STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1583

SM Investments, LLC,
Appellant,

vs.

Roger Erickson,
Respondent.

Filed September 4, 2018
Affirmed
Schellhas, Judge

Clay County District Court
File No. 14-CV-14-3557

Michael T. Andrews, Joshua M. Feneis, Anderson, Bottrell, Sanden & Thompson, Fargo, North Dakota (for appellant)

Mark R. Hanson, Nilles Law Firm, Fargo, North Dakota (for respondent)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Bratvold, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Following a jury trial, appellant challenges the district court's denial of his motion for judgment as a matter of law, his motion for a new trial, and his request to reform a purchase agreement. Respondent/cross-appellant argues that the district court erred by

granting partial summary judgment in favor of appellant's breach-of-contract claim. We affirm.

FACTS

On June 11, 2014, appellant SM Investments, LLC agreed in writing to purchase from respondent Roger Erickson two commercial properties for $825,000. The properties housed four commercial tenants, including Details Salon. SM Investments' purchase was subject to it obtaining mortgage financing. An addendum to the purchase agreement required Erickson "to furnish [SM Investments] any notice of tenants moving out if [Erickson] has been notified before closing." Marv Schlick, doing business as Marv Schlick Realty, brokered the sale. The addendum also provided that "Marv Schlick Realty is not representing the buyer or seller."

The parties closed the transaction on August 18, 2014. Shortly thereafter, Erickson informed Details Salon through its owner, Tim Williams, of the sale of the property to SM Investments and directed Williams to contact Schlick with any questions. Williams "immediately" called Schlick and told him that he had sent Erickson notice on June 25, 2014, that Details Salon did not intend to renew its lease. On August 29, Williams also informed Schlick and SM Investments by letter that Details Salon did not intend to renew its lease and reiterated that he had so advised Erickson by letter on June 25, 2014.

In response to Williams's information, SM Investments sued Erickson for breach of contract, consumer fraud, actual fraud, and reformation due to unilateral mistake. In a third-party complaint, Erickson sued Schlick and Marv Schlick Realty, claiming that he had informed Schlick of Details Salon's intent not to renew its lease, that Schlick said that he

would so inform SM Investments, that Schlick was obligated to inform SM Investments, and that he failed to do so.

The district court granted SM Investments partial summary judgment on its breach-of-contract claim on the basis that, "as a matter of law, the notice provision [in the purchase agreement] was breached." The court also ruled that the "party responsible for the breach and the amount of damages remain in controversy and are not before the Court in this summary judgment matter." The court denied summary judgment to SM Investments on its contract-reformation claim. Subsequently, the court granted SM Investments leave to amend its complaint to allege punitive damages, and the court dismissed SM Investments' consumer-fraud and deceptive-trade-practices claims under Minn. R. Civ. P. 12.02(e).

The court conducted a jury trial on SM Investments' remaining claims. A jury found that Erickson's breach of the purchase agreement did not damage SM Investments, and that Erickson had not engaged in any fraudulent activity. Because the jury found against SM Investments on its fraud claim, the district court did not submit the issue of punitive damages to the jury. SM Investments tried its claim for reformation of the contract to the district court. The court denied the claim and denied SM Investments' posttrial motions for judgment as a matter of law (JMOL) and a new trial.

This appeal follows.[1]

[1] Erickson filed a "conditional" notice of related appeal, seeking review of the district court's partial summary judgment on SM Investments' breach-of-contract claim. Because we affirm, we need not reach the merits of Erickson's related appeal.

D E C I S I O N

I. Denial of JMOL to SM Investments

If a party moves for JMOL after a jury returns a verdict, the district court may "(1) allow the judgment to stand, (2) order a new trial, or (3) direct entry of judgment as a matter of law." Minn. R. Civ. P. 50.02(a). Appellate courts "review de novo a district court's decision to deny a motion for judgment as a matter of law." *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 n.5 (Minn. 2018). When reviewing the denial of a motion for JMOL, appellate courts construe the evidence "in the light most favorable to the prevailing party and ask whether there is a legally sufficient evidentiary basis for a reasonable jury to find for the prevailing party." *Karl v. Uptown Drink, LLC*, 835 N.W.2d 14, 17 (Minn. 2013) (quotation omitted). We will set aside a jury's verdict "only if it is perverse and palpably contrary to the evidence, or where the evidence is so clear as to leave no room for differences among reasonable persons." *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 888 (Minn. 2010) (quotation omitted).

A damages award for a breach-of-contract claim should put the injured party in the position in which it would be had the contract been performed. *Lesmeister v. Dilly*, 330 N.W.2d 95, 102 (Minn. 1983). Recoverable damages are those "which arose naturally from the breach or could reasonably be supposed to have been contemplated by the parties when making the contract as the probable result of the breach." *Id.* at 103.

