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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1171**

North Country Contracting, LLC, et al.,
Respondents,

vs.

Citizens Alliance Bank,
Appellant,

Nick Woodard,
Defendant.

**Filed April 28, 2025
Reversed and remanded
Johnson, Judge**

Clay County District Court
File No. 14-CV-21-2671

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Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Schmidt,
Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A company borrowed money from a bank to finance the purchase of excavating equipment. The borrower granted the bank a security interest in the equipment, but the

bank did not timely perfect its security interest because the bank filed a financing statement in the wrong state. As a consequence, a different lender was able to enforce a security interest in the borrower's equipment. The borrower sued the bank that did not timely perfect its security interest. After a court trial, the district court found that the bank had breached the loan agreement by not timely perfecting its security interest. The district court entered judgment in favor of the borrower in the amount of the outstanding loan balance. We conclude that the plain language of the loan agreement does not impose on the bank a duty to perfect its security interest. Therefore, we reverse and remand.

FACTS

North Country Contracting, LCC (NCC), is a North Dakota limited liability company with its principal place of business in Moorhead, Minnesota. During the period of time relevant to this appeal, NCC was engaged in the business of providing excavation services at construction sites. NCC is solely owned by Mitchell Fuchs; his wife, Heather Fuchs, is employed by the company as a financial manager.

In July 2017, NCC borrowed approximately \$1,393,000 from Bell Bank, which has its principal place of business in Fargo, North Dakota, and multiple branch offices in North Dakota and Minnesota. The loan was secured by a security interest in all assets then owned or thereafter acquired by NCC. Bell Bank perfected its security interest by filing a financing statement with the North Dakota Secretary of State.

Approximately four years later, in the spring of 2020, Mitchell Fuchs spoke with Nick Woodard, then a loan officer at Citizens Alliance Bank, which has its principal corporate office in Clara City, Minnesota, and multiple branch offices in western

Minnesota, among other places. Mitchell Fuchs expressed concerns about NCC's limited cash flow, which he attributed in part to the high cost of NCC's equipment leases. Based on this and subsequent conversations, Woodard arranged for Citizens Alliance Bank to lend NCC money so that NCC could purchase its leased equipment and thereby reduce or eliminate its lease expenses.

In June 2020, Citizens Alliance Bank prepared five documents using commercially available loan-documentation software that allows banks to customize form documents: (1) a three-page "promissory note," (2) a seven-page "business loan agreement," (3) a six-page "commercial security agreement," which identified nine pieces of excavating equipment as collateral, (4) a four-page "commercial guarantee" to be signed by Mitchell Fuchs, and (5) a four-page "commercial guarantee" to be signed by Heather Fuchs. On June 8, 2020, the Fuchs and Woodard signed the loan documents (collectively, the loan agreement). Citizens Alliance Bank transmitted the loan proceeds of \$396,952 directly to the company from which NCC had leased its equipment. The following day, Citizens Alliance Bank filed a financing statement with the Minnesota (not North Dakota) Secretary of State.

After borrowing money from Citizens Alliance Bank in June 2020, NCC stopped making payments on its loan from Bell Bank. In December 2020, Bell Bank sued NCC and Mitchell Fuchs in a state trial court in North Dakota. For relief, Bell Bank requested a money judgment against the defendants, jointly and severally, and the recovery of NCC's collateral. In February 2021, Bell Bank moved for summary judgment, seeking a money judgment and foreclosure on its security interest in NCC's collateral. In May 2021, the

North Dakota trial court granted Bell Bank's motion and entered judgment in favor of Bell Bank. The court concluded that Bell Bank was entitled to damages of approximately \$617,000 plus interest and was entitled to foreclose on its senior security interest in NCC's collateral. The collateral later was sold, and the net proceeds of approximately \$577,000 were used to partially satisfy the judgment.

