STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0326

Great Plains Educational Foundation, Inc.,
Appellant,

vs.

Student Loan Finance Corporation, et al.,
Respondents.

Filed December 28, 2020
Reversed and remanded
Slieter, Judge

Hennepin County District Court
File No. 27-CV-19-13023

Vincent D. Louwagie, Philip J. Kaplan, Anthony Ostlund Baer & Louwagie P.A., Minneapolis, Minnesota (for appellant)

Douglas L. Elsass, Benjamin C. Johnson, Nilan Johnson Lewis PA, Minneapolis, Minnesota (for respondents)

Considered and decided by Slieter, Presiding Judge; Bratvold, Judge; and Cochran, Judge.

S Y L L A B U S

1. The presence of both a no-reliance and an integration clause in a settlement agreement does not as a matter of law bar a subsequent claim for fraudulent inducement of that settlement agreement based on alleged oral misrepresentations unless there are express terms in the settlement agreement that contradict the alleged oral misrepresentations.

2. A claim for fraudulent inducement of a settlement agreement does not constitute an impermissible attack on the judgment resulting from that settlement agreement.

O P I N I O N

SLIETER, Judge

Appellant Great Plains Educational Foundation, Inc. (Great Plains) challenges the rule 12 dismissal of its complaint asserting fraud claims against respondents, Student Loan Finance Corporation, et al. (SLFC).[1] The complaint alleges that SLFC fraudulently misrepresented or omitted its assets and liabilities during settlement negotiations with Great Plains, induced Great Plains to enter into a settlement agreement, and later fraudulently transferred assets. Great Plains argues that the district court erred by determining that its fraud claims are precluded by the no-reliance and integration clauses in the settlement agreement and that its fraud complaint constitutes an impermissible collateral attack on the judgment of dismissal which resulted from the prior settlement agreement. Because Great Plains's fraud claims are not as a matter of law barred by the no-reliance and integration clauses of the prior settlement agreement, nor do they constitute an impermissible attack on the judgment of dismissal resulting from the prior settlement agreement, we reverse and remand.

[1] Great Plains is a non-profit corporation formed in 1978 to assist in delivering federal student loans. SLFC is a for-profit corporation formed as a wholly-owned subsidiary of Great Plains in 1997.

FACTS

In 2014, Great Plains brought suit against SLFC for breach of a $13.25 million promissory note. SLFC had purchased stock from Great Plains in 1999 in exchange for the promissory note but failed to make payment according to its terms. Great Plains sought to recover the note's full principal balance plus interest. SLFC acknowledged that it owed Great Plains $13.25 million. In 2015, the parties began settlement negotiations.

Greats Plains asserts that, during these settlement negotiations, SLFC "repeatedly represented" through oral statements and financial disclosures that it had only two sources to fund a settlement: proceeds from a vendor's interest in a contract for deed, and money due under a licensing agreement.

In February 2017, SLFC's president reiterated these representations during a settlement conference before the district court, indicating that SLFC could not borrow funds to support a settlement because it had no assets to pledge as security for a loan.

In April 2017, Great Plains and SLFC executed a settlement agreement. The settlement agreement provided that, among other things, SLFC would pay Great Plains $350,000 in cash upon execution, transfer to Great Plains its vendor's interest in a contract for deed, and pay 75% of the principal balance from the $10 million licensing agreement in annual installments. The settlement agreement also provided that SLFC's obligations pursuant to the promissory note would be deemed satisfied, all claims asserted by either party would be dismissed with prejudice, and the parties agreed to "release and discharge one another" from "any and all" claims related to or arising out of the lawsuit.

In 2019, Great Plains brought this action against SLFC seeking money damages, alleging fraudulent misrepresentation and fraudulent omission in the inducement of the settlement agreement, and fraudulent transfer pursuant to Minn. Stat. § 513.44 (2018).

