STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0012

Bright Star Systems Corporation,
Plaintiff, Co-Appellant,

Gresser Companies, Inc.,
Respondent,

vs.

MN Theaters 2006, LLC, et al.,
Appellants and
Respondents on Notice of Related Appeal,

Midwest Theaters Corporation d/b/a CineMagic Theaters, et al.,
Defendants.

Filed June 24, 2013
Affirmed
Kirk, Judge

Dakota County District Court
File No. 19HA-CV-09-4183

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Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Kirk, Judge.

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

KIRK, Judge

In these appeals involving a mechanic's lien action, appellants, who are also respondents on notice of related appeal, argue that the district court erred by (1) determining that respondent established its right to a mechanic's lien on the property, and (2) granting partial summary judgment to respondent and dismissing appellants' counterclaim for liquidated damages. In the related appeal, co-appellant argues that (3) the district court erred by determining that it did not provide lienable improvements to the property, and (4) in the alternative, the district court abused its discretion by determining that co-appellant failed to meet its burden of proof on its claim of unjust enrichment. We affirm.

FACTS

This case arises out of the construction of a 15-screen movie theater complex in Burnsville. Defendants Midwest Theaters Corporation d/b/a CineMagic Theaters (CineMagic) owned real estate in Burnsville where the movie theater complex was later built. CineMagic sold the real estate to appellants and respondents on notice of related appeal MN Theaters 2006, LLC (MN Theaters), which is a wholly owned subsidiary of iStar Financial, Inc. (iStar) and was created solely for the purpose of owning the property.[1] CineMagic then entered into a complex lease agreement with MN Theaters to lease the real estate for an extended period of time. Under the terms of the agreement, MN Theaters agreed to loan money to CineMagic to construct a movie theater complex

[1] To avoid confusion, we refer to MN Theaters and iStar collectively as "MN Theaters."

on the property. In return, CineMagic made lease payments to MN Theaters. CineMagic also agreed to act as a construction manager and oversee the construction of the movie theater complex.

CineMagic/MN Theaters' contract with Gresser

In April 2007, Engelsma Construction Inc. entered into a contract with MN Theaters to serve as the general contractor for the construction of the movie theater complex. After a bidding process, Engelsma selected respondent Gresser Companies, Inc., as a subcontractor to perform concrete and masonry work. Gresser agreed to complete three tasks that are relevant to this appeal: construct insulated-concrete-form (ICF) walls and footings; install a masonry veneer on the exterior of the movie theater complex; and install concrete flatwork.

Gresser began working on the ICF walls in June 2007. The parties do not dispute that several delays unrelated to Gresser's actions slowed Gresser's work on the ICF walls, including rain and a substantial revision in the structural drawings. Gresser substantially completed the ICF walls in September after 12 weeks of work, which was slightly longer than the 10 weeks Gresser had proposed. After it completed the ICF walls, the next phase of Gresser's work was to install the masonry veneer on the exterior walls. The project specifications required Gresser to use a specific stone veneer product, called Coronado Stone, which Gresser was responsible for ordering.

On August 21, 2007, Gresser's project manager, Tim Selken, requested a quote from the seller of Coronado Stone, which he received on August 31. On September 6, Selken sent an email to Engelsma's project manager, Brent Lindstrom, stating that

Gresser had some concerns about the Coronado Stone product. Specifically, Selken stated that Gresser had recently experienced issues with the product not adequately adhering to a building. Following Selken's email, several emails were exchanged between Engelsma, CineMagic, and the architect. After communicating with the manufacturer of Coronado Stone, the architect approved the use of the product on September 27. Gresser submitted an order form for the stone veneer on September 28, although Selken did not submit a signed form until October 2. Gresser expected the stone veneer to arrive in eight to ten days, but it was not delivered until October 30.

Gresser began installing the stone veneer on October 31. On November 15, Gresser was still installing the stone veneer when the external temperature became cold enough to require Gresser to "heat and cover" in order to proceed with the installation. "Heat and cover" is a process of covering an area to raise the temperature so that the product can be installed at the temperature specified by the manufacturer. Gresser submitted a proposal to Engelsma for heat and cover costs of $2.62 per square foot. Lindstrom, Engelsma's project manager, immediately forwarded the information to MN Theaters and CineMagic, stating, "I think it's a good idea that you approve this as well to keep them moving forward." Bryan Sieve, a CineMagic executive, responded to Lindstrom's email and stated that he was concerned that Gresser could have installed the stone veneer earlier and avoided heat and cover costs. There is no evidence in the record that CineMagic or MN Theaters communicated to Engelsma or Gresser, at that time, whether it approved or denied Gresser's request for heat and cover costs. Gresser proceeded to install the stone veneer using heat and cover. Engelsma's on-site

superintendent signed off on a form that Gresser submitted with the hours it worked and the materials it used for heat and cover. Gresser completed the installation of the stone veneer in January 2008.

