This opinion is nonprecedential except as provided by Minn.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
A22-1524

Smart Construction & Remodeling, Inc.,
Appellant,

vs.

Dean Suchy,
Respondent.

Filed August 28, 2023
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-CV-19-20086

Edward E. Beckmann, Beckmann Law Firm, LLC, Bloomington, Minnesota (for appellant)

Courtney J. Ernston, North Star Law Group, PLLC, St. Paul, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Larkin, Judge; and Hooten, Judge.[*]

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant construction company challenges the district court's ruling that a liquidated-damages clause in its contract with respondent homeowner was unenforceable

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

and that appellant was not entitled to equitable relief. Respondent homeowner challenges the district court's determination that the parties entered into a valid contract. We affirm.

FACTS

Appellant Smart Construction & Remodeling, Inc. (Smart) is a business that provides repair and remodeling services to residential properties. Respondent Dean Suchy is a homeowner whose home was damaged in a storm. In 2018, Suchy contacted Smart regarding the possibility of Smart repairing the storm damage to his home. Pavel Pilich is Smart's owner, and he was Suchy's primary contact at Smart.

On May 2, 2018, Pilich presented Suchy with a document labeled "CONTRACT," which concerned the proposed repairs to Suchy's storm-damaged home. Pilich asked Suchy to sign the document and to initial certain statements in the document. Suchy signed and initialed the document as requested. Although Suchy read the statements that he initialed, he did not read the entire document.

The six-page document stated that Smart would use its "best efforts" to work with Suchy's insurance company to obtain "maximum approval" and coverage for work identified in a "scope of work" section. The terms in the document did not obligate Suchy or Smart "in any way" unless payment for damages was approved by the insurance company. The scope of work was identified as repair or replacement of the home's roof, gutters, siding, fascia, wrap, and deck, and a shed's roof, siding, fascia, and doors. The document stated that if the insurance company approved repairs at an amount acceptable to Smart, then Smart would perform "all work approved" by the insurance company. The

document also stated that the insurance company's "final agreed report" would "constitute the summary of the work to be performed."

The document contained the following liquidated-damages clause:

> Customer's cancellation, of this Contract after the rescission period, if any or Customer's failure to make available the work premises may result in breach of contract, remedied by Customer paying to [Smart], an amount equal to 30% of the contract or Insurance Company's Allocated amount plus cost of all materials as a reasonable amount of agreed damages, which are uncertain due to costs of storage, rescheduling and other undeterminable costs, which the parties agree to liquidate in advance of any dispute.

When Suchy signed the document, the insurance-approval process for claims related to Suchy's storm-damaged home had not begun. Suchy believed the document identified items that Smart would submit to Suchy's insurer for claim approval and that it authorized Smart to contact and work with the insurer in an effort to finalize Suchy's insurance claim.

In June 2018, Suchy's insurance company issued a scope-of-loss statement totaling $42,074.77 for repairs.[1] Smart conducted a detailed inspection of the damage to the home and used software to generate diagrams of the home's impacted areas. On August 2, 2018, Smart submitted a scope-of-loss statement to Suchy's insurer that contained additional areas of damage and estimated repairs and replacements totaling $115,509.96. Suchy's insurer did not accept Smart's estimate. Around December 2018, Smart provided a second estimate to Suchy's insurer. The price for repairs was lowered to $109,482.32 based primarily on reductions in expected costs to complete the work.

[1] The district court found that the total was $47,074.77. This appears to be a clerical error.

Each estimate assumed that Smart would serve as the general contractor and use subcontractors to complete the proposed work. The December 2018 estimate identified $89,441.86 for the costs for labor and materials to complete the work, plus $1,793.14 for reimbursements for sales tax, totaling $91,235. Smart's estimate added approximately 10% of this amount ($9,123.66) for payment of its overhead and another approximately 10% ($9,123.66) for payment of its profit for the total replacement cost value estimate of $109,482.32.

Around January 2019, Smart agreed with Suchy's insurance provider to complete the work described in the December 2018 estimate for a total price of $100,000. On June 27, 2019, Suchy contacted Smart and informed Smart that he did not want Smart to work on his home. Thus, Smart did not perform any repairs to the home, and Smart did not hire any subcontractors or purchase any materials for the anticipated repairs to Suchy's home.