During the North Dakota litigation, the Fuchses, Woodard, and Citizens Alliance Bank came to realize that Citizens Alliance Bank had filed its financing statement in the wrong state. In April 2021, Mitchell Fuchs sent a text message to Woodard (who then was no longer employed by Citizens Alliance Bank) to ask whether Citizens Alliance Bank had filed a financing statement with respect to NCC's collateral. Woodard responded by sending Mitchell Fuchs an image of the financing statement that had been filed with the Minnesota Secretary of State. In May 2021, Mitchell Fuchs met with a Citizens Alliance Bank loan officer and informed her of Bell Bank's contention that Citizens Alliance Bank did not timely perfect its security interest and that, as a consequence, Bell Bank was entitled to foreclose on equipment in which both banks had a security interest. Citizens Alliance Bank immediately filed a financing statement with the North Dakota Secretary of State. In July 2021, NCC stopped making payments on its loan from Citizens Alliance Bank.

In August 2021, NCC and the Fuchses commenced this action against Citizens Alliance Bank and Woodard, asserting ten claims. In the introductory paragraph, the plaintiffs alleged that "Woodard and [Citizens Alliance Bank] promised that [Citizens Alliance Bank] could make a loan to NCC that would protect its core excavating equipment" and "repeatedly assured plaintiffs that the excavating equipment would be

protected,” that the plaintiffs relied on those promises when borrowing money from Citizens Alliance Bank, and that Citizens Alliance Bank and Woodard “utterly failed to live up to their promises, representations, and agreement to protect the excavating equipment from other creditors, including by obtaining a first-priority security interest” in NCC’s equipment. Citizens Alliance Bank answered and asserted four counterclaims, including breach of contract. Woodard answered separately.

In June 2022, Citizens Alliance Bank and Woodard filed a motion for summary judgment on the plaintiffs’ claims and Citizens Alliance Bank’s counterclaims. The district court granted the motion on eight of the plaintiffs’ claims against Citizens Alliance Bank but denied the motion with respect to the plaintiffs’ claims of breach of contract and breach of the covenant of good faith and fair dealing. The district court also denied Citizens Alliance Bank’s motion with respect to its breach-of-contract claim. The district court reasoned that the loan agreement is “unequivocally ambiguous” with respect to whether Citizens Alliance Bank was contractually required to timely perfect a security interest in NCC’s collateral.

The district court conducted a court trial on four days in September and October of 2023. NCC and the Fuchses called five witnesses, including Mitchell Fuchs, Heather Fuchs, and Woodard. Citizens Alliance Bank called three witnesses, including one of its loan officers and an expert on banking practices. In their proposed findings, the parties reiterated legal arguments they had made at the summary-judgment stage.

In January 2024, the district court filed findings of fact, conclusions of law, and an order for judgment. The district court found that Citizens Alliance Bank breached the loan

agreement by not timely perfecting its security interest and that Citizens Alliance Bank's breach allowed Bell Bank to obtain a court order for the turnover of NCC's equipment. The district court ruled against Citizens Alliance Bank on its breach-of-contract claim on the ground that, although NCC and the Fuchses defaulted on the loan, Citizens Alliance Bank had committed a prior breach of the loan agreement. For a remedy, the district court ordered a money judgment in favor of NCC in an amount equal to the unpaid balance of its loan from Citizens Alliance Bank and a declaration that NCC's repayment obligation is satisfied. The district court ruled against the plaintiffs on their claim against Citizens Alliance Bank of breach of the covenant of good faith and fair dealing. In February 2024, Citizens Alliance Bank filed a motion for amended findings or a new trial, which the district court granted in small part and denied in substantial part. Citizens Alliance Bank appeals.

DECISION

Citizens Alliance Bank argues that the district court erred by entering judgment in favor of NCC and the Fuchses. Citizens Alliance Bank makes five specific arguments: (1) the district court erred by determining that the loan agreement is ambiguous and that parol evidence is necessary to interpret the loan agreement, (2) the district court erred by finding that Citizens Alliance Bank breached the loan agreement by not timely perfecting its security interest, (3) the district court erred by misapplying a statute governing credit agreements, (4) the district court erred by awarding damages to NCC and the Fuchses despite finding that NCC's evidence of lost profits is speculative, and (5) the district court erred by denying Citizens Alliance Bank's post-trial motion for amended findings or a new trial. We conclude below that Citizens Alliance Bank's first and second arguments have

merit. That conclusion is a sufficient reason to reverse the district court's decision, which makes it unnecessary to consider Citizens Alliance Bank's third, fourth, and fifth arguments.

