

*This opinion is nonprecedential except as provided by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
A24-1254**

Monica Mohn, et al.,
Appellants,

vs.

City Homes on Park Avenue Owners' Association,
Respondent.

**Filed April 7, 2025
Affirmed in part and reversed in part
Kirk, Judge***

Hennepin County District Court
File No. 27-CV-21-7518

David J. McGee, Natalie R. Walz, McGee Walz PA, Minneapolis, Minnesota (for appellants)

William A. Celebrezze, Goetz & Eckland P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Kirk, Judge.

NONPRECEDENTIAL OPINION

KIRK, Judge

In this dispute concerning whether appellant-unit owners or respondent-association is responsible for common element repairs, appellants argue that the district court erred by

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

determining that respondent did not breach the declaration or the implied covenant of good faith and fair dealing by assessing appellants' units for the cost of the masonry work on appellants' building. Because the district court misapplied the declaration by allowing these assessments on appellants' units, we reverse in part. But because appellants failed to prove that respondent breached the implied covenant of good faith and fair dealing, we affirm in part.

FACTS

Respondent City Homes on Park Avenue Owners' Association administers a common interest community in Minneapolis that was formed in December 1999 and is governed by the Minnesota Common Interest Ownership Act, Minn. Stat. §§ 515B.1-101 to .4-118 (2024). The community is comprised of 19 buildings, three of which were constructed over 120 years ago. Appellants Monica Mohn and Shawn Thorson own the units in one of the 120-year-old buildings, which was converted into a duplex.

In February 2021, appellants began the process of replacing the wooden decks attached to their units, and when the construction crew removed the decks, they identified “a giant hole where the bricks had fallen out and the mortar was so decayed [that a person] could just literally pull a brick out underneath.” Mohn alerted the association, which quickly approved a contract for the masonry repair, and the work began at the start of March 2021, before the association informed Mohn that her unit would be assessed for the cost of the masonry work. The mason testified that the work he performed was separate from the deck work, that failure to perform the masonry work prior to the deck installation

could cause the deck to collapse, and that the masonry work was required for safety. The association paid the mason for his work.

In a meeting in March 2021, the board unanimously approved a resolution to impose a special assessment for the cost of the masonry work against appellants' units alone. In the resolution, the board concluded that the masonry was "in immediate need of repair and replacement," and failure to perform the work would result in "substantial damage" to the building and "threaten the safety and security of persons in that building." The resolution also stated that the building had "special needs" and that appellants' units would be the "only units that will benefit from this expense." Appellants opposed the assessments and the board rejected appellants' demand to rescind the resolution.

In June 2021, appellants filed their complaint against the association asserting claims, among others, for breach of contract and breach of implied covenant of good faith and fair dealing. The parties filed cross-motions for summary judgment, and the district court issued its order on the motions in August 2022. The district court denied appellants' motion for summary judgment and granted the association's motion in part and denied it in part, determining that the masonry was a common element for which the association is responsible, but that the declaration allowed the association to assess common-element repairs to fewer than all units.

The case proceeded to a bench trial in June 2023, and the district court issued its order in October 2023. The district court found that the masonry was a common element under the declaration, "the masonry work was integral to completion of the deck reconstruction," and the repairs presented a "unique circumstance" that "solely benefitted

[appellants'] units.” The district court determined that the association was permitted to assess the cost of the masonry work solely against appellants’ units as a result of these findings. The district court also determined that appellants did not prove breach of the implied covenant of good faith and fair dealing because the governing documents supported the assessments, appellants did not demonstrate how the association’s decision violated any rules, and referencing the age of the building in the resolution did not demonstrate an ulterior motive because the benefit was unique to appellants’ units. The district court declared that the resolution was an enforceable obligation against appellants, and that appellants’ failure to pay the assessments was a breach of contract.

Appellants filed posttrial motions seeking amended findings or, alternatively, a new trial in March 2024. The district court denied all of appellants’ motions, determining that the record supported the district court’s findings, appellants asserted new theories and arguments not previously presented, and that, even if it could reach appellants’ new theories and arguments, they lacked merit.

This appeal follows.

DECISION

I. The association breached the contract because the cost of the masonry work cannot be assessed against appellants’ units alone.