Smart demanded that Suchy pay Smart $30,000 as liquidated damages, and Suchy refused to do so. Smart sued Suchy for breach of contract. Smart's complaint described the contract as an insurance-proceeds contract: Smart would perform repairs to the home and "[t]he scope of the repairs" would be "decided" and "funded" by Suchy's insurance company, "except for Suchy's deductible." Smart's complaint alleged that Suchy's insurer would not have agreed to pay $100,000 for Suchy's storm-damage repairs but for Smart's efforts to explain the scope of the project.

Smart limited its request for breach-of-contract damages to liquidated damages. Smart did not claim actual-expectation damages as an alternative remedy under the contract. Instead, Smart asserted three equitable claims as alternative grounds for relief:

promissory estoppel, unjust enrichment, and quantum meruit. Finally, Smart requested attorney fees under the "contract."

Suchy took the position that the parties had not entered into a contract.[2] Suchy also asserted that the liquidated-damages provision imposed a penalty in violation of public policy and that the clause was unenforceable. The parties stipulated that the enforceability of the liquidated-damages provision was an issue to be determined by the district court based on evidence produced at trial and facts determined by a jury. The parties also stipulated that Smart's claim for attorney fees would be submitted to the district court for determination.

The matter proceeded to a jury trial, at which the jury was asked to determine whether Smart and Suchy had entered into a contract. The jury heard testimony from Pilich and Suchy, and numerous exhibits were admitted into evidence. Additionally, the parties stipulated to certain general, underlying facts.

The jury returned a special verdict form indicating that there was a contract between Smart and Suchy, that Suchy breached the contract, and that Smart was therefore entitled to $30,000 in liquidated damages. The jury also provided advisory findings regarding Smart's promissory-estoppel claim. The jury found that Suchy made an enforceable promise to Smart, that Smart reasonably relied on that promise, and that Smart suffered loss or disadvantage in the amount of $20,000.

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[2] Suchy counterclaimed for breach of the duty of good faith and fair dealing. But as he acknowledged in his brief to this court, he did not pursue that claim.

Suchy moved for judgment notwithstanding the verdict on Smart's breach-of-contract claim. Suchy asserted that the evidence did not support the jury's finding that the parties had formed a contract.

On July 27, 2022, the district court issued an order concluding that there was sufficient evidence to support the jury's findings that a contract had been formed and that Suchy breached the contract. But the district court concluded that the liquidated-damages clause was unenforceable because it constituted a penalty and violated public policy. The court found that Smart had "declined to produce evidence to support that it had a reasonable expectation to earn more than the 10% profit and 10% overhead stated in the insurance estimates." The court noted that when Pilich was asked at trial whether Smart could expect to receive more than the amounts identified for profit and overhead in Smart's bid, he refused to answer because he considered the information "confidential." The court determined that Smart's damages were "known amounts" and "not difficult to calculate," and that Smart's liquidated damages were not related to "potential actual harm or recoverable damages for a breach." The district court noted that Smart had sought only liquidated damages under the contract, and not compensatory damages.

As to Smart's equitable claims, the district court declined to adopt the jury's advisory findings. The district court concluded that the existence of a contract precluded equitable relief and that Smart also was not entitled to equitable relief on the merits. Finally, the district court concluded that Smart was not entitled to attorney fees under the contract. The district court dismissed Smart's claims with prejudice.

Smart appealed. Suchy filed a notice of related appeal, challenging the district court's conclusion that the evidence supported the jury findings of a contract and breach. This court determined that the notice of related appeal did not create a cross-appeal and stated that Suchy could raise that issue in his respondent's brief.

DECISION

I.

Suchy contends that the district court erred by denying his motion for judgment notwithstanding the verdict, arguing that the document that he signed did not create a contract. He asserts that the purported contract contained "no price, no scope of work, or other requisite contract clauses." We begin with that issue.[3]

When a district court considers a motion for judgment notwithstanding the verdict, "it must determine whether, viewing the evidence in the light most favorable to the nonmoving party, the verdict is manifestly against the entire evidence or whether despite the jury's findings of fact the moving party is entitled to judgment as a matter of law." *Pouliot v. Fitzsimmons*, 582 N.W.2d 221, 224 (Minn. 1998). We review the district court's decision de novo. *Id.* Where judgment notwithstanding the verdict has been denied by the district court, we will affirm the district court "if, in the record, there is any competent evidence reasonably tending to sustain the verdict." *Id.* (quotation omitted). We view the

