STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1067

Seitz Properties, Inc.,
Appellant,

vs.

Allan R. Radel Homes, Inc., et al.,
Respondents.

Filed March 26, 2012
Affirmed
Larkin, Judge

Steele County District Court
File No. 74-CV-08-2339

William L. French, Rochester, Minnesota (for appellant)

Jeremy T. Kramer, Law Office of Jeremy T. Kramer, Owatonna, Minnesota (for respondents)

Considered and decided by Peterson, Presiding Judge; Worke, Judge; and Larkin, Judge.

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

LARKIN, Judge

Appellant challenges the district court's denial of its motions to amend its complaint to conform to the evidence presented at trial, for amended findings of fact and

conclusions of law, and for a new trial. Because the district court did not abuse its discretion in denying these motions, we affirm.

FACTS

This appeal follows a court trial on appellant Seitz Properties, Inc.'s (Seitz) intentional-interference-with-contractual-relationships and interference-with-prospective-economic-advantage claims against respondents Allan R. Radel Homes, Inc. and its principal, Allan R. Radel (collectively Radel). The trial evidence showed that on five different dates in 2006 and 2007, Seitz entered into thirteen contracts for deed with Radel for the purchase of ten residential and three commercial properties. Seitz's principal owner testified that he "always looked at [the contracts for deed] as a portfolio," or "an investment as a whole." After entering into the contracts for deed, Seitz resold some of the properties pursuant to contracts for deed and secured new tenants for some of the rental properties.

The parties' contracts for deed required Seitz to make monthly interest and principal payments to Radel. Seitz often provided Radel with a single check to satisfy the payments due on more than one contract for deed. Radel maintained a list of the contracts for deed and the payment histories associated with the contracts. Radel allocated Seitz's lump-sum payments among the contracts for deed. Seitz was aware of Radel's allocation method.

By early 2008, many of Seitz's contract vendees had fallen behind on their payments to Seitz. As a result, Seitz fell behind on the payments to Radel. On May 28, 2008, Radel told Seitz that Radel did not want the properties back. But the parties agreed

that Radel would take back two of the properties and apply the associated $27,000 in equity to Seitz's past-due contract-for-deed payments. On June 2, Seitz delivered two quit claim deeds to Radel as agreed. Radel gave Seitz three documents showing how the $27,000 in equity had been applied to the past-due payments on Seitz's remaining contracts for deed. The parties signed one of the documents, which Radel termed the "Seitz-Radel principal interest payments agreement." This document showed Radel's accounting "from top to bottom." Radel asserted at trial that the buy-back was "an attempt to save this whole project" and that Radel credited Seitz's other contracts "in an attempt to save the whole transaction."

Radel contacted Seitz within a week after the June 2 meeting and requested another meeting. At the ensuing meeting on June 9, Radel provided Seitz with cancellation notices for the remaining eleven contracts for deed. Seitz was formally served with cancellation notices a few days later. According to Seitz, if Seitz had known that Radel was going to cancel the remaining contracts for deed, Seitz would have tried to retain certain "high-equity properties." But Seitz acknowledged it would have been possible to redeem just one of the properties after cancellation.

Seitz submitted a written closing argument after trial. Acknowledging that a breach-of-contract claim was not pleaded, Seitz nevertheless argued that a breach-of-contract claim was tried by the implied consent of the parties and that the district court should allow Seitz to amend the pleading to conform to the evidence. Seitz asserted that "the parties orally agreed to the same thing, that the thirteen properties would be treated as a unit," that the contract "was modified by the agreement of the parties on

[June 2] . . . to provide that Seitz would pay money as fast as he possibly could, and that the parties would re-convene to discuss their overall situation in two weeks." Seitz further asserted that Radel breached this agreement by providing Seitz with cancellation notices on June 9.

Seitz also argued that, if the district court rejected the breach-of-contract theory, the evidence also supported a promissory-estoppel claim. Seitz asserted that Radel "made a clear and definite promise that [Radel] would not cancel the contracts or take any untoward action before [June 14]," that Seitz's reliance on that promise was reasonably foreseeable, and that Seitz relied on the promise and incurred damages as a result. Seitz argued that this theory "achieves the same result, by way of damages, as breach of contract."