SLFC, relying on the settlement agreement, moved to dismiss pursuant to Minn. R. Civ. P. 12.02(e) for failure to state a claim upon which relief can be granted. The district court dismissed Great Plains's complaint in its entirety, determining that the action was precluded by the no-reliance and integration clauses in the settlement agreement. The district court also deemed the action an improper collateral attack on the judgment of dismissal. The district court also dismissed Great Plains's Minnesota Uniform Voidable Transfer Act (MUVTA) claim for lack of a viable fraud claim and lack of a debtor-creditor relationship. Great Plains appeals.

ISSUES

I. Did the district court properly conclude that the no-reliance and integration clauses of the settlement agreement precluded Great Plains's fraud claims that are based on inducement of the settlement agreement?

II. Did the district court properly conclude that Great Plains's action was an impermissible attack on the judgment of dismissal?

ANALYSIS

"When reviewing a case dismissed pursuant to Minn. R. Civ. P. 12.02(e) for failure to state a claim on which relief can be granted, the question before [appellate courts] is whether the complaint sets forth a legally sufficient claim for relief." *See Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). Appellate courts review the legal sufficiency of the claim for relief *de novo*, *id.*, and "consider only the facts alleged in the

complaint, accepting those facts as true," *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn. 2013) (quotation omitted).

As a threshold matter, SLFC claims that Great Plains's complaint violates the election-of-remedies doctrine and the district court therefore properly dismissed the complaint. We disagree. The election-of-remedies doctrine dictates that a party "who has been induced to enter a contract by fraudulent misrepresentations may elect to rescind the contract or sue for damages." *Anders v. Dakota Land & Dev. Co.*, 289 N.W.2d 161, 163 (Minn. 1980); *see also U.S. Installment Realty Co. v. De Lancy Co.*, 188 N.W. 212, 214 (Minn. 1922) (stating "[a party] cannot affirm a part of the contract and also rescind a part of it"). In cases where a party elects to rescind the contract, the "'party seeking such relief must properly proceed to avoid the agreement; that is, [the party] must seek rescission but not damages, and [the party] cannot rescind in part and affirm in part. [The party's] rescission of the contract must be in toto.'" *Fouquette v. First Am. Nat.'l Securities Inc.*, 464 N.W.2d 760, 763 (Minn. App. 1991) (quoting *Atcas v. Credit Clearing Corp.*, 197 N.W.2d 448, 456 (1972)).

Great Plains's fraud action does not seek rescission of the settlement agreement but instead seeks a legal remedy of money damages for alleged fraud in the formation of the settlement agreement. This issue was addressed in *Mlnazek v. Libera*, in which plaintiff Mlnazek alleged his former business partner and their insurance company conspired to convince him to sign an agreement that released the insurance company from liability for all claims related to their firm's insurance policy. 80 N.W. 866, 866-67 (Minn. 1899). Mlnazek then brought an action to reform the settlement agreement. *Id.* The supreme court

rejected Mlnazek's request to reform or cancel the settlement agreement but did conclude that Mlnazek was "entitled to obtain the very right of which he was deprived through fraud." *Id.* at 867-68. The supreme court opined that it "seem[ed] that [Mlnazek] had an adequate legal remedy by an action for damages for the fraud of the company and his partner, whereby he was deprived of his interest in the policy." *Id.* at 868.

We conclude that Great Plains's situation is analogous to that of *Mlnazek* because Great Plains does not seek rescission of the settlement agreement and, instead, seeks damages for alleged fraud. Because the complaint establishes that Great Plains has elected damages as its remedy and is not seeking to rescind the settlement agreement in whole or in part, Great Plains has properly elected its remedy.

I. The no-reliance and integration clauses of the settlement agreement do not preclude Great Plains's fraud claims.

The parties' settlement agreement contains the following no-reliance and integration clauses:

> The Parties acknowledge that they have not relied upon any statements made by any of the other Parties, their agents, or their attorneys, in entering into this Agreement, other than what is contained in this Agreement. This Agreement reflects the entire agreement reached by the Parties and contains all terms of settlement reached by the Parties and supersedes any prior writings memorializing or reflecting the terms of that settlement.

