STATE OF MINNESOTA
IN COURT OF APPEALS
A11-265

gScribe, Inc.,
Appellant,

vs.

Soteria Imaging Services, LLC, et al.,
Respondents.

Filed September 12, 2011
Affirmed
Willis, Judge[*]

Hennepin County District Court
File No. 27-CV-10-4422

Stephen R. Arnott, Brian J. Clausen, Clausen & Hassan, L.L.C., St. Paul, Minnesota (for appellant)

Skip Durocher, Brian L. Vander Pol, Andrew D. Peters, Dorsey & Whitney, L.L.P., Minneapolis, Minnesota (for respondents)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Willis, Judge.

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

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

WILLIS, Judge

Appellant challenges the district court's grant of summary judgment to respondents, arguing that the court erred because genuine issues of material fact precluded summary judgment on appellant's claims of breach of contract and promissory estoppel. Because no genuine issues of material fact exist, we affirm.

FACTS

Appellant gScribe is a Minnesota corporation that creates and sells medical technology and transcription services to companies in the healthcare industry. Respondent Soteria Imaging Services, LLC is a company headquartered in Louisville, Kentucky, that manages outpatient medical-imaging clinics across the United States. Respondent LifeScan Minnesota Stand-Up MRI, LLC is a wholly owned subsidiary of Soteria and operates two stand-up MRI facilities in Minnesota.

Soteria relies on three major software components to conduct its business: (1) a radiology-information system (RIS); (2) a picture-archiving-and-communication system (PACS); and (3) software that converts a radiologist's oral report on the examination of a patient's scan into a written report. To transfer information between the three components, Soteria uses Health Level Seven (HL7), which is the standard messaging protocol used in the healthcare industry for the exchange of medical information between computer systems.

In 2003, gScribe began to provide medical-transcription services to LifeScan's imaging centers. gScribe charged LifeScan $15 per medical-transcription report. In

2004, gScribe and LifeScan formalized the arrangement in two written contracts, one for each of LifeScan's Minnesota clinics. In 2007, gScribe and LifeScan renewed the contracts.

After joining Soteria in 2007 as its director of information technology, Christopher Campbell began to look for software vendors to replace Soteria's RIS and PACS. Because he knew that a new RIS would require a transfer of data from the old RIS to the new, in March 2008, Campbell contacted Rakesh Sharma, gScribe's president and chief executive officer, to see if gScribe could help with the data-transfer project. Campbell gave Sharma a copy of Soteria's RIS database to help Sharma estimate gScribe's costs for the project. After Sharma had reviewed the database and made a cost estimate, Campbell told him that the project was on hold until Soteria selected a company to provide RIS services.

At about this same time, Campbell told Sharma that Soteria was in the process of standardizing the company's technology and, consequently, was looking at other medical transcription companies to provide services. Sharma, eager for Soteria's business, requested more specific information about the criteria Soteria planned to use to hire a company to develop such software. In May 2008, Campbell shared with Sharma information regarding competitors' price quotes, and in June 2008, sent Sharma an e-mail that elaborated on the minimum requirements, including an HL7-compliant interface, that Soteria demanded of companies that might develop the software.

gScribe proceeded to enter into an agreement with UTS Technologies, a wholly owned subsidiary of gScribe located in India, to begin developing HL7-compliant

software in exchange for gScribe's promise to pay UTS a minimum of $15,000 per month for five years following the development of a HL7-compliant interface. gScribe did not tell Soteria that it had entered into the agreement with UTS or that it was incurring development expenses.

Sharma and Campbell had little contact between June 2008 and August 2008. In September 2008, Sharma sent Campbell an e-mail to ask him how he wanted reports to be uploaded onto the system. Sharma also wrote that "[s]tarting this month we are charging 14 cents per line for your reports," which was similar to what competitors were quoting. Sharma wrote that after "we get all the reports to show up inside your system, then you will have the process of images and reports tied up complete[ly]." Campbell responded with a phone call, telling Sharma that he looked forward "to seeing what our options are." Several days later, Campbell sent Sharma an e-mail that stated: "You all do realize that because we do not yet have our RIS in place that we will have to change whatever we do to work with the new RIS system."