The district court issued findings of fact, conclusions of law, and an order determining that Seitz had proved the claims of intentional interference with a contract and intentional interference with a prospective contractual relation or advantage.[1] The district court awarded Seitz compensatory damages of $3,575 on these claims. But the district court did not enter a judgment at that time because it also concluded that Seitz was entitled to punitive damages in a yet-to-be-determined amount. After a bifurcated trial to determine the amount of punitive damages, the district court issued additional findings of fact and conclusions of law, as well as an order for judgment, awarding Seitz

[1] The district court found that Radel told several of Seitz's tenants and vendees not to pay Seitz and that, as a result, some of the tenants and vendees did not make the payments required under their contracts with Seitz.

$8,000 in punitive damages. None of the district court's findings, conclusions, or orders addressed Seitz's motion to amend the pleading to include breach-of-contract and promissory-estoppel claims.

Seitz moved to amend the district court's findings of fact and conclusions of law and for a new trial, arguing that the district court should have allowed Seitz to amend the pleading to conform to the evidence and that the district court should have considered Seitz's breach-of-contract assertion when making its findings and conclusions.

The district court denied the motions, observing that "[t]here was no evidence that any discussions [between the parties] led to an oral contract to treat the properties as one contract rather than many"; that "[t]he parties' discussions at the meeting on June 2, 2008, did not amount to a contract"; and that the document that the parties signed on June 2 "does not preclude foreclosure, nor was there any evidence of a verbal agreement that if [Seitz] deeded back the two properties, [Radel] would not foreclose for some set period of time." The district court therefore concluded that the evidence did not support Seitz's proposed amendment to the pleading or to the district court's findings of facts and conclusions of law. The district court also concluded that there were no errors of law at trial that necessitated a new trial. This appeal follows.

D E C I S I O N

I.

> When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may

> be made upon motion of any party at any time, even after judgment . . . .

Minn. R. Civ. P. 15.02. "Generally, whether to permit amendment of the pleadings is discretionary with the district court, and its decision will not be reversed absent a clear abuse of that discretion."[2] *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 474 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006).

Seitz contends that the trial evidence established that Seitz was entitled to damages under a breach-of-contract theory and that the district court erred in refusing to allow Seitz to amend the pleading to conform to the evidence. To establish the existence of a contract, a plaintiff must prove a valid offer, acceptance, and consideration. *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008), *review denied* (Minn. Jan. 20, 2009). A contract requires agreement with "reasonable certainty about the same thing and on the same terms." *Peters v. Mut. Benefit Life Ins. Co.*, 420 N.W.2d 908, 914 (Minn. App. 1988) (quotation marks omitted). There must be a "meeting of the minds concerning [the alleged contract's] essential elements." *Minneapolis Cablesystems v. City of Minneapolis*, 299 N.W.2d 121, 122 (Minn. 1980).

[2] Seitz asserts that "[a] court has no discretion to reject an amendment to conform to the evidence," relying on *Brooksbank v. Anderson*, 586 N.W.2d 789 (Minn. App. 1998), *review denied* (Minn. Jan. 27, 1999). *Brooksbank* does not stand for this proposition, and we therefore review the issue under the established, abuse-of-discretion standard. *See Brooksbank*, 586 N.W.2d at 793 (holding that the court could consider an issue raised for the first time on appeal because it was tried by implied consent of the parties in district court).

Seitz asserts that "Radel's application of [Seitz]'s payments proves that the parties saw their legal relationship from the outset as one contract with thirteen sub-parts." Seitz argued to the district court that the parties "orally agreed that the thirteen properties would be treated as a unit." The district court rejected this assertion, concluding that "there was no evidence that any discussions led to an oral contract to treat the properties as one contract rather than many" and that "[t]here was no evidentiary basis presented at trial for a breach of contract claim." We agree.