[3] Although the issue is technically moot given our decision to affirm, we address it in the interest of thorough review. *See State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984) ("[T]he mootness doctrine is a flexible discretionary doctrine, not a mechanical rule that is invoked automatically whenever the underlying dispute between the particular parties is settled or otherwise resolved.").

evidence in the light most favorable to the verdict and will not set the verdict aside "if it can be sustained on any reasonable theory of the evidence." *Id.*

"A contract is formed when two or more parties exchange bargained-for promises, manifest mutual assent to the exchange, and support their promises with consideration." *Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 628 (Minn. 2022) (quotation omitted). The existence and terms of a contract are generally questions for the fact-finder. *Id.*; *see Morrisette v. Harrison Int'l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992).

"[T]he law does not favor the destruction of contracts because of indefiniteness, and if the terms can be reasonably ascertained in a manner prescribed in the writing, the contract will be enforced." *King v. Dalton Motors, Inc.*, 109 N.W.2d 51, 53 (Minn. 1961) (footnote omitted). But a contract is void if it is so vague, indefinite, or uncertain that the contract's meaning and the parties' intent is left to speculation. *Id.* at 52. Therefore, a "purported contract is fatally defective" if "substantial and necessary terms are specifically left open for future negotiation." *Id.*; *see also Triple B & G, Inc. v. City of Fairmont*, 494 N.W.2d 49, 53 (Minn. App. 1992) ("If an alleged contract is so uncertain as to any of its essential terms that it cannot be consummated without new and additional stipulations between the parties, it is not a valid agreement."). "When the parties know that an essential term of their intended transaction has not yet been agreed upon, there is no contract." *Malevich v. Hakola*, 278 N.W.2d 541, 544 (Minn. 1979).

Suchy argues that the document that he signed did not result in a contract because "it did not provide any pricing information" or describe the work to be performed. But, viewed in a light most favorable to the verdict, the document addressed such terms stating,

"When the Owner's insurance company approves repairs for an amount acceptable to [Smart], the Owner agrees ONLY [Smart] will be performing all work approved by Owner's insurance company for the price agreed by the Owner's Ins. Company and [Smart]."

Suchy also argues that there was no contract because the terms did not "bind Suchy if the insurance company denied the claim" and "did not bind Smart to perform any work if it chose not to."[4] But Suchy does not cite legal authority or provide legal argument indicating that such terms prevent contract formation. Instead, Suchy relies on a nonprecedential case, *LeMaster Construction, Inc. v. Mahoney*, to support his argument that the contract here is unenforceable because it was too vague. No. A06-1202, 2007 WL 1599192 (Minn. App. 2007). "Nonprecedential opinions and order opinions are not binding authority except as law of the case, res judicata or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority." Minn. R. Civ. App. P. 136.01, subd. 1(c). *LeMaster* is factually distinguishable and therefore not persuasive. *See* 2007 WL 1599192, at *3 (explaining that the purported contract stated that the scope of work would be set forth "more specifically" in a separate "attached" document and that the separate document "was not attached").

In denying Suchy's motion for judgment notwithstanding the verdict, the district court reasoned that "the December 21, 2018 estimate approved by the insurer was a

[4] The district court described the contract as "a one-sided agreement in favor of [Smart] with significant detrimental provisions and liability as to the homeowner" but nonetheless accepted the jury's finding that a contract had been formed.

sufficient statement of the 'work' and Loss Draft of the insurer" under the contract. When viewed in the light most favorable to the verdict, Smart's December 2018 estimate, which Suchy's insurance company accepted at the negotiated price of $100,000, sufficiently addressed the relevant contract terms.

Again, parties need not agree on "every possible point." *Vermillion State Bank*, 969 N.W.2d at 628 (quotation omitted). "Instead, the law requires merely that the parties' intent as to the fundamental terms of the contract can be ascertained with reasonable certainty," and "the law does not favor the destruction of contracts because of indefiniteness." *Id.* (quotations omitted). On this record, the district court did not err by denying Suchy's motion for judgment notwithstanding the verdict.

II.

We now turn to Smart's contention that the district court erred by concluding that the liquidated-damages clause in the parties' contract was unenforceable.

