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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1328**

Alpine Meadows Townhome Association,
Appellant,

vs.

American Family Mutual Insurance Company,
Respondent.

**Filed April 2, 2012
Affirmed
Peterson, Judge**

Anoka County District Court
File No. 02-CV-10-3966

Mark J. Kallenbach, Minneapolis, Minnesota (for appellant)

Patrick J. Sauter, Kathryn R. Burke, Bassford Remele, Minneapolis, Minnesota (for
respondent)

Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Collins,
Judge.*

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

UNPUBLISHED OPINION

PETERSON, Judge

Appellant insured challenges summary judgment in favor of respondent insurer, arguing that it has alleged facts sufficient to support two of its causes of action and has suffered an injury-in-fact. We affirm.

FACTS

Appellant insured, Alpine Meadows Townhome Association, provides services to its members who own townhomes in a multi-unit community. Respondent American Family Mutual Insurance Company sold Alpine Meadows an insurance policy that provided American Family with the option of paying the value of lost or damaged property or paying for repairs.

While the insurance policy was in effect, a hail storm damaged the townhomes. Alpine Meadows chose Maverick Construction to do repair work, and Maverick repaired all of the damaged property. In adjusting the loss, American Family made a series of payments to Alpine Meadows, which totaled in excess of \$567,000. The payments included a six-percent overhead and profit for Maverick.

Maverick requested additional payment in the amount of \$99,819.95, which included an additional 14 percent for overhead and profit and minor amounts for additional costs associated with the work. American Family disputed the additional payments, claiming that the costs were either not covered by the policy, were included in the six-percent overhead and profit already paid, or were for costs that were not approved.

Alpine Meadows filed a complaint against American Family, alleging breach-of-contract, unjust-enrichment, and promissory estoppel claims. Maverick is not a party to this action, and the complaint does not mention Maverick. In preparation for trial, American Family took the depositions of Sharon Dahlgren, who is the president of the Alpine Meadows board of directors, and Bryan Reitzner, who is the owner of Maverick.

Dahlgren testified that Maverick “took care of everything” and completed all of the repairs. She understood that all of the money that American Family paid to Alpine Meadows had been paid to Maverick for the repairs and that Maverick sought additional compensation. Dahlgren stated that Alpine Meadows was owed nothing, had not suffered any damages, and that “it is Maverick that is owed the money.” She was not aware of Maverick filing a mechanic’s lien or otherwise claiming that Alpine Meadows was liable for additional payments. Dahlgren testified that she “had no idea” that Alpine Meadows was the plaintiff in the lawsuit and had initiated the litigation and that it was “interesting we brought a lawsuit and I didn’t know it.” She stated that she had not seen the complaint and expressed surprise that the lawsuit was between Alpine Meadows and American Family and not between Maverick and American Family.

Reitzner testified that he had helped draft the complaint and claimed to have authority to settle the case pursuant to a written agreement between Maverick and Alpine Meadows, in which Alpine Meadows allegedly agreed to pay to Maverick anything it recovered in the lawsuit. But Reitzner was unable to identify or produce a written agreement. Reitzner testified that Maverick agreed not to pursue any claim against

Alpine Meadows for the additional payments and confirmed that Alpine Meadows had “never assigned [him] any of their insured rights.”

American Family moved for summary judgment, arguing that Alpine Meadows failed to allege facts sufficient to support its claims and lacked standing because it had not shown that it suffered an injury-in-fact. The district court granted summary judgment on both grounds. This appeal follows.

DECISION

On appeal from a summary judgment, appellate courts review de novo whether a genuine issue of material fact exists and whether the district court erred in applying the law; in doing so, appellate courts view the evidence in the light most favorable to the party against whom summary judgment was granted. *Peterka v. Dennis*, 764 N.W.2d 829, 832 (Minn. 2009). Summary judgment is proper when the nonmoving party fails to provide specific facts indicating that there is a genuine issue of fact. *Hunt v. IBM Mid America Employees Fed. Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986). “[A]n adverse party may not rest upon the mere averments or denials of [his] pleading but must present specific facts showing that there is a genuine issue for trial.” Minn. R. Civ. P. 56.05.

The district court concluded that Alpine Meadows failed to present facts sufficient to support its breach-of-contract claim. “A claim of breach of contract requires proof of three elements: (1) the formation of a contract, (2) the performance of conditions precedent by the plaintiff, and (3) the breach of the contract by the defendant.” *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). Whether a contract exists generally is a question for the fact-finder. *Morrisette v. Harrison Int'l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992). The party asserting a breach-of-contract claim must also show that the breach caused damages. *Border State Bank of Greenbush v. Bagley Livestock Exch., Inc.*, 690 N.W.2d 326, 336 (Minn. App. 2004), *review denied* (Minn. Feb. 23, 2005).

Alpine Meadows' contract claim is based on an allegation that American Family breached the insurance policy by failing to pay Maverick an amount of money that Maverick asserts it is owed for completing the repairs. Although Alpine Meadows claims that American Family breached the policy, Alpine Meadows did not allege that American Family denied any part of its insurance claim and did not cite any policy provision that American Family breached. The alleged breach concerns American Family's failure to pay Maverick, but nothing in the record establishes that American Family entered into a contract with Maverick or that Alpine Meadows assigned its rights under the policy to Maverick. Thus, Alpine Meadows has not presented facts sufficient to support its claim that American Family breached the insurance contract.

Also, the undisputed record shows that Alpine Meadows has not suffered any damages. A breach-of-contract claim fails as a matter of law if the plaintiff cannot establish that it has been damaged by the alleged breach. *See Logan v. Norwest Bank Minn., N.A.*, 603 N.W.2d 659, 663 (Minn. App. 1999). In its complaint, Alpine Meadows alleged that "American Family's breach has caused Alpine Meadows to suffer damages in an amount to be proved at trial in excess of \$50,000." But nothing in the record shows that Alpine Meadows is obligated to pay Maverick the amount Maverick asserts it is

owed. Dahlgren testified that Maverick completed all of the repairs, Alpine Meadows is not owed anything, Maverick has suffered the loss, and Maverick has neither recorded a mechanic's lien against the property nor told Alpine Meadows that it will seek payment from Alpine Meadows.

Because Alpine Meadows failed to present facts sufficient to support its claim that American Family breached the insurance policy or that it suffered damages as a result of the alleged breach, the district court did not err in granting summary judgment on Alpine Meadows' breach-of-contract claim.

The district court also concluded that Alpine Meadows failed to present facts sufficient to support its unjust-enrichment claim. A claim of unjust enrichment requires proof that a defendant knowingly received something of value, was not entitled to the benefit, and, under the circumstances, would be unjustly enriched if permitted to retain it. *Southtown Plumbing, Inc. v. Har-Ned Lumber Co.*, 493 N.W.2d 137, 140 (Minn. App. 1992). In its complaint, Alpine Meadows alleged only that "American Family will be unjustly enriched in an amount to be proved at trial in excess of \$50,000 in the event that it does not adjust Alpine Meadows's May 25, 2008 Loss as provided for by the Policy's terms." In its memorandum of law in opposition to summary judgment, Alpine Meadows made no argument concerning its unjust-enrichment claim and presented no facts to support the claim. Thus, Alpine Meadows neither alleged nor presented facts sufficient to support its unjust-enrichment claim.

We do not address Alpine Meadows' promissory estoppel claim because Alpine Meadows has not challenged the district court's grant of summary judgment on that

claim. Because Alpine Meadows failed to present facts sufficient to support its causes of action, we need not consider the district court's determination that Alpine Meadows lacked standing.

Affirmed.