Under the Minnesota Common Interest Ownership Act, common interest communities, such as “condominiums,” are managed by an “association,” and are governed

by a “declaration.” Minn. Stat. § 515B.1-103(4), (11), (16).¹ A “declaration” is the instrument “that creates a common interest community,” Minn. Stat. § 515B.1-103(16), is binding on the association and the unit owners, Minn. Stat. § 515B.2-101, and is treated as a contract between the association and the unit owners, *Swanson v. Parkway Ests. Townhouse Ass’n*, 567 N.W.2d 767, 768 (Minn. App. 1997). Thus, the declaration is “interpreted according to contract interpretation principles.” *Harkins v. Grant Park Ass’n*, 972 N.W.2d 381, 388 (Minn. 2022). Interpreting a contract is a question of law, which we review de novo. *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *rev. denied* (Minn. July 19, 2011).

Appellants argue that the association breached the declaration.² “Failure to perform under a contract when performance is due establishes an immediate breach.” *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 837 (Minn. 2011). “In interpreting a contract, the language is to be given its plain and ordinary meaning.” *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). A contract is interpreted “as a whole,” and reviewing courts “attempt to harmonize all [of its] clauses” and “attempt to avoid an interpretation of the contract that would render a

¹ We begin by noting that all provisions of the declaration that are relevant to this analysis are consistent with the act.

² The association argues that appellants raise new theories and factual arguments that cannot be considered by our court as they were not raised to the district court prior to appellants’ posttrial motions. Our analysis does not rely on any of appellants’ purportedly new theories or factual arguments, and thus we need not address the association’s argument.

provision meaningless.” *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525-26 (Minn. 1990).

Under the terms of the declaration, the masonry along the side of appellants’ units is a “common element” and the appellants’ decks are a type of common element assigned to fewer than all units that is called a “limited common element.” The declaration explicitly states that the association “shall be responsible for the maintenance, repair, alteration, improvements and replacement of the Common Elements and, to the extent determined appropriate by the Board, the Limited Common Elements,”³ and that the unit owner is responsible for the work in their unit but also “to the extent determined by the Board, for the Limited Common Elements related to such Unit.” This grants the association discretion to determine whether expenses for limited common elements, not common elements, should be allocated to all units or only the units to which the limited common element is assigned. The declaration’s language unambiguously does not allow the association to allocate costs for common elements to fewer than all units.

The district court and association relied on the following provision⁴ of the declaration to levy the assessments for the cost of the masonry work against appellants’ units alone:

³ The declaration identifies at least one instance in which the association may assess work on a common element against fewer than all units and that is when a unit owner damages a common element; in that instance the association may assess the responsible unit owner for the cost of the necessary repairs. It is possible that the declaration would permit assessing the cost for work on a common element to fewer than all units in other circumstances, but those arguments are not before this court.

⁴ The district court relied on three provisions, but the two not mentioned in this analysis are not relevant. One of those provisions is very similar to the provision quoted in this

The Association may assess any Common Expense benefitting fewer than all of the Units against the Units benefitted. In that case the Common Expense shall be allocated among all of the Units benefitted by such Common Expense in proportion to their Common Expense liability Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Unit or Units to which that Limited Common Element was assigned at the time the expense was incurred[.]

(referencing Minn. Stat. § 515B.3-115(e)(1)). But this provision uses the term “common expense,” which is different from a “common element.” The declaration states that “common expenses” are “expenditures made or liabilities incurred by or on behalf of the Association together with any allocations for reserves,” and the declaration’s non-exhaustive list of common expenses includes, among others, premiums for the association’s insurance policy, utility charges, legal and accounting fees, and “all costs for the maintenance, operation, alteration, improvement and replacement of the Common Elements.” Therefore, while common-element work is a common expense, the terms are not interchangeable because common expenses include more than the costs associated with common elements.