As a threshold issue, Smart argues that Suchy forfeited his right to challenge the liquidated-damages clause because Suchy failed to read and negotiate the clause. For two reasons, we disagree. First, Smart cites *Currie State Bank v. Schmitz* as support, which states, "Parties who sign *plainly written* documents must be held liable, otherwise *such documents* would be entirely worthless and chaos would prevail in our business relations." 628 N.W.2d 205, 210 (Minn. App. 2001) (emphasis added) (quotation omitted). The contract in this case is not "plainly written." The district court correctly described the contract as a "lengthy" and "complex" document containing "numerous inconsistencies in its use of terms (both defined and undefined)," as well as "ambiguous terms." Second,

caselaw is replete with examples of appellate courts considering whether liquidated-damage provisions are enforceable. *See, e.g.*, *Willgohs v. Buerman*, 115 N.W.2d 59, 60 (Minn. 1962); *Dean Van Horn Consulting Assocs., Inc. v. Wold*, 367 N.W.2d 556, 560 (Minn. App. 1985), *rev. denied* (Minn. July 17, 1985); *Maslowski v. Prospect Funding Partners LLC*, 978 N.W.2d 447, 455 (Minn. App. 2022), *rev. granted* (Minn. Sept. 28, 2022). Adopting Smart's argument that Suchy waived the ability to challenge the liquidated-damages provision by not reading it and negotiating it would limit the court's well-established authority to invalidate a liquidated-damages provision on public policy grounds. That approach is inconsistent with caselaw, and we do not adopt it here.

Smart also argues that it is entitled to liquidated damages because Suchy "hindered" performance of the contract. Smart relies on *Zobel & Dahl Construction v. Crotty*, which states that hinderance of performance may constitute a breach of contract. 356 N.W.2d 42, 45 (Minn. 1984). Smart essentially argues that because Suchy breached the contract, Smart is automatically entitled to liquidated damages. But the case cited by Smart, *Zobel*, does not stand for that proposition. *See id.* at 43 (stating that "[i]n a contract for construction of a home, an owner who unreasonably fails to allow the contractor to complete construction excuses the contractor's performance and breaches the contract" and that "[i]n construction contracts, if the work has begun and the buyer breaches, the contractor is entitled to the unpaid contract price less the amount it would have cost to complete performance").

Before turning to the substantive law of liquidated damages, we resolve the parties' dispute regarding whether the liquidated-damages provision in their contract applies only to damages stemming from Smart's use of its "best efforts" to maximize Suchy's recovery

on his insurance claim or also applies to Smart's lost profits under the contract. Suchy argues the former, and Smart argues the latter.

The district court treated the liquidated-damages provision as including damages stemming from Smart's lost profits. Specifically, in determining that the provision was unenforceable, the district court compared the amount of damages available under the liquidated-damages provision with the amount Smart reasonably could have anticipated receiving as "loss of profits" if no breach had occurred and Smart had completed the repairs.

Given the language in the provision, we agree that it encompasses lost profits. For example, the provision states that Suchy's "failure to make available the *work premises*" may result in Suchy's breach and imposition of liquidated damages, which may include the "cost of all *materials*." (Emphasis added.) The reference to "work premises" and "materials" regards Smart's completion of the anticipated repairs—which in turn relates to Smart's profit—and not to Smart's best efforts to negotiate Suchy's insurance claim.

Having resolved these preliminary issues, we turn to the law governing liquidated damages.

> The term "liquidated damages" signifies the damages the amount of which the parties to a contract stipulate and agree, when the contract is entered into, shall be paid in case of breach. It is well settled that the parties to a contract may stipulate in advance as to the amount to be paid in compensation for loss or injury which may result in the event of a breach of the agreement. A stipulation of this kind is enforceable, at least in those cases where the damages which result from a breach of the contract are not fixed by law or are in their nature uncertain and where the amount stipulated does not manifestly exceed the injury which will be suffered.

Schutt Realty Co. v. Mullowney, 10 N.W.2d 273, 276 (Minn. 1943) (quotation omitted).

The principles governing the use of liquidated-damages provisions are explained in *Gorco Construction Co. v. Stein*, 99 N.W.2d 69 (Minn. 1959). Our research indicates that the principles set forth in *Gorco* remain valid today, and we therefore quote them here.