Gresser completed most of its work at the movie theater complex by the summer of 2008. In October, Engelsma issued a "punch list," which is a list that describes the items that need to be completed on a project. The punch list included one item that Gresser was required to address—a crack in a floor slab next to double exterior doors; Gresser repaired the crack. Shortly afterward, Engelsma asked Gresser to complete another item: a concrete step had separated from the building outside the double exterior doors where Gresser had repaired the crack. On November 26, Gresser fixed the stairs, and it is uncontested that this is the last work Gresser did on the property. On March 26, 2009, Gresser filed a mechanic's lien against the property for $343,982.30.

CineMagic's oral agreement with Bright Star

In late 2007, CineMagic entered into an oral agreement with co-appellant Bright Star Systems Corporation, a movie theater supply and service company, to provide equipment for the movie theater. In the spring of 2008, Bright Star provided CineMagic with speakers, movie screens, and lenses. A Bright Star technician also performed work on site, including wiring the sound system and connecting it with the projection system. From April until July 2008, Bright Star issued invoices totaling $442,445.46 that named both MN Theaters and CineMagic. CineMagic paid some of the invoices and MN Theaters paid some of the invoices. According to MN Theaters, the payments it made were advancements on a short-term loan to CineMagic. CineMagic and MN Theaters

paid $294,462.35 to Bright Star; $147,983.11 remains unpaid. The majority of the unpaid balance includes payments for lenses, screens, speakers, and some labor.

Bright Star supplied three different types of speakers to CineMagic: surround, subwoofers, and main screen channel. The surround speakers are relatively small and are bolted onto brackets that are attached to walls throughout each of the theaters, and the subwoofer speakers are large and typically sit on the floor behind the movie screen. The main screen channel speakers are also large, weighing approximately 265 pounds, and are mounted on platforms approximately 12 to 14 feet off the floor. All three types of speakers are connected to wiring that typically runs in piping along the walls and through the ceiling. Bright Star did not install the piping at the Burnsville movie theater complex, but a Bright Star installer performed connection wiring between the sound equipment and the piping and connected the speakers to the projection system.

Bright Star also supplied pre-manufactured, steel screens for the movie theater complex. The screens were built based on the dimensions of each theater and were then assembled on site and anchored to the floors and walls using Slinky-like coils. Bright Star did not install the screens at the Burnsville movie theater complex. Sieve, a CineMagic executive, testified that one movie screen was later removed from the wall and put back on its roll form. Finally, Bright Star performed repair work on, and supplied parts for, used film projectors that CineMagic purchased from other sources.

Bright Star's president and co-owner, Mel Hopland, testified that the equipment Bright Star provided to CineMagic was removable, but not easily removable. In particular, he testified that the speakers come in specialized packaging and, if the

packaging is discarded, it is harder to move the speakers without damaging them. Hopland also testified that there is a market for reselling items such as speakers but it is difficult to resell screens. Hopland testified that the equipment Bright Star provided is an integral part of the theater.

On September 29, 2008, Bright Star filed a mechanic's lien against the property for $165,027.85. After the lien was partially satisfied in June 2009, the amount of the lien was lowered to $147,983.11.

Complaint

On June 29, 2009, Bright Star and Gresser filed a complaint against MN Theaters and CineMagic, among others, seeking foreclosure of their mechanic's liens and alleging breach of contract. Bright Star and Gresser also sought to recover the amount of the claimed mechanic's liens under an unjust-enrichment theory. MN Theaters and CineMagic filed a counterclaim against Gresser, alleging breach of contract and seeking liquidated damages. Gresser subsequently moved for partial summary judgment. Following a hearing, the district court granted partial summary judgment to Gresser and dismissed MN Theaters' and CineMagic's counterclaims for breach of contract and liquidated damages.

CineMagic's bankruptcy

In September 2010, CineMagic filed for bankruptcy. As part of the bankruptcy proceeding, CineMagic signed a voluntary surrender agreement with one of its secured lenders, United Community Bank. Under the agreement, CineMagic surrendered possession and control of its personal property at the Burnsville movie theater complex

and one other movie theater complex to the bank and gave it the right to sell that property. In February 2011, the bank sold the personal property at the Burnsville movie theater complex to MN Theaters for $640,000. The theater's current operator continues to use at least some of the equipment that Bright Star supplied.

District court decision

The district court held a bench trial in March 2012. In an order issued in July, the district court foreclosed Gresser's mechanic's lien and awarded Gresser $54,174 with interest, costs, disbursements, and attorney fees. The district court also dismissed Gresser's claim of unjust enrichment, Bright Star's action to foreclose a mechanic's lien, and Bright Star's claim of unjust enrichment. Bright Star and MN Theaters each moved for amended findings. Following a hearing, the district court granted in part and denied in part both motions and filed an amended order with its amended findings. These appeals by MN Theaters and Bright Star follow.

