

The Minnesota Common Interest Ownership Act Is Construed Broadly (Again)

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Prevailing parties in litigation generally do not recover their attorney's fees unless a contract or statute expressly provides for it. However, prevailing parties in litigation typically do recover their costs and disbursements. Minnesota statutes provide that prevailing parties in district court actions "shall be allowed reasonable disbursements paid or incurred" and that "[u]pon a judgment in the plaintiff's favor of \$100 or more in an action for recovery of money only," a plaintiff may recover \$200 in costs. Minn. Stat. §§ 549.04, 549.02.

Of course, Minn. Stat. § 549.04 does not define what is meant by "reasonable" disbursements, and "costs" may include more than the mere \$200 awarded by the law. In a recent case involving a dispute between a condominium association, developer and contractor under the Minnesota Common Interest Ownership Act (MCIOA), Minn. Stat. §§ 515B.1-101 – 515.4-118 (2014), the terms "costs and disbursements" were construed rather broadly. See 650 N. Main Ass'n v. Frauenshuh, Inc., 885 N.W.2d 478, 499 (Minn. App. 2016). In Frauenshuh, the Minnesota Court of Appeals affirmed a trial court's decision to award the homeowner's association more than \$75,000 in costs and disbursements. As explained in this article, the court's decision was based on the interplay between the aforementioned costs and

disbursements statutes, the MCIOA, and a statute related to court fees.

The MCIOA codifies a homeowners' association's rights in a common interest community (i.e., communities of townhomes and condominiums) to bring causes of action against various parties for engineering and construction defects. The condominium association in Frauenshuh, known as 650 North Main Association, brought an action against the developer and contractor of the development under MCIOA alleging negligence and breach of statutory warranty. 885 N.W.2d 478. The jury found in favor of the developer on the statutory warranty claim, but the district court granted the homeowner association's motion for judgment as a matter of law, determining that the developer could in fact be liable for the breaches of warranty by the contractor.

One aspect of the court's decision was to construe the breadth of the award of costs and disbursements under the MCIOA. The Frauenshuh Court analyzed three different statutes to decide the issue:

The disbursements statute referenced above, Minn. Stat. § 549.04;

The costs statute under the MCIOA, Minn. Stat. § 515B.4-116(b); and

A statute from Chapter 357 regarding expert witness fees, Minn. Stat. § 327.25.

The Frauenshuh Court referred to the costs language in the MCIOA, which states that "the court may award reasonable attorney's fees and costs of litigation to the prevailing party." Minn. Stat. § 515B.4-116(b) (emphasis added). The court then noted that Minn. Stat. § 549.04 provides that the prevailing party in a district court action "shall be allowed reasonable disbursements paid

or incurred." Finally, the court cited Minn. Stat. § 327.25, which provides that "the judge of any court of record, before whom any witness is summoned or sworn and examined as an expert in any profession or calling, may allow such fees or compensation as may be just and reasonable." Frauenshuh, 885 N.W.2d at 499 (citing Minn. Stat. § 327.25).

Harmonizing these provisions, the Frauenshuh Court reasoned that that the prevailing party – which in this case was the homeowner's association – could recover a total of \$75,766.41 in costs and disbursements, including \$67,011.01 in expert witness fees, and that an award of that size was not unreasonable. 885 N.W.2d at 499. The court explained, "[b]ecause it is unclear whether 'costs' under [Minn. Stat.] section 515B.4-116(b) refers to the costs provided by [Minn. Stat.] section 549.02 or more broadly refers to general litigation expenses, the statute is subject to more than one reasonable interpretation and is therefore ambiguous." Id. The court went on to explain that the term "reasonable" in Minn. Stat. § 515B.4-116(b) refers to both attorney fees and costs of litigation, and that costs of litigation could not be limited by Minn. Stat. § 549.02 because the court had discretion to allow "reasonable . . . costs of litigation." Id. at 499-500. In summary, the court concluded that the district court properly awarded expert witness fees unrelated to trial testimony preparation to the association as "costs of litigation" under MCIOA.

Kristin Rowell is a trial lawyer and shareholder of business litigation boutique Anthony Ostlund. Kristin represents companies and individuals in complex real estate disputes, shareholder matters, contract, and employment matters. Kristin regularly appears on behalf of her clients in state and federal courts in Minnesota and North Dakota.