> The modern trend is to look with candor, if not with favor, upon a contract provision for liquidated damages when entered into deliberately between parties who have equality of opportunity for understanding and insisting upon their rights, since an amicable adjustment in advance of difficult issues saves the time of courts, juries, parties, and witnesses and reduces the delay, uncertainty, and expense of litigation. Accordingly this court has long regarded provisions for liquidated damages as prima facie valid on the assumption that the parties in naming a liquidated sum intended it to be a fair compensation for an injury caused by a breach of contract and not a penalty for nonperformance.
>
> Although favorably disposed to giving effect to a provision for liquidated damages, this court has not hesitated, however, to scrutinize a particular provision to ascertain if it is one for a penalty or one for damages. In determining the issue neither the intention of the parties nor their expression of intention is the governing factor. The controlling factor, rather than intent, is whether the amount agreed upon is reasonable or unreasonable in the light of the contract as a whole, the nature of the damages contemplated, and the surrounding circumstances.
>
> The law adopts as its guiding principles that the injured party is entitled to receive a fair equivalent for the actual damages necessarily resulting from failure to perform the contract and no more.
>
> Punishment of a promisor for breach, without regard to the extent of the harm that he has caused, is an unjust and unnecessary remedy and a provision having an impact that is punitive rather than compensatory will not be enforced.

> The Minnesota rule is in accord with Restatement, Contracts, § 339, which provides:
>
> (1) An agreement, made in advance of breach, fixing the damages therefor, is not enforceable as a contract and does not affect the damages recoverable for the breach, unless
>
> > (a) the amount so fixed is a reasonable forecast of just compensation for the harm that is caused by the breach, and
> >
> > (b) the harm that is caused by the breach is one that is incapable or very difficult of accurate estimation.
>
> This court has held that where the actual damages resulting from a breach of the contract cannot be ascertained or measured by the ordinary rules, a provision for liquidated damages not manifestly disproportionate to the actual damages will be sustained. On the other hand, when the measure of damages resulting from a breach of contract is susceptible of definite measurement, we have uniformly held an amount greatly disproportionate to be a penalty.

Gorco, 99 N.W.2d at 74-75 (footnotes omitted) (quotations omitted).

Whether a liquidated-damages clause constitutes an unenforceable penalty under established facts is a question of law reviewed de novo. *Maslowski*, 978 N.W.2d at 455. The district court concluded that the liquidated-damages provision in this case was unenforceable, reasoning in part that because "any expectation damages . . . can be reasonably calculated and determined on breach," "[t]he circumstances do not support the need for liquidation of damages." For the reasons that follow, we agree.

As to damages resulting from Smart's utilization of its "best efforts" to negotiate the insurance claim, Smart could have kept track of its related time, tasks, and expenses. Smart argues that because it relied on the liquidated-damages provision, it did not keep such records. If Smart had documented its efforts to negotiate the insurance claim, it could

have requested compensation for its actual efforts. There would be no reason to speculate regarding its damages; actual damages could have been calculated.

As to damages in the form of lost profits, although caselaw notes that such damages may properly be liquidated, the following language is instructive.

> The function of and necessity for the stipulation for liquidated damages is well illustrated here. The value of goodwill in the lumber business is an item of damage which would be *extremely difficult to prove.* Loss of profits might be claimed to be due to difference in management, to the war, the uncertainty of the times, and to other uncertain factors rather than to competition. *It is hard to conceive of damages which would be more difficult to prove than the kind here involved.* The difficulty of proving such damages is an important factor in determining whether or not the provision in the contract is a penalty.

Meuwissen v. H.E. Westerman Lumber Co., 16 N.W.2d 546, 550 (Minn. 1944) (emphasis added).

Ascertaining the potential lost profits in this case presents none of the challenges described in *Meuwissen* because Smart calculated its profits as a fixed percentage. Although the parties initially did not know whether Smart would be able to negotiate an acceptable insurance claim, how much time and effort it would take for Smart to do so, and the amount of any resulting claim, calculation of Smart's damages in the event of Suchy's breach would not require speculation given Smart's ability to establish its lost profits as a fixed percentage and its ability to keep track of its efforts to negotiate that claim.

Because the measure of actual damages resulting from Suchy's breach was susceptible of definite measurement, we next consider whether the amount of liquidated damages is greatly disproportionate and therefore a penalty. "The controlling factor . . . is

whether the amount agreed upon is reasonable or unreasonable in the light of the contract as a whole, the nature of the damages contemplated, and the surrounding circumstances." *Gorco*, 99 N.W.2d at 74. The district court concluded that the liquidated-damages provision was "not fair or reasonable" and that it was "not reasonably related to actual damages, losses or harms" that would result from Suchy's decisions not to proceed with the repairs. Once again, for the reasons that follow, we agree.

