**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A11-311**

John Sandberg, et al.,
Appellants,

vs.

City of Belgrade,
Respondent.

**Filed January 3, 2012**
**Affirmed**
**Minge, Judge**

Stearns County District Court
File No. 73-CV-08-15661

Patrick W. Michenfelder, Frederick M. Young, Gries & Lenhardt, P.L.L.P., St. Michael, Minnesota (for appellants)

Paul D. Reuvers, Jason J. Kuboushek, Iverson Reuvers, Bloomington, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and Ross, Judge.

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

**MINGE**, Judge

Appellants challenge the district court's (1) denial of their motion to amend the complaint to include quantum-meruit and punitive-damages claims; (2) exclusion of evidence of attorney fees incurred in a third-party litigation; (3) denial of their

promissory-estoppel claim; and (4) denial of their motion for a new trial. Because appellants failed to allege the elements necessary to support a claim of quantum meruit, because the record supports the district court's conclusion that there was not a clear and definite promise by respondent to support a promissory-estoppel claim, and because appellants failed to adequately brief their argument regarding the motion for a new trial, we affirm the district court decisions. Because appellants have no surviving causes of action against respondent, we do not reach the issues of punitive damages or third-party attorney fees.

## FACTS

Appellants John Sandberg and Bradley Larson are involved in real estate development in the Twin Cities area. Sandberg noted that the Belgrade school-district enrollment was declining and concluded that it would be advantageous for respondent City of Belgrade to redevelop unused and deteriorating property in the city for housing. After discussing his ideas with Belgrade Mayor Dennis Braegelman, Sandberg enlisted Larson, an attorney, in his efforts. Sandberg and Larson suggested to Mayor Braegelman that they identify vacant and blighted properties that could be redeveloped into single-family housing using a city-created tax increment financing (TIF) district.

During the summer of 2004, Sandberg and Mayor Braegelman identified properties with redevelopment potential. In July and August, Sandberg purchased a former church rectory and entered into agreements to purchase a mobile home park and other properties contingent upon Belgrade's commitment to the creation of a TIF district

for development of single-family housing. The school district indicated it would sell certain vacant property to Sandberg for the project for nominal cost.

In the fall of 2004, Sandberg and Larson presented a project proposal to the Belgrade City Council, organized a tour of the properties, prepared an outline of the project, and drafted a development contract. The council continued to discuss the project, with all members eventually indicating their support. Larson mailed a proposed resolution for the city council to consider at its December 13 meeting. The proposed resolution stated:

> That the City is hereby authorized to enter into a development project for the purpose of increasing the available residential housing inventory in the City of Belgrade by undertaking the acquisition, planning, development and marketing of those certain properties to be known as the Main Street Annex First Addition, Main Street Annex School Addition and Main Street Annex Downtown Addition.
>
> That the Council authorizes the City to enter into such contracts and agreements as may be reasonably necessary to go forward and carry out the intent and purpose and specifically is authorized to enter into a development management agreement with Main Street Annex, LLC, a Minnesota limited liability company for the development and management of said project.

Main Street Annex, LLC is an entity that Sandberg intended to form to undertake the project. As of December 2004, Main Street Annex had not yet been established. On December 13, 2004, with Larson and Mayor Braegelman in attendance, the city council unanimously approved the resolution. The minutes of that meeting include the following statement: "Passing the Resolution does obligate the City to buy the properties." Neither

Larson nor Mayor Braegelman could identify who made the statement. Based on this council action, Larson notified the owners of the properties that the contingencies in the purchase agreements were removed. In addition, Larson mailed an amended development contract to Mayor Braegelman, the city attorney, and the city's financial consultant.

In January 2005, the city council held a special meeting to discuss the project. An economic-development consultant attended, pointing out that Belgrade was taking all of the risk, that the deal would only work if at least five homes were sold per year, and that Belgrade was giving sole control of the project to Sandberg. In March 2005, Mayor Braegelman informed Sandberg and Larson that Belgrade had hired a consultant and that there were concerns about the development agreement.

Ultimately, the city council "determined that the project as proposed is not in the best interest of the taxpayers of the City of Belgrade." The consultant notified Larson of this decision, stating that the city did not believe the council's action on December 13, 2004 imposed any obligation to follow through with the project. In September 2005, the owners of one of the properties sued Sandberg seeking specific performance of their purchase agreement with him. In February 2008, the district court concluded that the city's actions excused Sandberg from any obligation to purchase that property.