D E C I S I O N

I. The district court did not err by determining that Gresser established its right to a mechanic's lien on the property.

MN Theaters argues that the district court erred by determining that Gresser established its right to a mechanic's lien on the property because (1) Gresser's mechanic's lien was not timely filed, and (2) MN Theaters did not waive its ability to object to the heat and cover costs that Gresser incurred.

A. Timeliness.

MN Theaters argues that the district court erred by finding that Gresser's mechanic's lien was timely filed because it incorrectly determined Gresser's last day of

work. The determination of when the claimant's last day of work occurred is a question of fact. *See Geo. Sedgwick Heating & Air Conditioning Co. v. Riverwood Cos.*, 409 N.W.2d 289, 290 (Minn. App. 1987) (stating that "[w]hether work subsequently performed is part of a continuing contract and therefore effective to extend the time of the lien is a question of fact"); *R.B. Thompson, Jr. Lumber Co. v. Windsor Dev. Corp.*, 374 N.W.2d 493, 497 (Minn. App. 1985) ("The question of which work done or material furnished establishes the date of first improvement is a question of fact."), *review denied* (Minn. Nov. 26, 1985). This court will not set aside a district court's findings of fact unless they are clearly erroneous. Minn. R. Civ. P. 52.01.

Under Minnesota law, a claimant's right to assert a mechanic's lien "ceases at the end of 120 days after doing the last of the work, or furnishing the last item of skill, material, or machinery." Minn. Stat. § 514.08, subd. 1 (2012). In calculating the deadline to file the lien, we disregard "items of labor or material which are nominal or insignificant in amount and furnished for the sole purpose of extending the time for filing of the lien." *Thompson*, 374 N.W.2d at 498. The mechanic's lien statute "is strictly construed on whether a mechanic's lien attaches, [and is only] liberally construed after the lien has been created." *Geo. Sedgwick*, 409 N.W.2d at 291 (alteration in original) (quotation omitted).

The district court found that Gresser completed its last item of work on the property on November 26, 2008, and filed its mechanic's lien on March 26, 2009, which was within 120 days of its last day of work. The district court found that Gresser completed its last work on the property at the direction of MN Theaters or the architect,

not in an attempt to extend the time for filing the mechanic's lien. As a result, the district court found that Gresser timely filed its mechanic's lien.

The district court's findings are supported by the record and are not clearly erroneous. The record establishes that Gresser repaired a crack in the floor at Engelsma's request, and, shortly afterward, Engelsma requested that Gresser repair a concrete step that had separated from the building. There is no evidence in the record that the work was "nominal or insignificant." In fact, Gresser's owner and president testified that completion of the items required several hours of work by two different employees. There is also no evidence in the record that Gresser performed the work for the sole purpose of extending the time of the lien. This is illustrated by the fact that Engelsma, not Gresser, initiated the further work on the property.

MN Theaters argues that the last work that Gresser performed on the property constituted repair work, which it contends does not extend the time to file a mechanic's lien in Minnesota. In support of this argument, MN Theaters cites several Minnesota cases. *See Fitzpatrick v. Ernst*, 102 Minn. 195, 198, 113 N.W. 4, 5-6 (1907) (concluding that the case before it involved several different jobs that constituted separate contracts and stating that "[w]here work, distinct in its nature, is performed at different times, the law supposes it performed under distinct engagements, as where the work at one time is for building and at another for repairing" (quotation omitted)); *Dayton v. Minneapolis Radiator & Iron Co.*, 63 Minn. 48, 48, 65 N.W. 133, 133 (1895) (affirming the district court's determination that the claimant had not timely filed its mechanic's lien when the last work performed was "two hours' labor . . . in chipping off the edge of the fire doors

on the front of a boiler . . . [and] the edge of a flue door" and observing that the "trifling amount of work done," the lapse in time, and the circumstances under which the work was performed, among other things, supported the district court's finding); *Geo. Sedgwick*, 409 N.W.2d at 290-91 (affirming the district court's determination that the claimant's lien right had been extinguished because the work was de minimis and the claimant performed work four months later for the sole purpose of extending the time to file a lien).

Contrary to MN Theaters' argument, *Fitzpatrick*, *Dayton*, and *Geo. Sedgwick* do not stand for the proposition that repair work cannot extend the time that a claimant has to file a mechanic's lien. Instead, the appellate court in each case considered several factors, including the amount of work done, whether the work that the claimant performed constituted separate contracts, and whether the work was performed for the sole purpose of extending the time to file a mechanic's lien. *See Fitzpatrick*, 102 Minn. at 198, 113 N.W. at 6; *Dayton*, 63 Minn. at 48, 65 N.W. at 133; *Geo. Sedgwick*, 409 N.W.2d at 291. Because the district court's findings are supported by the record, the district court in this case did not err by finding that Gresser's mechanic's lien was timely filed.