SLFC argues this language precludes Great Plains from claiming reliance on oral statements and omissions made during settlement discussions. Great Plains counters that Minnesota law precludes a party from contractually waiving fraud claims.

The Minnesota Supreme Court has long held that fraud cannot be waived by a contractual disclaimer. In *Ganley Bros. v. Butler Bros. Bldg. Co.*, the supreme court stated that Minnesota law does not "permit a covenant of immunity to be drawn that will protect a person against his own fraud." 212 N.W. 602, 603 (Minn. 1927). Federal caselaw also observes that "[g]eneral disclaimers and integration clauses are given no effect in misrepresentation cases under Minnesota law." *Randall v. Lady of Am. Franchise Corp.*, 532 F. Supp. 2d 1071, 1086 (D. Minn. 2007) (emphasis omitted). *Randall* noted that "even fairly specific disclaimers are typically held to create jury questions about reliance, rather than to negate reliance as a matter of law." *Id.* (emphasis omitted).

Likewise, in *Johnson Bldg. Co. v. River Bluff Dev. Co*., our court determined that "[a] 'full integration' clause does not prevent proof of fraudulent representations by a party to the contract." 374 N.W.2d 187, 193 (Minn. App. 1985), *review denied* (Minn. Nov. 18, 1985). This is not to say that fraud claims are never precluded by such clauses. A court may "find that reliance on an oral representation was unjustifiable as a matter of law only if the written contract provision explicitly stated a fact completely contradictory to the claimed misrepresentation." *Id.* at 194. But if the written contract is not completely contradictory to the oral representation, the question of reliance is one for a factfinder. *Id.*

Because Great Plains's fraud complaint alleges that SLFC did not accurately portray or disclose its assets and liabilities during settlement negotiations and the alleged misrepresentations and omissions are not "completely contradictory to the claimed misrepresentation" of any term of the parties' written settlement agreement, Great Plains's fraud claims are not precluded by the settlement agreement. *Id.*

SLFC contends that this situation is distinguishable from *Randall* and *Johnson* because the settlement agreement contained both a no-reliance and an integration clause. We are not convinced. SLFC cites no caselaw in support of its argument, although it does refer to a law-review article to support its claim. *See* Eric J. Magnuson & Daniel J. Supalla, *Life with Hoyt: Avoiding Misrepresentation Claims in Negotiating Settlement Agreements*, 1 Wm. Mitchell J. L. & Prac. 3 (2008). We first note that the article does not support the conclusion claimed by SLFC. The article suggests that fraud claims may be precluded if "the contract address[es], and negate[s], at least one of the elements of a fraudulent-representation claim." *Id.* The authors assert that "a clause that requires both parties to affirm that they have not relied on representations outside of the settlement agreement" allows the parties to "confirm[] the representations . . . may be relied upon, and simultaneously undercuts the reasonable-reliance element of a fraudulent-inducement claim." *Id.* Neither the article nor SLFC refer to Minnesota caselaw that holds a no-reliance and integration clause entitles a party to judgment as a matter of law.

After considering this state's well-established caselaw that fraud cannot be waived by contractual disclaimers, we do not find SLFC's argument persuasive. Further, federal caselaw, which is not precedential but may be persuasive to our court, has allowed fraud claims where contracts contain both no-reliance and integration clauses. *See, e.g., Randall*, 532 F. Supp. 2d at 1075; *Commercial Prop. Invs., Inc. v. Quality Inns Int'l, Inc.*, 938 F.2d 870, 875 (8th Cir. 1991)

In summary, having accepted the facts alleged in the complaint as true, we conclude that the no-reliance and integration clauses of the parties' settlement agreement do not

preclude Great Plains's fraud claims as a matter of law. The district court erred in dismissing the complaint.