Smart submitted an estimate to Suchy's insurer on December 21, 2018. On January 4, 2019, Smart agreed with the insurer to complete the work described in the December 21 estimate for $100,000. The record is conflicting regarding the amount of profit Smart likely would have made at that price. Smart's estimate included approximately 10% for its overhead and approximately 10% for its profit. Thus, the district court found that "for cancelation of the Contract before work was scheduled or commenced, [Smart] could at most establish expectation damages up to 20% of the approved estimate as the anticipated payment for its work."

Smart asserts that the district court erred in finding that Smart's maximum recovery would have been 20%, arguing that "[t]he evidence showed that Smart's profitability would have been 30%." But the only evidence supporting that percentage was the testimony of Smart's owner, Pilich, who testified that Smart needs 30% margins to be profitable. Smart describes that testimony as "unrebutted." Pilich's testimony on this point may have been unrebutted, but the district court's findings and conclusions indicate that it did not find Pilich's testimony credible. Specifically, the court found that when Pilich was asked if there were ways that Smart could expect to receive more than the 10% amounts identified

for overhead and profit in Smart's bid, "Pilich refused to answer asserting he would not answer because he considered this information about [Smart's] business to be 'confidential.'" As to that response, the district court noted that it "was not asked to and did not designate this type of evidence to be confidential or outside of the scope of relevant evidence at trial." Given those findings, we conclude that the district court did not credit Pilich's testimony that Smart would have made 30% on the project, and not 20% as indicated in Smart's bid. And we defer to that credibility determination. *See* Minn. R. Civ. P. 52.01 (requiring that "due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses").

Smart further argues that "[i]n any event, a 10% difference (20% vs. 30%) is not 'manifestly disproportionate' and is not unreasonable as a matter of law." That argument fails to recognize that the 10% difference between the 20% Smart claimed in its bid for Suchy's repairs—which the record establishes as reasonable expectation damages—and the 30% Smart claimed in its liquidated damages provision represents a 50% difference between the amount of actual and liquidated damages.[5] That is a significant difference in and of itself.

Moreover, the law has less tolerance for the sizable difference in this case because, as explained above, Smart's prospective actual damages were not difficult to ascertain.

> The solution of the question whether the amount stipulated in a contract to be paid in case of a failure of compliance therewith is to be treated as an agreement for liquidated

[5] For example, on a contract price of $100,000, actual damages of 20% would be $20,000, and liquidated damages of 30% would be $30,000. The $10,000 difference between those sums reflects liquidated damages that are 50% higher than actual damages.

> damages or as a penalty is often attended with much difficulty. . . . *An important matter for consideration as bearing on the question is whether the actual damages resulting from a failure to comply with the contract are definitely fixed by some rule of law, and may be easily determined and ascertained by the application of appropriate rules of evidence. If they are, and the sum named in the contract is greatly out of proportion to and much larger than the real damage, courts uniformly hold the stipulated sum a penalty, and require the party asserting injury to prove his actual loss*. But where the actual damages are uncertain and difficult to ascertain or prove, are of a purely speculative character, and the contract furnishes no data for their ascertainment, the sum named and fixed by the parties for its breach is to be treated and held as liquidated damages. . . . In cases where the sum stipulated is exceedingly large and greatly disproportionate to the real damages, and the actual damages may be readily ascertained, the law, in the interests of justice, reduces the parties to an equality, by compelling them to litigate their pecuniary difference on a basis of fair compensation; and this, too, without regard to the express language of the contract.

Taylor v. Times Newspaper Co., 86 N.W. 760, 762 (Minn. 1901) (emphasis added).

The actual damages in this case were not uncertain and difficult to ascertain. And any difficulty in proving damages is the result of Smart's failure to document its work on Suchy's behalf. Moreover, actual damages were not speculative given Smart's reliance on a fixed-percentage calculation. And the accepted insurance estimate furnished data for their ascertainment. Although agreements for liquidated damages are favored, the amount of such damages cannot be unreasonably disproportionate to the amount of actual damages, especially when prospective actual damages could easily be ascertained and proved.