B. Heat and cover costs.

MN Theaters next argues that the district court erroneously determined that Gresser was entitled to heat and cover costs because (1) MN Theaters did not waive its right to approve costs outside of the contract, and (2) Gresser assumed the risk of delays by stating in its proposal that there would be no material lead times.

1. Waiver.

"Waiver is the voluntary and intentional relinquishment of a known right." *City of Minneapolis v. Minneapolis Police Relief Ass'n*, 800 N.W.2d 165, 176 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. Aug. 24, 2011). "The party alleging waiver must provide evidence that the party that is alleged to have waived the right possessed both knowledge of the right in question and the intent to waive that right." *Ill. Farmers Ins. Co. v. Glass Serv. Co.*, 683 N.W.2d 792, 798 (Minn. 2004). Waiver is generally a question of fact. *Pollard v. Southdale Gardens of Edina Condo. Ass'n, Inc.*, 698 N.W.2d 449, 453 (Minn. App. 2005). However, when the facts of a case are undisputed, waiver becomes a question of law. *Minneapolis Police Relief Ass'n*, 800 N.W.2d at 176.

It is undisputed that heat and cover costs were not included in Gresser's contract and that the contract required Gresser to obtain advance approval by submitting a change order before incurring costs outside of the contract. MN Theaters argues that it did not waive its right to approve costs outside of the contract and, therefore, Gresser should be barred from recovering the unapproved heat and cover costs it incurred.

The district court found that Gresser notified CineMagic and MN Theaters about its intent to bill for heat and cover costs and Engelsma encouraged them to approve the costs, but CineMagic and MN Theaters did not respond to the request until well after Gresser had incurred the costs. The district court also found that the parties' practice throughout the project was to proceed with work and receive approval later. Finally, the district court found that the delays that caused Gresser to work in winter months were not

chargeable to Gresser because Gresser placed the order for the stone veneer shortly after receiving approval from the architect and the delay in delivery was not within Gresser's control. As a result, the district court found that MN Theaters waived its right to deny heat and cover costs.

In reaching this conclusion, the district court relied on *Standard Constr. Co. v. Nat'l Tea Co.*, 240 Minn. 422, 62 N.W.2d 201 (1953). In that case, the parties disputed several change orders that were presented during the course of construction. *Standard Constr. Co.*, 240 Minn. at 424-25, 62 N.W.2d at 203. The contract provided that if work was performed involving costs not included in the original contract, the contractor was required to present a correct account of the costs. *Id.* at 428, 62 N.W.2d at 205. However, a witness testified that many of the change orders that were submitted were based on an estimate of costs, not detailed records, and that the change orders were accepted and approved without protest. *Id.* As a result, the supreme court determined that "it appears that with the assent of both parties a practice was established which was inconsistent with the quoted provision of the contract, and a waiver of the right to demand compliance with that provision resulted." *Id.* at 428-29, 62 N.W.2d at 205. The supreme court concluded that, because "[t]he record include[d] considerable testimony indicating that change orders were frequently handled without regard to the method of procedure demanded by the contract," under the facts of the case, the company was not "in a position to urge that [the contractor's] failure to conform to [the contract] provisions precludes its recovery." *Id.* at 431, 62 N.W.2d at 206-07.

Here, MN Theaters does not contest the district court's finding that it provided written authorization for other changes after the costs were incurred, but it argues that, in those cases, MN Theaters provided verbal authorization before Gresser incurred the costs. MN Theaters argues that Gresser did not receive any authorization at all before the heat and cover costs were incurred. It is not clear from the record that MN Theaters provided verbal authorization before Gresser completed work that was the subject of other change orders. But the record establishes that Gresser followed the same process for approval of extra costs as had been followed throughout the project. Most of the change orders were signed by Engelsma's on-site superintendent on the "authorized by" line. Similarly, Engelsma's on-site superintendent signed off on a form that Gresser submitted regarding the heat and cover costs. In addition, as the district court found, Engelsma's project manager wrote in an email to Gresser stating that "[a]ll of these items that didn't have a 'Formal Change order' were proceeded in good faith by Gresser with the Owner well aware that additional work [was] required. Selective memory now doesn't constitute rejection of the extras, everyone proceed[ed] on a good faith effort to help him get the project completed."

Further, MN Theaters' argument that Gresser "[b]latantly disregard[ed]" MN Theaters' "expressed objection" by incurring heat and cover costs is not supported by the record. The record establishes that CineMagic raised concerns about the extra costs to Engelsma. But nothing in the record indicates that MN Theaters or CineMagic communicated a final decision to Engelsma stating that it did not approve the costs, and

nothing in the record shows that anything was communicated to Gresser until after the work had been completed.