The trial evidence shows that Seitz and Radel entered into thirteen separate and distinct contracts for deed between October 2006 and August 2007. After Seitz fell behind on the payments, Radel developed a method of apportioning Seitz's partial payments among all of the contracts. But there was no evidence that the parties agreed to an additional, over-arching contract that encompassed all of the contracts for deed. Radel's desire to save "the whole transaction" and Seitz's treatment of the properties as a "portfolio" does not establish the formation of a new contract encompassing all of the contracts for deed. In fact, the record belies Seitz's "one-contract" theory and indicates that Seitz viewed each of the contracts for deed as separate and distinct. For example, testimony at trial established that had Seitz known that cancellation was imminent, Seitz would have attempted to pay off some of the higher-end properties. And Seitz admitted that it would have been possible to redeem one of the eleven properties.

Seitz also contends that the evidence established an alternative basis for damages under a promissory-estoppel theory and that the district court should have allowed Seitz to amend the pleading in accordance. The doctrine of promissory estoppel requires

proof, among other factors, of a clear and definite promise. *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000). Seitz asserted in closing argument that Radel "made a clear and definite promise that [the parties] would not cancel the contracts or take any untoward action before [June 14], 2008" and that Seitz detrimentally relied on that promise. The record does not support this assertion; it contains no evidence that Radel clearly and definitely promised Seitz that Radel would "not cancel the contracts or take any untoward action" before June 14. Seitz acknowledged as much at oral argument, arguing that its promissory-estoppel theory was based on Seitz's belief that Radel made an implicit promise not to cancel the contracts for two weeks.

Because the evidence does not reflect or support Seitz's breach-of-contract and promissory-estoppel theories, the district court did not abuse its discretion by refusing to allow Seitz to amend the pleading to include such claims.

II.

The district court may "amend its findings or make additional findings, and may amend the judgment accordingly" upon motion of a party. Minn. R. Civ. P. 52.02. "When considering a motion for amended findings, a district court must apply the evidence as submitted during the trial of the case and may neither go outside the record, nor consider new evidence." *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006) (quotation omitted), *review denied* (Minn. Nov. 14, 2006). "This court reviews denials of such motions under an abuse-of-discretion standard." *Id.*

Seitz argues that "none of the [district] court's findings of fact or conclusions of law addressed the proffered amendment" of the pleading and that the district court

"[c]learly . . . made a mistake." The district court did not make a mistake. Seitz's proposed amendments to the district court's findings and conclusions reflect Seitz's attempt to recover breach-of-contract damages. But because the district court properly determined that there was no evidence to support a breach-of-contract claim, it did not abuse its discretion in rejecting the proposed amendments.

III.

The district court may grant a motion for a new trial when errors of law occurred at trial. Minn. R. Civ. P. 59.01(f). "[A]n appellate court reviewing a district court's denial of a motion for a new trial asks only whether the district court abused its discretion." *Stoebe v. Merastar Ins. Co.*, 554 N.W.2d 733, 735 (Minn. 1996). Seitz contends that the district court abused its discretion in denying the motion for a new trial because (1) "it did not address [Seitz]'s motion to amend [the pleading] until very late in the day, in the course of denying [Seitz's] motions for post-trial relief," and (2) it "did not find that there was a contract and that the contract had been breached."

As to the first contention, the purpose of posttrial motions is to provide the district court with an opportunity to correct errors and avoid an appeal. *See Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 310 (Minn. 2003) (A motion for a new trial "permits the court to more fully develop the record for appellate review or to correct its own mistake and alleviate the need for appellate review."). Seitz brought the district court's failure to rule on Seitz's motion to amend the pleading to the district court's attention in the posttrial motions, and the district court correctly determined that the record did not support the proposed amendment. Assuming for the

sake of argument that the district court's delay in ruling was in error, it is not a basis for a new trial. *See* Minn. R. Civ. P. 61 (stating that no error "in anything done or omitted by the court . . . is ground for granting a new trial . . . unless refusal to take such action appears to the court inconsistent with substantial justice" and that the court "must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties"). As to the second contention, the district court correctly determined that there was no evidence of the formation, or the breach, of a contract governing all of the contracts for deed as one unit.

Affirmed.