Smart makes much of the fact that Suchy is a banker, arguing that Suchy is therefore "sophisticated in business and financial matters." Smart cites *Meuwissen*, which states that

"in determining the reasonableness of the amount, the court will take into consideration the relation of the parties, their situation, the absence or presence of fraud or oppression, and the purpose the agreement seeks to subserve." 16 N.W.2d at 550-51. Suchy's reliance on *Meuwissen* is unpersuasive because in that case, "[b]oth parties were experienced" in the business of buying, selling or dealing in lumber, millwork or coal, "knew all about the trade territory, the extent of the goodwill, and other factors involved." *Id.* at 550. Suchy may be sophisticated in business and financial matters as a result of his position as a banker, but as the district court found, "Suchy was not sophisticated or knowledgeable about the insurance claims processes for repair to storm damage or the legal issues, rights and responsibilities related to residential construction and home improvements."

In sum, the district court concluded that the liquidated-damages provision in this case was a penalty for Suchy's breach of contract, reasoning that "[n]o legitimate purpose is served by the inflated liquidated damages term" and that the excessive amount of liquidated damages "improperly pressures the homeowner to remain in the contract, even if the homeowner does not want to proceed with repairs or disagrees with the repairs or materials as the work and materials are determined in the future." The district court's reasoning is sound. We hold that the liquidated-damages provision in this case, which results in a damage award approximately 50% higher than the actual damages established by the record, constitutes an unenforceable penalty.

III.

We next address Smart's contention that the district court erred in denying its claims for equitable relief. We review a district court's decision to deny equitable relief for an

abuse of discretion. *Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 819 (Minn. 2016). But we review de novo whether equitable relief is available as a matter of law. *See id.* at 822 (concluding that a deferential standard of review was inappropriate when the district court decided that equitable relief was not available as a matter of law); *Drewitz v. Motorwerks, Inc.*, 867 N.W.2d 197, 204 n.2 (Minn. App. 2015) (noting that "[t]he supreme court has not deviated from a de novo standard of review of legal issues simply because the claims at issue are for equitable relief" (quotation omitted)), *rev. denied* (Minn. Sept. 15, 2015).

"[E]quitable relief cannot be granted where the rights of the parties are governed by a valid contract." *Midwest Sports Mktg., Inc. v. Hillerich & Bradsby of Canada, Ltd.*, 552 N.W.2d 254, 268 (Minn. App. 1996) (quotation omitted)), *rev. denied* (Minn. Sept. 20, 1996). The district court concluded that because "the parties entered a valid contract," Smart's "alternative equitable claims are precluded by the existence of that [c]ontract." The district court also concluded that neither the unenforceability of the liquidated-damages provision nor Smart's decision not to seek compensatory damages as an alternative to liquidated damages established grounds for pursuing equitable relief "where there existed a valid contract." In sum, the district court concluded that "[t]he unenforceability of the liquidated damages provision does not invalidate the existence of the [c]ontract."

The district court correctly determined that equitable relief under the theories asserted by Smart—promissory estoppel, unjust enrichment, and quantum meruit—was not available given the existence of a valid contract governing the parties' rights. *See In re*

Petition for Distribution of Attorney's Fees between Stowman L. Firm, P.A., 870 N.W.2d 755, 759 n.2 (Minn. 2015) (stating that quantum meruit is "a claim in equity as restitution for the value of a benefit conferred in the absence of a contract under a theory of unjust enrichment"); *Banbury v. Omnitrition Int'l, Inc.*, 533 N.W.2d 876, 881 (Minn. App. 1995) (stating that "the doctrine of promissory estoppel only applies where no contract exists"); *Southtown Plumbing, Inc. v. Har-Ned Lumber Co.*, 493 N.W.2d 137, 140 (Minn. App. 1992) (stating that "[r]elief under the theory of unjust enrichment is not available where there is an adequate legal remedy" and that the party seeking equitable relief "had a remedy . . . in a breach of contract suit").

Smart's arguments that equitable relief was available despite the existence of a contract are unavailing. Smart argues that because it sued for relief under the liquidated-damages provision in the contract, it could not alternatively seek actual damages. In briefing, Smart asserts that parties who "agree to a liquidated damages clause have elected their sole contract remedy at law." The two precedential cases on which Smart relies are not on point. *See Dean Van Horn Consulting Assocs., Inc.*, 367 N.W.2d at 559 (holding that the district court erred by granting a directed verdict on the grounds that respondent must prove actual damages to receive liquidated damages under a contract); *Fabian v. Sather*, 316 N.W.2d 10, 13 (Minn. 1982) (holding that the vendors' recovery was restricted to the $1,000 liquidated-damages clause in the parties' contract where vendor did not contest the validity of that clause). And at oral argument to this court, Smart maintained that it could not have pursued actual damages as an alternative to liquidated damages and

explained that doing so would have undercut its assertion that actual damages could not be ascertained prospectively.