The record also supports the district court's findings that the delays in the ordering and delivery of the stone veneer were not chargeable to Gresser. The parties do not dispute that delays due to weather and structural revisions delayed some of Gresser's work. And the record establishes that Gresser raised a legitimate concern about the adherence of the stone veneer to the building and ordered the product shortly after the architect approved it. Finally, the record establishes that the delivery of the stone veneer was delayed due to the manufacturer, not due to Gresser's conduct.

Thus, like the record in *Standard Constr. Co.*, the record in this case indicates that MN Theaters had a practice of approving work outside of the contract after the work was completed. Because of that practice, MN Theaters waived its right to deny the heat and cover costs by waiting until the work was completed to object. The district court did not err by determining that Gresser was entitled to heat and cover costs.

2. Assumption of the risk of delays.

MN Theaters next argues that Gresser assumed the risk that the stone veneer would be delivered late because Gresser stated in its proposal, which was incorporated into the contract, that it did "not anticipate any material lead time issues." MN Theaters argues that because this statement was "effectively fraudulent," Gresser bore the risk of loss when it was incorrect. In response to this argument, Gresser argues that, to the extent MN Theaters is making a fraud argument, this court should not consider the argument because it was not raised to and decided by the district court. *See Thiele v.*

Stich, 425 N.W.2d 580, 582 (Minn. 1988). We agree with Gresser and, because the district court did not address the issue, we decline to consider it here. *See id.*

II. The district court did not err by granting partial summary judgment to Gresser and dismissing MN Theaters' counterclaim for liquidated damages.

MN Theaters argues that the district court erred by granting partial summary judgment to Gresser and dismissing MN Theaters' liquidated-damages counterclaim. A motion for summary judgment shall be granted "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. On appeal from an award of summary judgment, a reviewing court reviews de novo whether there is a genuine issue of material fact and whether the district court erred when it applied the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). This court must "view the evidence in the light most favorable to the party against whom summary judgment was granted." *Id.* This court will affirm the award of summary judgment if it can be sustained on any ground. *Winkler v. Magnuson*, 539 N.W.2d 821, 828 (Minn. App. 1995), *review denied* (Minn. Feb. 13, 1996).

Gresser's contract with Engelsma includes a liquidated-damages clause that provides that "[l]iquidated damages or other damages for delay, if provided for in . . . the Prime Contract[,] shall be assessed against the Subcontractor only to the extent caused by the Subcontractor." The prime contract—the contract between Engelsma and MN Theaters—provides a weekly liquidated damages schedule "[i]f Contractor does not achieve Substantial Completion by February 28, 2008, or 10 months after the Date of

Commencement." Finally, Gresser's proposal, which was incorporated into its contract with Engelsma, states, "NO BONDS OR LIQUIDATED DAMAGES." It also states, "GRESSER ACCEPT[S] THE LIQUIDATED DAMAGES CLAUSE, BUT REQUESTS A $1,000/DAY BONUS FOR COMPLETING IN LESS THAN 10 WEEKS."

MN Theaters argues that the liquidated-damages provisions in the contract were ambiguous and that, as a result, it was inappropriate for the district court to grant summary judgment. "A contract is ambiguous if its language is reasonably susceptible to more than one interpretation." *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). In interpreting a contract, courts give language its plain and ordinary meaning. *Id.* In addition, courts "interpret a contract in such a way as to give meaning to all of its provisions." *Id.*

In its partial-summary-judgment order, the district court determined that the provision in Gresser's proposal that appears to accept the liquidated-damages clause creates a contractual ambiguity. But the district court concluded that the ambiguity is resolved because Engelsma never accepted the $1,000 daily bonus contingency for early completion. The district court determined that "the subcontract is unmistakable, and [MN Theaters is] prohibited from collecting liquidated damages from Gresser for any delay."

The plain language of the contract between Gresser and Engelsma states that Gresser did not accept liquidated damages. But it further provides that Gresser would accept the liquidated-damages provision *if* Engelsma agreed to pay Gresser an early-completion bonus. None of the contract documents state that Engelsma accepted the

early-completion bonus condition. As a result, the liquidated-damages provision did not become part of the contract. *See Gresser v. Hotzler*, 604 N.W.2d 379, 382 (Minn. App. 2000) (stating that "an acceptance must be coextensive with the offer and may not introduce additional terms or conditions" (quotation omitted)). Accordingly, the district court did not err by granting partial summary judgment to Gresser and dismissing MN Theaters' liquidated-damages counterclaim.