In November 2008, Sandberg and Larson sued Belgrade, alleging breach of contract and promissory estoppel. In March 2009, the parties agreed to entry of a scheduling order providing that: "[t]he deadline for any amendment of the pleadings shall be April 15, 2009" and "[a]ll motions shall be served and filed by October 1, 2009." The

district court granted Belgrade's motion for summary judgment as to the breach-of-contract claim. Belgrade moved to dismiss Sandberg and Larson's claims for lost profits and for attorney fees incurred in defending against the specific-performance litigation initiated by property owners, and Sandberg and Larson moved to amend their complaint to state claims for quantum meruit and punitive damages. The district court granted Belgrade's motion to dismiss and denied the Sandberg/Larson motion to amend. This left the promissory-estoppel claim for trial.

After a bench trial, the district court found that Sandberg and Larson "acted at their own peril when they relied upon less than clear and definite promises and a vague Resolution" and rejected the promissory-estoppel claim. Sandberg and Larson moved for amended findings or a new trial, which the district court denied. This appeal follows.

## D E C I S I O N

### I. PROMISSORY ESTOPPEL

The first issue is whether the district court erred in denying Sandberg and Larson's promissory-estoppel claim. Whether the facts found by the district court rise to the level of promissory estoppel is a question of law, which we review de novo. *Greuling v. Wells Fargo Home Mortg., Inc.*, 690 N.W.2d 757, 761 (Minn. App. 2005). We review the underlying factual findings for clear error. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992). The doctrine of promissory estoppel requires proof that a clear and definite promise was made, that the promisor intended or should have reasonably expected the promise to induce reliance, that the promisees relied on the promise to their detriment, and that the promise must be enforced to prevent injustice. *Martens v. Minn.*

*Mining & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000); *see also* Restatement (Second) of Contracts § 90(1) (1981) (including the "should reasonably expect" language).

"Affirmative misconduct, rather than simple inadvertence, mistake, or imperfect conduct is required for estoppel to be applied against the government," *AAA Striping Servs. Co. v. Minn. Dep't. of Transp.*, 681 N.W.2d 706, 720 (Minn. App. 2004) (quotation omitted), and "[w]e do not envision that estoppel will be freely applied against the government," *Mesaba Aviation Div. of Halvorson of Duluth, Inc. v. Itasca Cnty.*, 258 N.W.2d 877, 880 (Minn. 1977). *See also Christensen v. Minneapolis Mun. Emps. Ret. Bd.*, 331 N.W.2d 740, 749 (Minn. 1983) ("Promissory estoppel, like equitable estoppel, may be applied against the state to the extent that justice requires."). The supreme court has indicated that estoppel may only be applied against the government when the plaintiffs, who bear "a heavy burden of proof," show that their interest in justice outweighs "the public interest frustrated by the estoppel." *Brown v. Minn. Dep't. of Pub. Welfare*, 368 N.W.2d 906, 910 (Minn. 1985).

Sandberg and Larson have the burden of establishing promissory estoppel against the city. Sandberg and Larson argue that Mayor Braegelman assured them during the summer of 2004 that Belgrade would proceed with the development. Mayor Braegelman testified that he gave no assurances or promises to Sandberg or Larson, and, during their testimony, neither developer could identify a specific promise from Mayor Braegelman or a date when such a promise was given. The district court found that Mayor Braegelman did not make any definite promises to Sandberg or Larson, and the record supports that conclusion.

Alternatively, Sandberg and Larson argue that the city council action on December 13, 2004 constituted a commitment to enter into a development contract with them, to complete the project in good faith, and to purchase the properties from Sandberg. The district court found that neither the resolution nor the meeting minutes demonstrate a promise that the Sandberg/Larson project would receive final approval, that Sandberg and Larson would be compensated for their services, or that the city would purchase the properties involved. Sandberg and Larson point to the statement in the minutes of the December 13 council meeting that "[p]assing the Resolution does obligate the City to buy the properties." However, neither Larson nor Mayor Braegelman, who were both in attendance at the December 13 meeting, could identify who made the statement. Moreover, the resolution contains no commitment that the city would contract with Sandberg and Larson; instead, it merely authorizes the city to do so. Passage of the resolution cannot obligate Belgrade to purchase the properties involved in the project when it does not even obligate Belgrade to enter into the Sandberg/Larson development contract.