Smart does not cite, and our research does not reveal, any precedent holding that a claimant may not pursue actual damages as an alternative to liquidated damages. In fact, caselaw provides that "[t]he mere fact that the stipulation for damages, as embodied in a contract, is construed as a penalty, does not render the contract a nullity. The only effect following that conclusion is to limit recovery to actual damages, which may be recovered under proper pleading and proof." *J. I. Case Threshing Mach. Co. v. Fronk*, 117 N.W. 229, 231 (Minn. 1908); *see Meuwissen*, 16 N.W.2d at 549 (stating that if the provision for liquidated damages is "in the nature of a penalty," then a claimant "would be required to prove actual damages"). Minnesota caselaw on this point is in accord with the Restatement (Second) of Contracts, which states that "[p]unishment of a promisor for having broken his promise has no justification on either economic or other grounds and a term providing such a penalty is unenforceable on grounds of public policy," but "[t]he rest of the agreement remains enforceable, however, . . . and the remedies for breach are determined by the rules stated in this Chapter," which permit expectation and reliance damages. Restatement (Second) of Contracts § 356 cmt. a (1981). Thus, we are not swayed by Smart's complaint that the district court determined that equitable relief was not available because there was an enforceable contract, "even though it had invalidated the liquidated damages clause."

Moreover, at oral argument before this court, counsel for Suchy stated that Suchy had intended to bring a pretrial dispositive motion to determine the validity of the liquidated-damages provision. The district court requested Smart's consent for Suchy to

file the dispositive motion, as the scheduled time for dispositive motions had passed, and Smart did not consent. Had Smart agreed to litigate the validity of the liquidated-damages provision before trial, it would not have been in the position of choosing to forgo proof of actual damages in a strategic attempt to avoid undermining its argument that the liquidated-damages provision was enforceable.

Smart also argues that the contract in this case allowed "Smart to pursue 'any option or remedy' for relief 'at law or equity.'" But the relevant contract provision actually states: "Contractor's exercise of any option or remedy hereunder shall not preclude the exercise of any other options or *remedies available to Contractor under this Agreement, at law or equity*." Because the parties' rights were governed by a valid contract, the equitable remedies Smart sought were not "available" to Smart. Moreover, the cases on which Smart relies regard requests for injunctive relief in addition to contractual damages, and not requests for monetary equitable relief. *See Cherne Indus., Inc. v. Grounds & Assocs.*, 278 N.W.2d 81, 92 (Minn. 1979) ("The party seeking the injunction must establish that his legal remedy is not adequate and that the injunction is necessary to prevent great and irreparable injury." (citation omitted)); *Bell v. Olson*, 424 N.W.2d 829, 830 (Minn. App. 1988) (involving request for injunctive and contractual relief). Those cases do not address whether parties to a valid contract may obtain monetary equitable relief on the quasi-contract theories asserted by Smart.

Finally, Smart argues that "[t]he jury found that Smart should be awarded $20,000 for the adjustment work Smart did before any repair work was done." Even though the district court correctly determined that equitable relief was not available given the

existence of a contract, it also concluded that Smart's equitable claims failed on the merits. We discern no error in the district court's reasoning on that issue and do not discuss it here, except to note that the district court correctly reasoned that even if equitable relief were available to Smart, the record is insufficient to enable a proper determination of the amount of such relief because Smart did not document or present evidence regarding its actual losses stemming from its efforts to negotiate the insurance claim. And although Pilich generally testified regarding the efforts that went into negotiating the claim on Suchy's behalf, the record in no way supports a determination that $20,000 was a reasonable amount of compensation for those efforts. In sum, Smart was not entitled to equitable relief.

Conclusion

The district court correctly determined that the record supported the jury's finding that a contract was formed, that the contractual provision for liquidated damages is an unenforceable penalty, and that Smart is not entitled to equitable relief. We therefore affirm.[6]

Affirmed.

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[6] We therefore reject Smart's argument that "[w]ith the [district] court judgment overturned, Smart will be the prevailing party" and "entitled to attorney fees as part of the relief provided for by contract." And we do not address Suchy's request that this court issue a precedential decision holding that the type of "price agreeable contract" in this case is invalid and unenforceable as a matter of law.