III. The district court did not err when it determined that Bright Star did not provide lienable improvements.

The determination of whether equipment is a trade fixture is a question of fact. *Cent. Chrysler Plymouth, Inc. v. Holt*, 266 N.W.2d 177, 179 (Minn. 1978). This court will not set aside a district court's findings of fact unless they are clearly erroneous. Minn. R. Civ. P. 52.01. "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). This court will not disturb a district court's findings if there is reasonable evidence to support those findings. *Id.*

"A mechanic's lien is a statutory remedy intended to protect those who furnish materials or services in the improvement of real property." *S.M. Hentges & Son, Inc. v. Mensing*, 777 N.W.2d 228, 230 (Minn. 2010). Under Minnesota law, a contractor who "contributes to the improvement of real estate by performing labor, or furnishing skill, material or machinery . . . for the erection, alteration, repair, or removal of" a "fixture" is entitled to a lien against the real estate. Minn. Stat. § 514.01 (2012). A fixture is a thing

that is "annexed to the realty so as to become a part of it." *Holy Ghost Catholic Church of Two Harbors v. Clinton*, 169 Minn. 253, 258-59, 211 N.W. 13, 15 (1926).

However, there is an exception to the law of fixtures in landlord-tenant situations. *Nw. Lumber & Wrecking Co. v. Parker*, 125 Minn. 107, 111, 145 N.W. 964, 965 (1914). In those cases, "certain articles ordinarily fixtures, attached by a tenant for trade purposes, may be removed during the tenancy. Such articles are known as 'trade fixtures.'" *Id.* at 111, 145 N.W. at 965. In contrast to fixtures, trade fixtures are not encompassed by the mechanic's lien statute. *Ulstruck v. Home Ass'n*, 166 Minn. 183, 185, 207 N.W. 324, 325 (1926). In determining whether an article is a fixture, courts consider several factors: (1) "the fact and character of annexation"; (2) "the nature of the thing annexed" and "the adaptability of the thing to the use of the land"; and (3) "the intent of the party in making the annexation" and the party's relation to the freehold. *Behrens v. Kruse*, 121 Minn. 479, 484, 140 N.W. 114, 116 (1913).

Here, based on an analysis of the *Behrens* factors, the district court found that the items Bright Star provided to the movie theater are trade fixtures, not fixtures. The district court determined that the items are not properly the subject of a mechanic's lien. Bright Star argues that the district court's findings regarding all of the factors are clearly erroneous and contends that the equipment, specifically the screens and speakers, constitute fixtures that are subject to the mechanic's lien statute. We note that Bright Star argued at oral argument that a landlord-tenant relationship was not present in this case, but we decline to address this argument because it was not raised to and argued before the district court. *See Thiele*, 425 N.W.2d at 582.

We analyze the district court's findings regarding each of the *Behrens* factors here to determine if the district court's findings are clearly erroneous.

A. Fact and character of the annexation.

The permanency of an item is not conclusive, but it is a factor to consider in determining whether something is a fixture or a trade fixture. *See Johnson v. Mugg*, 261 Minn. 451, 454, 113 N.W.2d 1, 3 (1962) (determining that a fence that was moved annually to different locations was of temporary nature and, thus, was not a fixture). The amount of damage to the building that would be caused if the item were removed is a consideration. *Behrens*, 121 Minn. at 485, 140 N.W. at 117. It is also important to consider the amount of damage that would be caused to the item itself if it were removed from the building. *See Johnson v. Grady*, 187 Minn. 104, 107, 244 N.W. 409, 410 (1932) (determining that the district court's finding that lighting equipment constituted a trade fixture was sustained by the evidence when the equipment could be moved without materially damaging the building, grounds, or equipment).

Here, the district court determined that the speakers, screens, and lenses are attached to the movie theater in very limited ways. The district court found that both the screens and the speakers could be easily removed from the theater, and that the lenses used in the theater's projectors are not connected to the building at all. As a result, the district court found that this factor supported a finding that the equipment did not constitute a fixture.

1. Removability and level of attachment to the building.

Bright Star first contends that because improvements that are minimally attached or unattached to a building can be considered fixtures, the district court erred by focusing on whether the equipment supplied by Bright Star could be easily removed. In support of this argument, Bright Star relies on several cases. *See Willcox Boiler Co. v. Messier*, 211 Minn. 304, 305-06, 1 N.W.2d 130, 131 (1941) (determining that a 9-foot-long, 6-foot-high, 31/2-foot-wide, 6,000-pound boiler was lienable because it was a permanent improvement to the building, even though it was "not shown that it was set in concrete, screwed to the floor, fastened to the wall, [or] connected to pipes or to any other part of the building"); *Pond Mach. Tool Co. v. Robinson*, 38 Minn. 272, 275-76, 37 N.W. 99, 100-01 (1888) (determining that a 76,000-pound planer in a machine shop that was specially modified to contain the planer was lienable). And Bright Star attempts to distinguish *Behrens*. 121 Minn. at 481-82, 484-85, 140 N.W. at 115-17 (concluding that a 4,000-to-6,000-pound refrigerator that was specially ordered and installed in a flower shop was a trade fixture based on several factors, including that the refrigerator was removable from the building with only slight injury to the building and that the shop could be used for other purposes).