Based on the trial record, we conclude that the district court did not clearly err in finding that Belgrade did not make a clear or definite promise to Sandberg or Larson regarding completion of the project, compensation, or the purchase of the properties involved and in rejecting their promissory-estoppel claim.

## II. QUANTUM MERUIT/PUNITIVE DAMAGES

The second issue is whether the district court abused its discretion in denying Sandberg and Larson's motion to amend their complaint to include a quantum-meruit

cause of action and a claim for punitive damages. After a responsive pleading has been served, "a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Minn. R. Civ. P. 15.01. This rule "is intended to be liberally construed so that cases are decided on their merits." *Fore v. Crop Hail Mgmt.*, 270 N.W.2d 13, 14 (Minn. 1978). "This is in keeping with the general rule that amendments are to be allowed unless a party would be prejudiced as a result." *Id.* In determining whether the nonmoving party would be prejudiced by allowing an amendment to the pleadings, the district court considers various factors, including: (1) "the stage of the proceedings"; (2) whether "substantial delay will result"; and (3) whether the amendment states a "cognizable legal claim." *Envall v. Indep. Sch. Dist. No. 704*, 399 N.W.2d 593, 597 (Minn. App. 1987), *review denied* (Minn. Mar. 25, 1987). "Generally, the decision to permit or deny amendments to pleadings is within the discretion of the district court and will not be reversed absent a clear abuse of discretion." *Johns v. Harborage I, Ltd.*, 664 N.W.2d 291, 295 (Minn. 2003).

Quantum meruit is not an independent claim; rather, it is a remedy which, in the absence of a contract, requires a showing of unjust enrichment. *See Stemmer v. Estate of Sarazin*, 362 N.W.2d 406, 408 (Minn. App. 1985) (determining that quantum meruit "is used only when failure to do so would result in unjust enrichment"); *see also* Restatement (Third) of Restitution & Unjust Enrichment § 31 cmt. e (2011) (recognizing that a claim for quantum meruit is either based in contracts (seeking the enforcement of an implied term of an actual contract) or in unjust enrichment (seeking to recover the value of

benefits conferred where there was no implied or express contract)). Unjust enrichment requires a showing that one party benefitted from another party through the use of illegal or unlawful means. *See Hesselgrave v. Harrison*, 435 N.W.2d 861, 864 (Minn. App. 1989) (concluding that a mortgage-foreclosure sale did not constitute "an illegality giving rise to an unjust enrichment claim"), *review denied* (Minn. Apr. 24, 1989).

Here, Sandberg and Larson admitted that there was no contract and failed to allege that Belgrade committed any illegal or unlawful action. They did not plead a cause of action for unjust enrichment or a cognizable legal claim of quantum meruit. Moreover, Sandberg and Larson moved to amend their complaint on April 2, 2010, nearly one year after the agreed-upon deadline to amend the pleadings, six months after the deadline to make motions of any kind, and three months before the scheduled trial date. They argued that the claim was unknown to them until discovery of certain documents in September 2009; however, Sandberg and Larson still waited seven months after discovering the documents to move to amend the complaint. Considering the stage of the proceedings and the delay that would likely result from additional discovery and considering that they did not allege unjust enrichment, we conclude that the district court did not abuse its discretion in denying Sandberg and Larson's motion to amend to add a quantum-meruit claim.

Sandberg and Larson also argue that the district court erred in denying their motion to amend the complaint to include a request for punitive damages. However,

because there is not an underlying cause of action remaining, we need not consider whether the district court erred in denying their request for punitive damages.[1]

## III. NEW TRIAL

The third issue is whether the district court abused its discretion by not granting Sandberg and Larson's motion for a new trial. We review a district court's decision to deny a new trial under an abuse-of-discretion standard. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 892 (Minn. 2010).

Here, Sandberg and Larson argue that "[f]or the reasons discussed above, the Trial Court should have granted Appellants' motion for a new trial." They offer no argument or authority in support, and they do not identify any grounds for granting a new trial. *See* Minn. R. Civ. P. 59.01 (providing seven grounds for granting a new trial). An assignment of error in a brief based on "mere assertion" and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (quotation omitted). Prejudicial error not being obvious, we do not further consider the district court's denial of the motion for a new trial.

**Affirmed.**

Dated:

[1] Likewise, because we previously concluded that the district court did not err in rejecting Sandberg and Larson's promissory-estoppel claim, we need not consider whether the district court erred in ruling that Sandberg could not recover or introduce evidence of his attorney fees in the litigation with the sellers of the involved property.