In October 2008, Soteria selected a new RIS provider, MedInformatix. Campbell sent Sharma an e-mail to ask whether gScribe could configure its software to work with the RIS provided by MedInformatix, using the HL7 protocol.

In January 2009, Sharma sent Campbell an e-mail stating that because gScribe was "getting close to finishing the HL7 implementation," he wanted "to get our new contract done so that we are clearly working under the terms from her[e] onwards." Sharma attached to the e-mail a sample contract, which provided that gScribe would be the "exclusive service provider that will implement the HL7 interface between the

MedInformatix Radiology Information System (RIS) and gScribe EMR." The e-mail was forwarded to Soteria's chief financial officer, who responded to Sharma by an e-mail stating that gScribe would not be Soteria's exclusive service provider and refusing to sign the agreement. He also told Sharma that any agreement "should only cover the services of specific radiologist[s] and not centers."

Sharma responded to the e-mail, stating:

> I was[] told that HL7 interface is [a] must for all Soteria centers in order to move the data inside RIS, and I was told that the cost [of] 14 cents is what everyone will pay. I was asked to develop HL7 interface technology to enable the data to move inside the RIS system. gScribe ha[s] agreements with some of your centers for its services till 2010, which I decided to re-do so that gScribe could rol[l] out its services to more centers without losing revenue. gScribe has put more than 600 hours of work in HL7 interface development, which is a huge financial commitment that I made with an understanding that this will be used in all your centers. gScribe needs minimum 10,000 lines of work a day in order for it to recoup all its investment. You may be able to give this much to gScribe from 10 to 15 of your centers, and that will be fine, but we do need to have minimum this much work. We have been working with your organization since 2003, and we have done everything that has been asked from us.

gScribe and Soteria did not reach an agreement for gScribe to provide transcription services to any of Soteria's clinics after this e-mail exchange.

In late January or early February 2009, gScribe began to bill LifeScan for past transcription services at $15 per medical transcription report, even though gScribe had modified the billing structure in the September 2008 e-mail to charge LifeScan 14 cents per line. gScribe also billed LifeScan for gScribe's software-development costs and

threatened to report unpaid invoices to the government, health-insurance companies, and clinics and hospitals. In February 2009, Sharma sent Campbell an e-mail stating that gScribe would immediately begin to charge 24.9% interest on invoices that were 60 days past due. Sharma warned that "[f]ailing to pay for these invoices will result in[] an increase in the interest rate by 5% after every 30 days plus a hefty penalty will be added into these invoices." Soteria and LifeScan did no business with gScribe after receiving the e-mail.

In January 2010, gScribe filed a complaint in Hennepin County District Court against Soteria and LifeScan, alleging four counts: (1) breach of contract; (2) promissory estoppel; (3) unjust enrichment; and (4) fraudulent misrepresentation. Soteria and LifeScan subsequently moved to dismiss gScribe's breach-of-contract claim against Soteria and the other three claims against both Soteria and LifeScan. The district court granted the motion in part and dismissed the unjust-enrichment and fraudulent-misrepresentation claims. Soteria and LifeScan then moved for summary judgment on the remaining claims of breach of contract and promissory estoppel. The district court granted the motion, and gScribe appeals.

D E C I S I O N

gScribe argues that the district court erred by granting summary judgment to Soteria and LifeScan. A district court must grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. A

genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the non-moving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). We apply a de novo standard of review to a grant of summary judgment, and we view the evidence in the light most favorable to the nonmoving party. *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009).