The cases that Bright Star relies on are distinguishable. In contrast to the 4,000-to-6,000-pound boiler in *Willcox*, the screens, speakers, and lenses are relatively light and portable. Although the record establishes that some of the speakers weighed up to 265 pounds, there is a vast difference between those speakers and the boiler. And, unlike the machine shop in *Pond Mach. Tool Co.* that was modified specifically to accommodate a

76,000-pound piece of equipment, the movie theater was not designed specifically to accommodate the equipment that Bright Star provided, and the equipment is much smaller and lighter, making it much easier to move. Finally, we are not persuaded by Bright Star's argument that, unlike the refrigerator in *Behrens*, neither the movie theater nor the equipment it provided could be used without the other. Bright Star ignores the requirement that the equipment also be "permanently attached to, or the component part of, some erection, structure, or machine which is attached to the freehold, and without which the erection, structure, or machine would be imperfect or incomplete." *Behrens*, 121 Minn. at 484, 140 N.W. at 116 (quotation omitted).

2. Attachment of the movie screens and speakers.

Bright Star argues that the movie screens are permanent structures that were specifically designed for the movie theater and are difficult to remove without destroying them. The district court found that the screens were attached to the building only with spring coils and that at least one screen had been easily removed. These findings are supported by the record and are not clearly erroneous. Bright Star's president and co-owner, Hopland, testified that the movie screens are attached to the walls and floors of the theater using Slinky-like coils. And a CineMagic executive, Sieve, testified that at least one screen had been removed from the wall and placed in storage.

Bright Star next contends that the speakers are integrated into the building itself, arguing that removal of the speakers behind the screen would likely result in damage to the screen and that removal of the mounted speakers would likely damage the speakers or the building. The district court found that, even though the speakers are wired to the

building and some speakers are mounted on platforms, they could be removed without damaging the building or the speakers themselves. These findings are supported by the record and are not clearly erroneous. Hopland testified that all of the speakers Bright Star supplied to the movie theater are connected to wiring that was installed by an electrical contractor, and that Bright Star connected the speakers to the previously installed wiring when it installed the speakers. Hopland further testified that some of the speakers were mounted on brackets or platforms on the wall, while some speakers sat on the floor behind the screen, and that some of the speakers were very heavy. But Hopland testified that the speakers were removable and that there is a market to resell them. Therefore, the district court's findings regarding this factor are not clearly erroneous.

B. Nature of the thing annexed and adaptability.

Bright Star contends that the only purpose for the movie theater is use as a movie theater, the equipment and services that it provided were specifically adapted to that use, and the theater could not be used as a theater without Bright Star's projection and audio equipment. The district court found that Bright Star provided equipment to fit the particular size and needs of the theater. But the district court found that the speakers and lenses are standard materials that are not adapted or modified to fit a particular space. And the district court found that the screens were ordered in custom sizes to fit the theater but were not further adapted to the space when they were installed.

The district court's findings are supported by the record and are not clearly erroneous. Hopland testified that Bright Star supplied certain types of speakers and lenses for the theater, but there is no evidence in the record that they were anything other

than standard sized. In contrast, Hopland testified that the screens were specifically manufactured based on the theater's dimensions and then were installed in the theater by attaching them to the walls and floor with coils. However, the screens must be "permanently attached" to the theater in some way to constitute fixtures and, as previously discussed, the record supports the district court's finding that the screens were attached to the theater in only a limited way. *See Behrens*, 121 Minn. at 484, 140 N.W. at 116.

Bright Star contends that, unlike the florist's shop in *Behrens*, the movie theater cannot be used for anything other than a movie theater. However, the purpose for which the building is suited is just one factor to consider in determining the nature of the equipment. *See id.* at 485, 140 N.W. at 117; *Wolford v. Baxter*, 33 Minn. 12, 18, 21 N.W. 744, 745 (1884) ("To make it a fixture, it must not merely be essential to the business of the structure, but it must be attached to it in some way, or, at least, it must be mechanically fitted so as . . . to constitute a part of the structure itself."). And just because the equipment Bright Star provided is consistent with the use of the theater as a movie theater does not mean that the equipment Bright Star provided is lienable. *See Wolford*, 33 Minn. at 18, 21 N.W. at 745 (stating that while "[i]t is true that [casks and tubs] were well adapted to and necessary for carrying on the brewing business, to which the premises were appropriated . . . this of itself is quite an immaterial element in determining the nature of an article"). Bright Star has not demonstrated that the district court's findings regarding this factor are clearly erroneous.