This interpretation is consistent with the association’s “Maintenance Responsibility Matrix” that shows the division of responsibility and funding sources between the association and unit owners. In that matrix, the item “deck,” which is a limited common element, and its associated maintenance and service needs, is identified as being the

opinion and the other does not mention when assessments may be levied against fewer than all units.

responsibility of the association, which is consistent with the understanding of it as a type of common element, but the matrix assigns the funding source for the work to “owner assessment.” This is consistent with the portion of the declaration that allows for common expenses to fund the work for a limited common element and later assess the cost of the work on the limited common element to the unit owner. Under the item “siding—masonry,” which is a common element, the matrix allocates the responsibility to the association and assigns the funding source to the association, specifically either the “operating expense” or the “reserve expense.” This funding allocation is consistent with the interpretation of the declaration that the association is responsible for common elements and that the funds are provided by the association.

The association interprets the above provision of the declaration to permit assessing the costs of common-element work against fewer than all units so long as the common-element work benefits fewer than all units. The association seems to rely on the sentence, “Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Unit or Units to which that Limited Common Element was assigned at the time the expense was incurred.” By interpreting “associated with” broadly and exchanging “common element” for “common expense,” this provision would permit the conclusion reached by the association. But we cannot vary the plain language of the declaration. The association also argued that, because the masonry work was necessary for the deck repairs and the decks benefit fewer than all units, the masonry work benefits fewer than all units. However, the association’s interpretation is inconsistent with the provision that the association *shall be responsible* for

funding common-element work outside of limited exceptions and is inconsistent with the Maintenance Responsibility Matrix.

Here, the district court found that the masonry was a common element under the declaration and neither party disagrees with this finding. Therefore, the declaration does not permit assessing the cost of the masonry work against appellants' units alone and the district court erred in concluding that appellants breached the declaration. Rather, interpreting the declaration as provided above, the association has breached the declaration by assessing the cost of the masonry work against appellants' units alone, and we reverse the district court's order and judgment on this issue.

II. The association did not breach the implied covenant of good faith and fair dealing when it assessed the cost of the masonry work against appellants' units.

Appellants next argue that the association breached the implied covenant of good faith and fair dealing by treating their units differently. The association contends that appellants' building had "special needs" and that this provided sufficient grounds under the declaration to levy the assessments for the cost of the masonry work against only appellants' units. The district court found that appellants did not identify specific guidelines that the association must follow when determining whether to levy assessments against fewer than all units and the age of appellants' building created a "unique circumstance" for the association under which only appellants benefitted. The district court then determined that the association's decision to levy the assessments against appellants' units alone was at the discretion of the association and the exercise of discretion was

reasonable, thus the district court concluded that the association did not breach the implied covenant.

“When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the district court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard.” *In re Est. of Sullivan*, 868 N.W.2d 750, 754 (Minn. App. 2015) (quotation omitted). “Under Minnesota law, every contract includes an implied covenant of good faith and fair dealing requiring that one party not ‘unjustifiably hinder’ the other party’s performance of the contract.” *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 502 (Minn. 1995). To prevail on a claim for breach of the implied covenant of good faith and fair dealing, “a party must establish bad faith by demonstrating that the adverse party has an ulterior motive for its refusal to perform a contractual duty.” *Minnwest Bank Cent. v. Flagship Props. LLC*, 689 N.W.2d 295, 303 (Minn. App. 2004). A party does not act in bad faith when they act upon an “honest mistake regarding one’s rights or duties.” *Cent. Specialties, Inc. v. Minn. Dep’t of Transp.*, 5 N.W.3d 409, 415 (Minn. App. 2024) (quotation omitted), *rev. denied* (Minn. July 9, 2024). When a party to a contract merely exercises their discretion under the contract, this does not demonstrate bad faith. *See Sterling Cap. Advisors, Inc. v. Herzog*, 575 N.W.2d 121, 125 (Minn. App. 1998) (demonstrating that a party’s use of discretion in exercising a contract right does not breach the implied covenant).

Here, appellants have not demonstrated that the association acted with any ulterior motive. Although appellants assert that the association was motivated by retribution for a

previous lawsuit brought by appellant Mohn against the association, the district court found that this was speculation and was insufficient to demonstrate ulterior motive. The record supports this finding and demonstrates that any error by the association seems to have been an honest mistake given that the district court also agreed with the association's interpretation. Because the district court's findings are supported by the record and there is no evidence that the association acted with an ulterior motive, appellants' argument is unpersuasive. Therefore, we affirm the district court's judgment on this issue.

Affirmed in part and reversed in part.