse additional bond proceeds. Because these postpetition events are part of this underlying controversy, the district court's decision does not raise ripeness concerns.

### B. The district court did not err by addressing whether the trustee was justified in withholding the third cost certification regardless of whether an event of default had occurred.

One10 additionally argues that the district court erred by addressing whether UMB was justified in withholding the third cost certification regardless of whether an event of default had occurred. One10 relies on *Roberge* in arguing that the supreme court rejected the argument that notice of the relief the opposing party seeks puts the litigant on notice of every theory under which the opposing party can secure the requested relief, meaning that One10's notice that UMB sought instruction that no further bonds were owed does not equate to adequate notice of UMB's theory of relief. *See* 67 N.W.2d at 402. However, the supreme court held in *Roberge* that the trial court improperly granted relief based on quantum meruit when the complaint only raised a breach-of-contract claim because the complaint could not be "fairly said" to spell out a quantum meruit claim. *See id.* Such a situation is not present here where, as stated above, the petition's fourth request broadly seeks instruction authorizing the trustee to take actions "as are consistent with and reasonably necessary to protect the . . . Trust Estates." This request invites the district court to consider whether there is a basis for ordering that the trustee need not issue the proceeds requested under the third cost certification, irrespective of whether an event of default occurred. Therefore, for the same reasons that the district court did not err by considering the postpetition events in ruling on UMB's petition, it also did not err by considering whether the trustee was justified in withholding the third cost certification regardless of whether an event of default occurred.

## II. The district court did not err by concluding that the indentures allow UMB to withhold the third cost certification in the absence of uncured events of default.

One10 argues that the district court erred by concluding that UMB was justified in not paying the third cost certification even in the absence of uncured events of default. In support of this argument, One10 points to section 403(b) of the indentures, arguing that this provision requires UMB to disburse the funds upon receipt of a properly completed request. One10 further contends that there was not an event of default at the time the city approved the third cost certification.

Appellate courts review a district court's interpretation of an unambiguous contract de novo. *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *rev. denied* (Minn. July 19, 2011). The interpretation of an ambiguous contract presents a question of fact. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003). The parties selected Kansas law to govern interpretation of the contracts. Minnesota courts traditionally enforce choice-of-law provisions, provided the parties acted "in good faith without an intent to evade the law." *Hagstrom v. Am. Cir. Breaker Corp.*, 518 N.W.2d 46, 48 (Minn. App. 1994). The parties do not dispute that Kansas law governs the interpretation of the indentures. Because the record does not reflect that the parties acted in bad faith in enacting this provision, nor is there any indication that this case implicates a conflict between Kansas and Minnesota law with respect to contract interpretation, we apply Kanas law. *See Vetter v. Security Continental Ins. Co.*, 567 N.W.2d 516, 521-22 (Minn. 1997) ("Because the choice of one state's law over another does not create an actual conflict, there is no choice of law issue.").

Kansas courts interpret contracts with the goal of implementing the parties' intent. *Harding v. Cap. Fed. Sav. Bank*, 556 P.3d 910, 919 (Kan. Ct. App. 2024). "If the plain language of the contract provision at issue is clear and unambiguous, this court should interpret the contract provision as clearly and unambiguously written." *Id.* Ambiguity exists when the language has "doubtful or conflicting meaning, as gleaned from a natural and reasonable interpretation of its language." *Id.* (quotation omitted).[3] Kansas courts can look to dictionary definitions to construe written instruments. *See State ex rel. Sec'y of Soc. & Rehab. Servs. v. Jackson*, 822 P.2d 1033, 1038 (Kan. 1991) (citing *Black's Law Dictionary* to define a term used in a trust).

At issue here is the interpretation of the indentures, particularly whether they allow the trustee to withhold the third cost certification in the absence of uncured events of default. Section 403(b) of the indentures provides that:

> The Trustee *shall disburse moneys* on deposit in the Project Fund from time to time to pay or as reimbursement for payment made for the TGT Eligible Expenses (other than Costs of Issuance), in each case within three Business Days after receipt by the Trustee of written disbursement requests of the Owner *properly completed in all respects and in substantially the form of* ***Exhibit D*** hereto, signed by the Authorized Owner Representative and approved by the Authorized Issuer Representative, *following satisfaction of all requirements of the Development Agreement for disbursal*.