SM Investments contends that the jury did not base its zero-damages verdict on the evidence because "[a]ll the evidence heard by the Jury pointed to the conclusion that [SM Investments] would have had to reduce its purchase price [by $181,417.24] to account for

the loss of income from Details Salon, or decline to purchase at all." But SM Investments' argument ignores the possibility that the jury did not find the claimed measure of damages persuasive. Although SM Investments' principal, Scott Differding, testified that the "$825,000 price was based on an 8 1/2 percent CAP [capitalization] rate on the rental income between the two properties," he acknowledged that the parties did not discuss how they "ended up at [an] $825,000 purchase price." In fact, Differding admitted that neither the purchase agreement nor addendum identified a CAP rate or how Erickson determined the $825,000 amount. Differding acknowledged that the parties arrived at a purchase price after he presented an unsigned purchase agreement to Erickson with a purchase price of $750,000, and that Erickson countered with a price of $825,000, signed the agreement, and then Differding signed and initialed it. The fact that Erickson was the party who counter-offered a purchase price of $825,000 does not support Differding's claim that the $825,000 amount was based on an 8 1/2 percent CAP rate. The purchase agreement and addendum also lack any contingency based on the number of tenants occupying the properties and do not provide for renegotiation upon receipt of a tenant's vacancy notice before the closing.

The evidence showed that Differding received the leases before the closing, and that he knew that Details Salon's lease expired on its terms on September 30, 2014, shortly after the scheduled closing. Differding also acknowledged at trial that two other tenants have since vacated the premises. Moreover, Differding admitted that SM Investments did not attempt to lease Details Salon's space for at least five or six months after learning that Details Salon was not renewing its lease.

The testimony of Erickson and Jerome Weber, Erickson's expert witness, also contradicted Differding's testimony that the $825,000 amount was based on an 8 1/2 percent CAP rate. Although Differding claimed that SM Investments' sole purpose for buying the properties was to maximize the properties' income-producing potential, both Erickson and Weber testified that buyers often purchase commercial properties for other reasons, such as redevelopment, or improvement and resale for profit. The jury simply may have credited the testimony of Erickson and Weber and discredited the testimony of Differding on the measure of damages, which was well within its province. The jury was free to reject SM Investments' evidence on damages and find that SM Investments suffered no damages from Erickson's breach. After all, Differding acknowledged at trial that the appraised value of the properties exceeded the purchase price.

The jury's zero-damages verdict is also supported by evidence that SM Investments obtained mortgage financing to purchase the properties, thereby satisfying the financing contingency in the purchase agreement. SM Investments obtained financing from two different lenders, one that, due to lending limits, partially financed the purchase, and one that provided refinancing at a mortgage closing on September 17, 2014, after SM Investments knew that Details Salon did not intend to renew its lease. When viewed in the light most favorable to the verdict, a reasonable jury had ample evidence upon which to find that SM Investments was not entitled to damages for Erickson's breach. We therefore conclude that the district court did not err by denying JMOL to SM Investments.

II. New trial

A district court may grant a motion for a new trial if "[t]he verdict . . . is not justified by the evidence, or is contrary to law." Minn. R. Civ. P. 59.01(g). "Whether the verdict is justified by the evidence presents a factual question and the district court may properly weigh the evidence." *Clifford v. Geritom MED, Inc.*, 681 N.W.2d 680, 687 (Minn. 2004). In deciding whether to grant a new trial on the basis that the evidence does not justify the verdict, a district court looks to "whether the verdict is so contrary to the preponderance of the evidence as to imply that the jury failed to consider all the evidence, or acted under some mistake." *Id.* (quotation omitted). "This cause vests the broadest possible discretionary power in the [district] court." *Id.* (quotation omitted).

"On appeal from a denial of a motion for a new trial, an appellate court should not set aside a jury verdict unless it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict." *Raze v. Mueller*, 587 N.W.2d 645, 648 (Minn. 1999) (quotations and footnote omitted). This court will not reverse a district court's denial of a motion for a new trial absent an abuse of discretion. *Christie*, 911 N.W.2d at 838. Because a district court is in a better position "to assess whether the evidence justifies the verdict," an appellate court "usually defer[s] to that court's exercise of the authority to grant a new trial." *Clifford*, 681 N.W.2d at 687.

SM Investments argues that the jury's verdict of no damages was "perverse and irreconcilable with the evidence," and that the "only plausible explanation" for the verdict stems from the district court's erroneous admission of Weber's expert testimony. We construe SM Investments' challenge to the district court's denial of its new-trial motion to

be based primarily on a claim that the district court erred by allowing Weber to testify as Erickson's expert witness.

The Minnesota Rules of Evidence provide that "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Minn. R. Evid. 702. To admit expert testimony under rule 702, the testimony must pass a four-part test: "(1) [t]he witness must qualify as an expert; (2) the expert's opinion must have foundational reliability; (3) the expert testimony must be helpful to the trier of fact; and (4) if the testimony involves a novel scientific theory, it must satisfy the *Frye–Mack* standard." *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 164 (Minn. 2012). "Evidentiary rulings, including the admission of expert testimony, are within the broad discretion of the district court," and will not be reversed absent an abuse of discretion. *City of Moorhead v. Red River Valley Coop. Power Ass'n*, 830 N.W.2d 32, 39 (Minn. 2013) (quotation omitted).

