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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-136**

Karl Bjorkman,
Appellant,

vs.

Arctic Cat, Inc.,
Respondent.

**Filed October 31, 2011
Affirmed
Stoneburner, Judge**

Pennington County District Court
File No. 57CV09825

Michael L. Jorgenson, Charlson & Jorgenson, P.A., Thief River Falls, Minnesota (for appellant)

Robert M. Albrecht, Brink, Sobolik, Severson, Malm & Albrecht, P.A., Hallock, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Kalitowski, Judge; and Peterson, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the district court's judgment in favor of respondent, dismissing appellant's breach-of-contract and promissory estoppel claims. Appellant

asserts that the district court's findings of fact are clearly erroneous. Because the record supports the findings and the findings support the judgment, we affirm.

FACTS

Appellant Karl Bjorkman began working for respondent Arctic Cat, Inc. in Thief River Falls in early July 1991. From 1998 until he resigned in 2009, Bjorkman was an international sales manager.

In May 2007, Arctic Cat announced that it expected to move many of its managerial positions to a facility in Plymouth in the fall of 2007. The move did not occur as soon as expected. It was not until July 2008 that Bjorkman met with Arctic Cat's CEO, Chris Twomey, and vice-president of human resources, Terry Blount, about his options in connection with the anticipated move. Twomey and Blount orally gave Bjorkman three options: (1) move in his current position to Plymouth and receive a \$10,000 increase in salary; (2) look for a different position at the Thief River Falls facility; (3) resign and receive a severance package equivalent to one-week's pay for every year of service. Bjorkman asked that the offer be put in writing. On July 30, 2008, Arctic Cat sent him a letter setting out the terms of employment if the position moved to Plymouth and stating that "[i]f you choose not to transfer to the Plymouth location, you have the opportunity to investigate internal openings or be provided with a severance package in the amount of one week for each year of service." The letter requested a response to the offers by August 8, 2008.

On August 8, 2008, Bjorkman sent a letter to Blount and Twomey stating that his research indicated that Arctic Cat's salary offer was lower than other companies were

paying for similar jobs in the Twin Cities and asking them to reconsider the salary offer. Blount responded by asking Bjorkman if he was accepting any of the offers and requesting that Bjorkman respond “ASAP.” Bjorkman responded that he was asking Arctic Cat to review the compensation package offered. On August 12, 2008, Blount responded that Arctic Cat would not be increasing the compensation offered for the move to Plymouth and again requested a response “ASAP.” Bjorkman then requested that his annual performance review, which should have taken place in early July, be completed, asserting that the review “should bring insight into a difficult decision.” In December 2008, Bjorkman again requested his annual review.

Bjorkman and Twomey met on January 8, 2009, at which time Twomey orally gave Bjorkman two options: (1) move to Plymouth and receive a salary of \$90,000 or (2) stay in Thief River Falls and continue working in his present position and salary. Twomey told Bjorkman that if he stayed in Thief River Falls, he would receive a 3% raise retroactive to July 2008 (the anniversary of his hiring date). Resignation with a severance package was not discussed at this meeting.

On January 9, 2009, Bjorkman met with Leigh Kennedy, an Arctic Cat human-resources manager in Thief River Falls, to discuss how he could “get the most bang for his buck” if he resigned. They discussed accrued vacation, sick leave, health and dental insurance, and the retroactive raise to his anniversary date. Bjorkman asked about severance, and Kennedy responded that Bjorkman was probably not eligible for a severance package. When Bjorkman looked surprised, Kennedy stated that she was not privy to the previous discussions and correspondence among Bjorkman, Twomey, and

Blount, but that Bjorkman should talk to Blount (whose office was nearby) about any severance option he was given in July.

Bjorkman did not talk to Blount or Twomey about the continued availability of the severance option. He submitted his resignation letter on January 12, 2009, stating that he would take the severance package. On January 16, 2009, Blount informed Bjorkman that no severance option was available to him.

Bjorkman sued Arctic Cat for breach of contract and promissory estoppel. After a bench trial, the district court dismissed Bjorkman's claims based on its findings that the offer for the severance package had been revoked or lapsed before Bjorkman's acceptance and that Bjorkman's reliance on the offer in January 2009 was not reasonable. Bjorkman moved for amended findings or, alternatively, a new trial. The district court amended some of its findings but did not alter the decision and denied Bjorkman's request for a new trial. This appeal followed.

D E C I S I O N

I. Standard of review

“The existence of a contract is generally a question of fact.” *Riley Bros. Constr., Inc. v. Shuck*, 704 N.W.2d 197, 202 (Minn. App. 2005). “Findings of fact [by the district court] . . . shall not be set aside unless clearly erroneous . . .” Minn. R. Civ. P. 52.01.

“When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the [district] court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard.” *Porch v. General Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002) (quotation omitted). A district court's

conclusion on equitable estoppel after a bench trial is reviewed for abuse of discretion. *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 23 (Minn. 2011).