II. Great Plains's action was not an impermissible attack on the judgment of dismissal.

SLFC argues Great Plains's fraud claims constitute an impermissible collateral attack on the judgment of dismissal which followed the settlement agreement. "A collateral attack is [a]n attack on a judgment in a proceeding other than a direct appeal." *Aaron Carlson Corp. v. Cohen*, 933 N.W.2d 63, 71 (Minn. 2019) (quotation omitted). "Where a direct attack on a judgment attempt[s] to annul, amend, reverse, or vacate a judgment or to declare it void in an appropriate proceeding instituted initially and primarily for that purpose, an impermissible collateral attack similarly attacks the validity of a judgment, but the attack is purely secondary or incidental." *Id.* (quotations omitted).

We have already determined that rule 12 dismissal of Great Plains's fraud claims is not proper despite the no-reliance and integration clauses. Because the fraud claims are new claims with their own remedy, and because Great Plains bears the burden of proving that its fraud damages were caused by the fraudulent inducement of the settlement agreement and exceed the amount agreed-upon in the settlement agreement, the claims are not an attempt to annul—either in full or in part—the previous judgment. The claims are not, therefore, a direct attack on the prior judgment. The question then becomes whether the claims are a secondary or incidental attack on the validity of the judgment. We conclude they are not.

The concept of a collateral attack is closely related to *res judicata*. *See In re Minneapolis Cmty. Dev. Agency*, 359 N.W.2d 687, 690 (Minn. App. 1984) ("The reason for the res judicata doctrine is not only to discourage collateral attacks on judgments but also to discourage claim-splitting."). Whether *res judicata* applies to preclude a claim is a question we review *de novo*. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004).

Res judicata precludes a party from relitigating a claim or pursuing a claim that could have been litigated in the earlier action. *Id.* It applies when "(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; (4) the estopped party had a full and fair opportunity to litigate the matter." *Id.* All four prongs must be satisfied to preclude the claim. *Id.* Great Plains's claims are not precluded because the first prong is not met.

In assessing whether the claims involve the same factual circumstances, appellate courts consider "whether the same evidence will sustain" both the previous action and the current action. *Id.* at 840-41 (quotation omitted). The prior action was for breach of contract with no allegations or evidence of fraud involved. Because Great Plains did not have knowledge of the fraud until after the parties had entered into the settlement agreement, Great Plains is not precluded from now alleging fraud in the inducement of the settlement agreement. For these reasons, the fraud claims are not precluded by *res judicata* and are not an impermissible collateral attack on the final judgment.

Similarly, we conclude that the action is not barred by the doctrine of collateral estoppel. "Res judicata and collateral estoppel are related doctrines." *Id.* at 837. While *res judicata* applies to preclude claims, collateral estoppel applies to preclude the relitigation of issues that have been adjudicated. *Id.* "The issue must have been distinctly contested and directly determined in the earlier adjudication for collateral estoppel to apply." *Id.* at 837-38. Because fraud was not alleged in the previous litigation, collateral estoppel does not apply to preclude the issue of fraud.

In conclusion, because Great Plains's claims for fraudulent misrepresentation and fraudulent omission in the inducement of the settlement agreement are new claims and new issues, the claims do not impermissibly attack that judgment.[2]

D E C I S I O N

Because general no-reliance and integration clauses included in the settlement agreement do not preclude Great Plains fraud claims, and because such fraud claims do not constitute an impermissible attack of the judgment of a settlement agreement, we reverse and remand for further proceedings consistent with this decision.

Reversed and remanded.

[2] SLFC also argues that Great Plains's MUVTA claim fails for lack of a debtor-creditor relationship. MUVTA, Minnesota statutes sections 513.41-.51, is intended "to prevent debtors from placing property that is otherwise available for the payment of their debts out of the reach of their creditors." *Finn v. Alliance Bank*, 860 N.W.2d 638, 644 (Minn. 2015) (quotation omitted). "[MUVTA] allows creditors to recover assets that debtors have fraudulently transferred to third parties." *Id.* Because we conclude that the parties shared a debtor-creditor relationship contemplated by Minn. Stat. § 513.44(a)(1), we determine the district court erred in dismissing Great Plains's MUVTA claim.