C. Intent of the party making the annexation and the relation to freehold.

Bright Star contends that the lease between MN Theaters and CineMagic demonstrates that those parties intended the equipment to belong to MN Theaters because the lease's terms indicate that the party who paid for the equipment was the party who owned the equipment. "The intent of the parties is often a controlling factor in deciding whether a given item is a 'trade fixture.'" *Cent. Chrysler Plymouth*, 266 N.W.2d at 179. In determining the intent of the parties, it is relevant to consider the terms of the lease between the landlord and a tenant. *Id.* at 179-80. But the Minnesota Supreme Court has stated that a company's lack of awareness about an agreement between a landlord and tenant can affect the determination of whether an item constitutes a fixture or a trade fixture. *See Nw. Lumber & Wrecking Co.*, 125 Minn. at 112-13, 145 N.W. at 966 (stating that while a "chattel mortgage and [] agreement clearly conferred upon all such articles the attributes of personal property as between the parties thereto," the agreement "could not change the character of these annexations so far as the [company that provided the items] was concerned, nor affect the rights of that company in any way, unless that company had knowledge that such agreements had been made").

The district court found that because Bright Star was not a party to the agreement between MN Theaters and CineMagic, "[t]he relationship between MN Theaters and CineMagic does not change the nature of the annexations as far as Bright Star is concerned, unless Bright Star had knowledge of the specific agreements." The district court found that Bright Star was aware only that CineMagic was a tenant on the property and, based on that knowledge, "it would be more plausible for Bright Star to believe that

the equipment would constitute a trade fixture of the tenant, since the equipment was supplied at the tenant's request for the tenant's business."

The district court's findings are supported by the record and are not clearly erroneous. It is uncontested that CineMagic and MN Theaters entered into a lease agreement, and that Bright Star had an oral agreement only with CineMagic. Hopland testified that he was approached by Sieve, a CineMagic executive with whom he had previously worked, regarding the project. Hopland testified that when Bright Star entered into an agreement with CineMagic to provide equipment, he was aware only that CineMagic was working with MN Theaters to develop the property. Hopland testified that he eventually saw the lease agreement after Bright Star began the process to foreclose its mechanic's lien and, at that point, he became aware that MN Theaters was the landlord. The record supports the district court's finding that Bright Star was unaware of the specific agreement between CineMagic and MN Theaters at the time it provided equipment to CineMagic. Thus, the terms of the lease agreement do not affect Bright Star. *See Nw. Lumber & Wrecking Co.*, 125 Minn. at 112-13, 145 N.W. at 966.

Accordingly, because the district court's findings were supported by the record and were not clearly erroneous, the district court did not err when it determined that Bright Star did not provide lienable improvements.

IV. The district court did not abuse its discretion by determining that Bright Star failed to meet its burden of proof on its claim of unjust enrichment.

In the alternative, Bright Star argues that the district court abused its discretion by determining that it failed to meet its burden of proof on its claim for unjust enrichment. Unjust enrichment is an equitable doctrine. *ServiceMaster of St. Cloud v. GAB Business*

Servs., Inc., 544 N.W.2d 302, 305 (Minn. 1996). This court reviews a district court's equitable determination for an abuse of discretion. *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 23 (Minn. 2011).

To establish a claim for unjust enrichment, the plaintiff must show that the defendant "knowingly received or obtained something of value for which the defendant in equity and good conscience should pay." *ServiceMaster of St. Cloud*, 544 N.W.2d at 306 (quotation omitted). The plaintiff must do more than establish that the defendant benefited from another's efforts or obligations. *First Nat'l Bank of St. Paul v. Ramier*, 311 N.W.2d 502, 504 (Minn. 1981). Instead, the plaintiff must show that the defendant "was unjustly enriched in the sense that the term 'unjustly' could mean illegally or unlawfully." *Id.* The plaintiff can also establish unjust enrichment by demonstrating that the defendant's conduct in retaining the benefit is morally wrong. *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. App. 2001).

The district court determined that Bright Star failed to establish that MN Theaters was unjustly enriched when it purchased the equipment from CineMagic's lender. The district court found that MN Theaters purchased the equipment in a good-faith, arms-length transaction, the purchase was not illegal or unlawful, and MN Theaters paid what CineMagic's lender considered to be a fair price. Bright Star contends that the district court abused its discretion by finding that Bright Star needed to establish that MN Theaters' conduct was illegal or unlawful because Bright Star only needed to establish that MN Theaters' conduct was morally wrong or inequitable.

Bright Star has not established that MN Theaters knowingly received a benefit to which it was not entitled. The record establishes that CineMagic filed for bankruptcy and then voluntarily surrendered its personal property to the bank, which subsequently sold its personal property at the Burnsville Theater to MN Theaters for $640,000. There is nothing in the record to suggest that the transaction was anything but a good-faith, arms-length transaction. And, contrary to Bright Star's argument, the district court's determination that it had not established a claim of unjust enrichment was based on several findings in addition to its finding that MN Theaters' conduct was not illegal or unlawful, including that MN Theaters paid a fair price and the transaction occurred in a good-faith, arms-length transaction during CineMagic's bankruptcy proceeding. While the district court did not specifically state that MN Theaters' conduct was not morally wrong, its findings establish that it did not consider the transaction to be morally wrong. The district court did not abuse its discretion by determining that Bright Star failed to establish a claim of unjust enrichment.

Affirmed.