II. Modification and revocation

The parties do not dispute that in July 2008 Arctic Cat made a valid offer, premised on Arctic Cat's decision to transfer Bjorkman's position to Plymouth, which included a severance package if Bjorkman chose not to take the position in Plymouth or to seek other employment within the company. The district court concluded that the offer of a severance package was modified or revoked prior to acceptance. Bjorkman argues that, because modification or revocation of the offer of the severance package was not explicitly communicated to him, the district court erred by finding that the offer of a severance package was modified or revoked before January 2009.¹

“[A]n offer to make a contract may be revoked by words or conduct inconsistent with the offer at any time before the offer is accepted.” *Feges v. Perkins Restaurants, Inc.*, 483 N.W.2d 701, 708 (Minn. 1992). But intent to revoke must be communicated to the offeree. *Id.* Arctic Cat argues that allowing Bjorkman to continue his position as international sales manager without relocating to Plymouth (conduct) and the oral offer by Twomey at the January 8, 2009 meeting for Bjorkman to continue in his position

¹ In the district court, Arctic Cat argued that Bjorkman's communications of August 8 and August 11, 2008, attempting to modify the terms of the original offer, constituted rejection of the offer. The district court agreed based on the “mirror image rule” of contract formation and case law holding that an acceptance that qualifies an essential term of an offer is, in essence, a rejection of the offer and is treated as a counteroffer. *Alpha Venture/Vantage Properties v. Creative Carton Corp.*, 370 N.W.2d 649, 652 (Minn. App. 1985). But the district court also found that Arctic Cat kept the original offer open after Bjorkman's rejection by counteroffer. Neither party challenges these findings on appeal.

without relocating to Plymouth (words) were inconsistent with the offer of severance, which had been an alternative to the requirement that Bjorkman relocate to maintain his position. Arctic Cat therefore argues that it communicated to Bjorkman by conduct and words that the severance package offer had been revoked. The district court agreed, finding that the options offered on January 8, 2009, modified the original offer and revoked the offer of a severance package. The record supports the district court's findings, and the district court did not misapply the law; therefore the district court did not abuse its discretion in deciding that the severance package offer was revoked prior to Bjorkman's acceptance on January 12, 2009.

III. Lapse

The district court also agreed with Arctic Cat's assertion that the offer of a severance package had lapsed prior to Bjorkman's acceptance. "It is well-settled law in Minnesota that unless an offer provides a date at which the offer expires or the offeror revokes the offer, the offer remains open for a reasonable amount of time." *Riley Bros.*, 704 N.W.2d at 202. Whether the time for acceptance was reasonable is a question of fact which depends on the totality of the circumstances. Restatement (Second) of Contracts § 41 (1981).²

² Bjorkman criticizes the district court's reliance on *Pioneer Peat, Inc. v. Quality Grassing & Services, Inc.*, 653 N.W.2d 469, 473 (Minn. App. 2002) for the proposition that "[a]bsent a contract provision defining the time allowed for rejection, a reasonable time for rejection is a question of fact," arguing that because *Pioneer Peat* involved the UCC, it is inapplicable to this case. But Bjorkman does not cite any authority to refute the accuracy of the proposition, which is also stated in the Restatement (Second) of Contracts § 41.

The district court found that Arctic Cat's requests in August 2008 that Bjorkman respond to the original offer "ASAP" made it unreasonable for Bjorkman to expect the offer to remain open until January 2009. And the district court found that Twomey's failure to offer the severance package in January 2009 confirmed that the time to accept the original offer had lapsed. We conclude that the totality of circumstances, including (1) the original response deadline of August 8; (2) the requests several days after August 8 for a response "ASAP;" and (3) Arctic Cat's decision, communicated to Bjorkman on January 8, 2009, to let Bjorkman remain in his position in Thief River Falls, support the district court's finding that the offer of a severance package as an alternative to a required relocation had lapsed prior to January 12, 2009. The district court's finding that the time to accept the severance-package offer had lapsed by January 12, 2009, is not clearly erroneous.

IV. Promissory estoppel

Bjorkman also asserted that he is entitled to relief on a theory of promissory estoppel because he reasonably relied to his detriment on Arctic Cat's promise of a severance package. Promissory estoppel is an equitable doctrine that "implies a contract in law where none exists in fact." *Javinsky v. Comm'r of Admin.*, 725 N.W.2d 393, 398 (Minn. App. 2007) (citation omitted). The doctrine applies when "the promisor makes a unilateral or otherwise unenforceable promise and the promisee relies on the promise to his or her detriment." *Axelson v. Minneapolis Teachers' Retirement Fund Ass'n*, 544 N.W.2d 297, 299 (Minn. 1996) (citation omitted). "[P]romissory estoppel is an equitable form of action based on good-faith reliance." *Olson v. Synergistic Technologies Business*

Systems Inc., 628 N.W.2d 142, 152 (Minn. 2001.) “[A]pplication of promissory estoppel requires the analysis of three elements: (1) Was there a clear and definite promise? (2) Did the promisor intend to induce reliance, and did such reliance occur? (3) Must the promise be enforced to prevent injustice?” *Id.* (quoting *Ruud v. Great Plains Supply, Inc.*, 526 N.W.2d 369, 372 (Minn. 1995)).

The district court found that Arctic Cat made a unilateral promise to Bjorkman but did not intend that Bjorkman could rely on the promise indefinitely, and Bjorkman did not meet his burden of proving that the promise of a severance package must be enforced to prevent injustice. Because the record supports the district court’s findings, the findings are not clearly erroneous, and the district court did not abuse its discretion in concluding that the doctrine of promissory estoppel is not applicable in this case, we affirm.

Affirmed.