(Emphases added.) In turn, Exhibit D requires that the requestor certify that "no Event of Default under the Development Agreement has occurred and is continuing and *no event or*

[3] Minnesota courts follow a similar approach with respect to contract interpretation. *See, e.g.*, *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs.*, 913 N.W.2d 687, 692 (Minn. 2018).

*condition has occurred which, with notice or passage of time or both, would constitute an Event of Default* under the Development Agreement." (Emphasis added.) Indeed, the third cost certification included a provision in which the developer certified that "the Developer is in compliance, in all material respects, with all further terms of the [Development] Agreement." Section 403(b) additionally includes a provision stating that "the Trustee *may* rely upon such written requests and accompanying certificates and statements and shall not be required to make any independent investigation in connection therewith."

The district court determined that UMB, as trustee, was justified in not paying the third costs certification regardless of whether there was an event of default because One10 could not truthfully certify that "no event or condition has occurred which, with notice [or] passage of time or both, would constitute an Event of Default under the Development Agreement." The district court reasoned that One10 could not truthfully make this certification because there was "no Construction Loan, the Hotel Project was suspended, and One10 had not articulated a plan to obtain the financing necessary to complete the Hotel Project by the performance milestone of July 1, 2021." Although the district court noted that section 403(b) allows the trustee to rely on written requests and certificates, such as the third cost certification, it determined that this permissive language does not require the trustee to rely on "patently false" certifications.

Irrespective of whether the contract is ambiguous or unambiguous, the district court did not err under the less deferential de novo standard, which is applied to unambiguous contracts, in determining that UMB is not required to pay the third cost certification regardless of whether an event of default had occurred because the indentures provide the trustee with discretion to withhold payment in this situation. Section 403(b) of the indentures require that the certification must be "properly completed in all respects." "Proper," as UMB notes, means "[a]ppropriate, suitable, fit, right or correct; according to the rules." *Black's Law Dictionary* 1472 (12th ed. 2024) (defining proper). In carrying out this requirement, section 403(b) states that the trustee "*may* rely upon such written requests and accompanying certificates." (Emphasis added.) The use of the permissive word "may" indicates that the trustee retains discretion to independently inquire into whether the certification was properly completed. *See Welsch v. Trivestco Energy Co.*, 221 P.3d 609, 615 (Kan. Ct. App. 2009) (holding that, as a general rule, "may" relates to permissive conduct), *rev. denied* (Kan. Dec. 7, 2010). As UMB notes, courts are to avoid interpreting a contract in a way that renders a term meaningless. *LDF Food Grp. v. Liberty Mut. Fire Ins.*, 146 P.3d 1088, 1095 (Kan. Ct. App. 2006). Therefore, the trustee had the discretion to determine that the third certification was not completed substantially in the form of Exhibit D, which in turn required certification that no event has occurred that *would* become an event of default with passage of time.[4]

Indeed, the record indicates that events existed that would become events of default with the passage of time. Under the development agreement, an event of default includes

[4] We note that there is a discrepancy between Exhibit D, which requires certification that no event has occurred which "would constitute an Event of Default under the Development Agreement," and the language that appears in the third cost certification that One10 submitted, which merely includes a certification that the developer is materially compliant with the development agreement. This discrepancy does not affect our analysis because an event of default in the development agreement includes a lack of material compliance with the development agreement.

"failure or delay by either party to perform any term or provision of this Agreement, after receiving written notice and failing to cure," as well as a "breach by developer of the representations and warranties set forth in this Agreement and failure to cure or correct the same." Multiple events existed that would be breaches of the development agreement with notice and passage of time. First, because One10 was unable to secure a construction loan, it failed to secure adequate funding, as required by section 401. Second, One10's suspension of the project and the expiration of the construction permit would, with passage of time, violate the requirements set out in section 601 and the December 31, 2020, completion date set out in Exhibit J. These delays would not be the type of event "outside the reasonable control" contemplated as a permitted delay under section 102 of the development agreement. Therefore, there are events that would, with notice or passage of time, become events of default under the development agreement. The district court thus properly determined that the trustee had the discretion to withhold the funds requested by the third cost certification because, given that conditions existed that would become events of default, One10 could not properly certify the third cost certification as required by section 403(b) of the indentures.

**Affirmed.**