Erickson sought to admit the testimony of Weber, who prepared the bank's appraisal. SM Investments vigorously objected at trial to Weber's testimony on the basis that it was irrelevant and constituted "undisclosed expert testimony." In overruling the objection, the district court found that Weber's appraisal report and opinion were well-known to the parties and ruled that Weber could testify to the information related to and contained in his report "and the reasons for it."

SM Investments argues that the court abused its discretion by allowing Weber to testify. We disagree. Given the nature of the damages evidence presented at trial, we conclude that the court did not abuse its discretion by finding that Weber's testimony would be helpful to the jury in determining whether SM Investments was damaged by Erickson's breach. Moreover, SM Investments cannot show any prejudice by Erickson's failure to identify Weber as an expert on its witness list because SM Investments was familiar with Weber's appraisal report, having stipulated to its admission into evidence. We conclude that the court did not abuse its discretion by denying SM Investments' motion for a new trial.

III. Contract reformation

Contract reformation "is an equitable remedy that is available when a party seeks to alter or amend language in a contract so that the contract reflects the parties' true intent when they entered into the contract." *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 864 (Minn. 2011). This court reviews "equitable determinations for an abuse of discretion." *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 23 (Minn. 2011).

A party seeking contract reformation must prove that

> (1) there was a valid agreement between the parties expressing their real intentions; (2) the written instrument failed to express the real intentions of the parties; and (3) this failure was due to a mutual mistake of the parties, or a unilateral mistake accompanied by fraud or inequitable conduct by the other party.

SCI, 795 N.W.2d at 865 (quotation omitted). These elements must be established through "evidence which is clear and consistent, unequivocal and convincing." *Id.* (quotation omitted). The level of proof for contract reformation is a "high burden." *Id.* (quotation omitted).

SM Investments argues that the district court erred by denying its claim for reformation of the purchase agreement due to unilateral mistake. We disagree. Here, the jury rejected SM Investments' fraud claim, a decision that SM Investments has not appealed. And SM Investments' claim that Erickson engaged in "inequitable conduct" is premised on the assumption that Erickson knew that (1) SM Investments only agreed to purchase the properties because four tenants occupied the properties and had not given Erickson notice to vacate, and (2) one of the tenants had given notice to vacate and Erickson failed to disclose the fact. But no evidence supports a finding that Erickson received notice of Details Salon's intention to vacate *before* the parties signed the purchase agreement on June 11, 2014. Because Erickson did not receive notice of Details Salon's notice to vacate until after the purchase agreement was signed, and the record contains no evidence of inequitable conduct by Erickson, SM Investments' contract-reformation claim cannot be premised upon unilateral mistake.

In denying SM Investments' contract-reformation claim, the district court found:

> The issue is not whether the parties generally had an agreement or whether the purchase agreement was valid, but, given the nature of SM [Investments'] claim and allegations, whether, at the time of the formation of the agreement, there was an agreement between SM Investments and Roger Erickson that the purchase price was based on four, long-term commercial tenants, or a specific [CAP] rate, or some other economic

> formula, thereby justifying or resulting in a purchase price of $825,000.

The district court determined that SM Investments failed to satisfy the first element of contract reformation because "no evidence" suggested that "the parties reached a 'meeting of the minds' as to any issue beyond what was set out in the written contract, which included the notice provision in the addendum but in no way tied the purchase price or correlated the transaction to the status or existence of tenants."

The district court found that SM Investments purchased the properties "intending that it would be self-sustaining through the generation of rental income," but that this "intention was neither part of the purchase agreement nor discussed with Erickson." The court also found that SM Investments and Erickson had no "meeting of the minds" that "related to a methodology for valuing the Propert[ies], or what type of value was placed on the Propert[ies] by either of them." In addition, the court found that the parties reached no agreement that "the $825,000 purchase price was in fact based on a certain number of tenants, the lease status of the tenants, a specific stream of income or a specific [CAP] rate." In fact, the court found that "no evidence suggest[ed] any deliberate intention as to how the $825,000 price was arrived at."

Ample evidence in the record supports the district court's findings, and the findings support the conclusion that the parties did not agree that SM Investments' purchase of the properties for the price stated was conditioned on a specific number of tenants who would generate a certain amount of income based upon an 8 1/2 percent CAP rate, and that in the event a tenant gave notice to vacate, the parties would renegotiate the purchase price. We

conclude that the court's findings are not clearly erroneous, and that they support the conclusion that SM Investments is not entitled to contract reformation. The district court therefore did not abuse its discretion by denying SM Investments' contract-reformation claim.

Affirmed.