The parties' arguments require the court to interpret the loan agreement, which is a contract. See *Westland Capital Corp. v. Lucht Eng'g, Inc.*, 308 N.W.2d 709, 714 (Minn. 1981). "The primary goal of contract interpretation is to ascertain and enforce the intent of the parties." *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009). The corollary to this principle is that "the intent of the parties is determined from the plain language of the instrument itself," so long as the agreement is unambiguous. *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). "When the language is clear and unambiguous, we enforce the agreement of the parties as expressed in the language of the contract." *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). Contractual language is ambiguous "if, judged by its language alone and without resort to parol evidence, it is reasonably susceptible of more than one meaning." *Metro Office Parks Co. v. Control Data Corp.*, 205 N.W.2d 121, 123 (Minn. 1973). "We construe a contract as a whole and attempt to harmonize all of its clauses." *Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). We apply a *de novo* standard of review to the question whether a contract is ambiguous. *Dykes*, 781 N.W.2d at 582.

The district court's decision is based on one sentence that appears in two places in the 24 pages that comprise the loan agreement. The sentence appears in the business-loan agreement and the commercial-security agreement in a paragraph captioned, "Default." The "default" paragraph begins, "Each of the following shall constitute an event of default

under this agreement” Following that introductory clause are ten sentences describing ten types of default. The sentence on which the district court relied is captioned “Defective Collateralization” and states, “This agreement or any of the related documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.”

In its summary-judgment order, the district court considered the defective-collateralization provision and other provisions of the loan agreement and determined that the loan agreement is ambiguous with respect to whether Citizens Alliance Bank was contractually required to perfect its security interest in NCC’s collateral. In its order following trial, the district court again determined that the loan agreement is ambiguous with respect to whether Citizens Alliance Bank had a contractual duty to “protect” NCC’s collateral by timely perfecting its security interest. In light of the perceived ambiguity, the district court considered the trial testimony of Mitchell Fuchs, Heather Fuchs, Woodard, and Citizens Alliance Bank’s chief credit officer and found that Citizens Alliance Bank “breached the contract by failing to perfect a valid security interest in the Excavating Equipment.”

On appeal, Citizens Alliance Bank’s primary argument is that the district court erred, as a matter of law, by determining that the loan agreement is ambiguous with respect to whether Citizens Alliance Bank had a contractual duty to timely perfect its security interest. Citizens Alliance Bank contends that three other provisions in the loan agreement make clear that it did *not* have such a duty. First, the promissory note states, “All such parties agree that lender may . . . release any . . . collateral . . . or impair, fail to realize upon

or perfect lender's security interest in the collateral" Second, the commercial-security agreement states, "Lender shall not be required to take any steps necessary to preserve any rights in the collateral against prior parties, nor to protect, preserve or maintain any security interest given to secure the indebtedness." Third, the commercial-guaranty agreements state that the Fuches, as guarantors, "waive[] any right to require Lender . . . to proceed directly against or exhaust any collateral held by lender from borrower."

The three contractual provisions identified by Citizens Alliance Bank plainly state that Citizens Alliance Bank is not contractually required to perfect its security interest in NCC's collateral. To be sure, lenders generally have a self-interest in perfecting their security interests in borrowers' collateral. But the parties' loan agreement does not impose such a contractual duty on Citizens Alliance Bank. The district court reasoned that the defective-collateralization provision conflicts with the provisions identified by Citizens Alliance Bank. But a court must "construe a contract as a whole and attempt to harmonize all of its clauses." *Storms, Inc.*, 883 N.W.2d at 776.