I. The district court did not err by granting summary judgment on gScribe's claim of breach of contract against LifeScan.

gScribe contends that the district court erred by granting summary judgment to LifeScan on gScribe's 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). To evaluate whether the parties formed a contract, a reviewing court must focus on the parties' objective conduct and not their subjective intentions. *Id.*

gScribe pleaded separate breach-of-contract claims against Soteria and LifeScan, and the district court analyzed each claim separately. The district court, quoting from the pleadings, stated that gScribe alleged that Soteria "failed to reimburse [gScribe] for development costs associated with the HL7 interface project and to use gScribe's transcription services at its centers." The district court also noted that gScribe claimed that LifeScan breached an agreement to provide gScribe with additional work and

breached the parties' two written agreements when LifeScan refused to pay the rate of $15 per report called for by the written contracts between gScribe and LifeScan. The district court granted summary judgment on the breach-of-contract claims against both Soteria and LifeScan.

On appeal, it appears that gScribe challenges only the district court's order relating to the breach-of-contract claim against LifeScan, although the parties at times seem to treat Soteria and LifeScan as a single entity. gScribe argues that a genuine issue of material fact exists regarding the existence of a contract between gScribe and LifeScan: whether gScribe modified its LifeScan contract rates from $15 per report to 14 cents per line on the condition that LifeScan would provide gScribe with additional work. LifeScan denies the existence of any such agreement. gScribe cites *Knezevich v. Dress* for the proposition that resolving the claim is for a fact-finder, and, therefore, the district court improperly granted summary judgment. 399 N.W.2d 219, 221 (Minn. App. 1987). gScribe also cites *Smith v. Woodwind Homes, Inc.* to support its argument that summary judgment should be reversed because the district court impermissibly weighed the evidence and resolved a factual dispute. 605 N.W.2d 418, 425 (Minn. App. 2000).

The district court determined that gScribe failed to offer evidence sufficient to establish that the modification of its rates was conditioned on a promise by Campbell to provide gScribe with additional work. The district court stated that although

> a fact finder might infer that [gScribe] lowered its rates in hopes of getting additional work, there is no evidence to show that [gScribe] and LifeScan objectively manifested intent to be bound by contract terms in which [gScribe] reduced its rate in consideration for [Campbell's] promise to provide

> additional work. . . . Such a reduction, without more, does not create a fact issue.

Further, the district court determined that gScribe breached the written contracts with LifeScan first by imposing interest rates and fees not agreed to in the contracts. Therefore, the district court granted summary judgment to LifeScan on the breach-of-contract claim.

We agree that gScribe did not present evidence sufficient to raise a genuine fact issue regarding the existence of an agreement that reducing the rate charged to LifeScan was contingent on Campbell's agreement that Soteria, or LifeScan, would provide additional work to gScribe. gScribe cites two passages from Campbell's deposition that it alleges is evidence of such an agreement. gScribe first relies on Campbell's testimony that he told Sharma what Soteria's "minimum requirements were going to be for any vendor" and stated that Sharma would need to meet those requirements "[i]f he wanted to continue to receive a volume from us." gScribe alleges that this testimony establishes that "Chris Campbell had made it clear to gScribe that gScribe continuing to receive a volume of work was contingent on it developing the HL-7 interface." But gScribe misstates Campbell's deposition testimony, which refers to the June 2008 e-mail that Campbell sent Sharma to elaborate on the minimum requirements Soteria would use to select a new transcription provider. The testimony simply iterates the purpose of that e-mail—to share with gScribe the minimum requirements for vendors that Soteria would consider. The testimony does not establish the existence of an agreement between gScribe and LifeScan.

gScribe also relies on Campbell's testimony that he assumed that Sharma would want to maintain his volume of business. gScribe claims that this testimony establishes that "Soteria knew the importance of volume to gScribe." But gScribe's allegation is irrelevant to establishing the existence of a contract. Campbell's assumption that gScribe would want to maintain volume does not support an inference that gScribe had an agreement with LifeScan to receive additional work in exchange for reduced rates.

Additionally, as the district court correctly noted, gScribe first breached the existing written contracts with LifeScan and, therefore, may not recover under the contracts. "Under general contract law, a party who first breaches a contract is usually precluded from successfully claiming against the other party." *Carlson Real Estate Co. v. Soltan*, 549 N.W.2d 376, 379 (Minn. App. 1996), *review denied* (Minn. Aug. 20, 1996).