Contractual provisions may be harmonized by applying the principle that "the more specific language takes precedence over the more general language." *Bank Midwest, N.A. v. Lipetzky*, 674 N.W.2d 176, 181 n.8 (Minn. 2004). In this case, the defective-collateralization provision is the more general provision. The provision states that it applies if the loan agreement "ceases to be in full force and effect . . . at any time and for any reason." The provision includes one example: a "failure of any collateral document to create a valid and perfected security interest or lien." But that example is quite general because it does not explain why a collateral document might fail to create a valid and

perfected security interest or lien and, in addition, does not identify the party that might be responsible for such a failure. In contrast, the contractual provisions identified by Citizens Alliance Bank are specific in stating that “lender may . . . fail to realize upon or perfect lender’s security interest in the collateral”; that “Lender shall not be required to take any steps necessary to preserve any rights in the collateral against prior parties, nor to protect, preserve or maintain any security interest given to secure the indebtedness”; and that the guarantors “waive[] any right to require lender . . . to proceed directly against or exhaust any collateral held by lender from borrower.” The provisions identified by Citizens Alliance Bank are more specific than the defective-collateralization provision.

In harmonizing various contractual provisions, we presume that parties to a contract “intended the language used to have effect,” and “we will attempt to avoid an interpretation of the contract that would render a provision meaningless.” *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 526 (Minn. 1990). Applying that principle here, we interpret the defective-collateralization provision to apply to situations in which a collateral document fails to create a valid and perfected security interest or lien for reasons other than the lender’s inadvertent failure to file a financing statement in the correct state. *See Storms, Inc.*, 883 N.W.2d at 777 (interpreting two contractual provisions to not be in conflict “because they address different situations”). To ensure that the contractual provisions identified by Citizens Alliance Bank are not rendered meaningless, we interpret them to apply if a borrower seeks to prove that a lender defaulted by not timely perfecting a security interest in the lender’s collateral. *See id.*

In addition, contractual provisions may be harmonized by interpreting them in the context of language in nearby or related provisions of the contract. *Kuhn v. Dunn*, 8 N.W.3d 633, 638 (Minn. 2024). The defective-collateralization provision does not refer to either the lender or the borrower in describing the reason for a defective-collateralization default. But two nearby provisions make clear that the defective-collateralization provision applies only if the *borrower* causes a “failure of any collateral document to create a valid and perfected security interest or lien.” First, the list of ten types of default are followed by a provision captioned, “Right to Cure,” which allows the *borrower*—not the lender—to cure any of the types of defaults described in that paragraph. Second, the following paragraph, which is entitled “Effect of an Event of Default,” provides, “If any event of default shall occur, . . . all commitments and obligations of *lender* under this agreement or the related documents or any other agreement immediately will terminate . . . and, at *lender’s* option, all indebtedness immediately will become due and payable” (Emphasis added.) The fact that only the borrower is allowed to cure a default described in the “Default” paragraph, and the fact that a default described in the “Default” paragraph relieves the *lender* of “all commitments and obligations” under the agreement, makes clear that the defective-collateralization provision does not impose any contractual duties on the lender, such as a duty to perfect a security interest in the borrower’s collateral.

Again, a contract is ambiguous only if, when “judged by its language alone and without resort to parol evidence, it is reasonably susceptible of more than one meaning.” *Metro Office Parks Co.*, 205 N.W.2d at 123. In this case, the parties’ loan agreement, when interpreted “as a whole,” is unambiguous in providing that Citizens Alliance Bank did not

have a contractual duty to perfect its security interest in NCC's collateral. *See Storms, Inc.*, 883 N.W.2d at 776. Accordingly, "the agreement of the parties as expressed in the language of the contract" must be enforced, without reference to parol evidence. *See Dykes*, 781 N.W.2d at 582.

Thus, the district court erred as a matter of law by determining that the loan agreement is ambiguous with respect to whether Citizens Alliance Bank had a contractual duty to perfect its security interest. Consequently, the district court also erred by admitting parol evidence, by relying on parol evidence to interpret the loan agreement, and by concluding that Citizens Alliance Bank breached the loan agreement by not timely perfecting its security interest in NCC's collateral. Given this resolution of Citizens Alliance Bank's first and second arguments, it is unnecessary to consider its other arguments. Therefore, we reverse the district court's decision and judgment, and we remand for further proceedings, including the entry of judgment in favor of Citizens Alliance Bank on all claims and counterclaims that were tried.

Reversed and remanded.