The district court found that in January or February 2009, gScribe began billing LifeScan at $15 per report, even though the parties' contracts had been modified in September 2008 to reflect a rate of 14 cents per line. The district court also found that gScribe imposed interest rates and penalty fees not provided for in the contracts. The district court determined that "[b]y imposing fees and rates that were not authorized under the parties' contract, [gScribe] was the party that first breached the contract. [gScribe] cannot now recover damages for lost earnings based on its own breach." The district court's factual findings are supported by the record, and it did not err by concluding that gScribe's actions were a material breach and, therefore, that gScribe may not recover against LifeScan. *See Soltan*, 549 N.W.2d at 379.

The district court did not err by granting summary judgment on gScribe's breach-of-contract claim against LifeScan.

II. The district court did not err by granting summary judgment on gScribe's claim of promissory estoppel.

gScribe argues that the district court erred by granting summary judgment to both Soteria and LifeScan on gScribe's claim of promissory estoppel. To establish a claim of promissory estoppel, a plaintiff must prove that (1) a clear and definite promise was made, (2) the promisor intended to induce reliance and the promisee actually relied to his or her detriment, and (3) the promise must be enforced to prevent injustice. *Martens v. Minnesota Mining & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000). "Promissory estoppel is an equitable doctrine that 'impl[ies] a contract in law where none exists in fact.'" *Id.* (quoting *Grouse v. Group Health Plan, Inc.*, 306 N.W.2d 114, 116 (Minn. 1981)).

gScribe contends that the district court erred by granting summary judgment because the question of whether it relied on representations by Campbell creates a genuine issue of material fact. gScribe cites deposition testimony that, it alleges, establishes that gScribe did so rely. First, gScribe cites Sharma's testimony that gScribe "conditioned its work on Soteria's project on the expectation that it would receive increased volume of business from Soteria in addition to the work it was entitled to pursuant to its existing (and disputed) LifeScan contracts." Second, gScribe contends that Campbell's testimony establishes that Soteria knew that gScribe had relied on this promise. Third, gScribe alleges that Sharma's testimony and Campbell's testimony

establish that Soteria knew that gScribe was developing an HL7-compliant interface for Soteria and that gScribe undertook the development because it believed it would receive more work from Soteria as a result. gScribe cites *Dallum v. Farmers Union Cent. Exchange, Inc.*, in which this court found that a "letter of assurance" between the parties created the basis for a promissory-estoppel claim. 462 N.W.2d 608, 612 (Minn. App. 1990), *review denied* (Minn. Jan. 14, 1991). gScribe alleges that this appeal presents facts similar to those in *Dallum*.

The district court concluded that gScribe had cited no evidence that Soteria made a "clear and definite" promise of additional work to gScribe. The district court determined that "the record reveals that Soteria promised only to consider [gScribe] for additional transcription work if [gScribe's] product met certain minimum standards."

We conclude that the district court did not err. gScribe has cited no evidence that Soteria made a "clear and definite" promise, or, for that matter, any promise at all. Soteria and LifeScan correctly note that Sharma admitted in his deposition that gScribe's expectation of additional work was based on his subjective, unilateral understanding, not on any statement or promise that Campbell made. Because gScribe has failed to establish that Soteria made a "clear and definite" promise and intended for gScribe to rely on such a promise, we decline to address gScribe's arguments that there is a genuine issue of material fact regarding reliance. Therefore, the district court did not err by granting summary judgment on gScribe's promissory-estoppel claim.

In sum, the district court did not err by granting summary judgment to LifeScan on gScribe's claim of breach of contract because gScribe cited no evidence to establish that

it had an agreement with LifeScan for additional work. Further, the district court did not err by granting summary judgment to both Soteria and LifeScan on gScribe's claim of promissory estoppel because gScribe did not present evidence that showed that Campbell made a "clear and definite" promise.

Affirmed.