STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1067

John Rogalski,
Appellant,

vs.

Little Poker League, LLC,
Respondent.

Filed February 22, 2011
Affirmed
Kalitowski, Judge

Beltrami County District Court
File No. 04-CV-09-2892

Wayne Bohn, Cass Lake, Minnesota (for appellant)

Kay Nord Hunt, Lommen, Abdo, Cole, King & Stageberg, P.A., Minneapolis, Minnesota; and

Wayne H. Swanson, Swanson Law, Crookston, Minnesota (for respondent)

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

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

KALITOWSKI, Judge

Appellant John Rogalski won a Texas hold'em tournament conducted by respondent Little Poker League LLC. The parties dispute the nature of the prize. Respondent contends that the prize was a seat in the 2009 World Series of Poker Main

Event (WSOP) in Las Vegas, with the entry fee of $10,000 and travel-related expenses of $2,500 to be paid by respondent. Appellant contends that he had the option of accepting $12,500—the cash value of the prize. Appellant, who ultimately did not attend the WSOP, sued respondent for breach of contract and requested damages in the amount of $10,000 (the value of the WSOP entry fee). Respondent counterclaimed for breach of contract, seeking return of the $2,500 that it had paid to appellant in advance of the WSOP to cover his expenses. The district court granted judgment on the pleadings in respondent's favor on both claims. Appellant challenges the district court's resolution of these claims, arguing that (1) a unilateral contract was formed when he began to participate in the tournament; and (2) the agreement he signed during the tournament was invalid. We affirm.

D E C I S I O N

On appeal from judgment on the pleadings under Minn. R. Civ. P. 12.03, this court reviews de novo whether the complaint sets forth a legally sufficient claim for relief. *Zutz v. Nelson*, 788 N.W.2d 58, 61 (Minn. 2010). We "consider only the facts alleged in the complaint, accept[] those facts as true and draw[] all reasonable inferences in favor of the nonmoving party." *Id.* But we also may consider documents and statements that are incorporated by reference into the pleadings. *Nexus v. Swift*, 785 N.W.2d 771, 781 (Minn. App. 2010).

I.

We first address appellant's breach-of-contract claim. The elements of a breach-of-contract claim are: (1) a contract was formed; (2) the plaintiff performed any

conditions precedent; and (3) the defendant breached the contract. *Commercial Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. App. 2006).

The parties here dispute the point at which a contract was formed. The record indicates that the tournament lasted for several months, with players in the preliminary rounds competing for spots in a winner-take-all final event. The final event took place on May 2, 2009, at a casino operated by the White Earth Band of Ojibwe. During the final event, appellant and the other remaining contestants signed a document captioned "WSOP Agreement." The agreement provided that respondent would pay the WSOP entry fee, worth $10,000, on the winner's behalf and pay the winner $2,500 for travel-related expenses. The agreement also provided that the winner would relinquish the WSOP seat and return the expense money to respondent if the winner did not attend the WSOP.

Appellant's breach-of-contract claim is based on the following assertions: a contract was formed when he began participating in the preliminary rounds of the tournament; the terms of the WSOP Agreement conflict with respondent's previous "advertisements and representations" that the winner of the tournament could accept $12,500 in cash instead of attending the WSOP; and the WSOP Agreement is an invalid modification of his prior contract with respondent. We disagree.

Here, neither party has challenged the legality of the tournament. And where a contest is not prohibited by law, "the offer of a premium or prize for the performance of a specific act is a proposition to all persons who may accept and comply with its conditions." 38 Am. Jur. 2d *Gambling* § 184 (2010). Such an offer may be accepted by

performance of the actions contemplated by the offer. *Holt v. Rural Weekly Co.*, 173 Minn. 337, 341, 217 N.W. 345, 346 (1928). When a contestant begins performance, he accepts the offer, and a unilateral contract is formed. *Mooney v. Daily News Co. of Minneapolis*, 116 Minn. 212, 217-18, 133 N.W. 573, 575 (1911); *see also Sylvestre v. State*, 298 Minn. 142, 156-57, 214 N.W.2d 658, 667 (1973) (stating that partial performance in response to an offer for a unilateral contract results in formation of a contract). But an offer must be sufficiently definite to allow a court to determine its meaning and the liabilities of the parties. *Holt v. Swenson*, 252 Minn. 510, 515, 90 N.W.2d 724, 728 (1958). And indefinite statements are insufficient to form an offer for a unilateral contract. *Id.*; *Ruud v. Great Plains Supply, Inc.*, 526 N.W.2d 369, 372 (Minn. 1995). Whether statements are sufficiently definite to constitute an offer to enter into a unilateral contract is a question of law, which we review de novo. *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 740 & n.10 (Minn. 2000).

Appellant asserts in his complaint that he believed respondent had offered the winner of the tournament the option to participate in the WSOP or to receive $12,500 in cash. Appellant also asserts that the tournament advertisements "were vague and did not state with specificity precisely what the ultimate prize would be"; that some advertisements mentioned a "$12,500 grand prize"; that some advertisements stated that $12,500 was the value of a trip to the WSOP; and that in December 2008, one of respondent's owners stated that the nature of the prize had not been determined. But significantly, appellant does not allege that respondent offered the winner the option to select either the trip or its cash value. Thus, accepting appellant's allegations as true,

respondent's statements are not sufficiently definite to constitute an offer for a unilateral contract that may be accepted by performance.

Without the existence of a sufficiently definite offer, no contract was formed when appellant began to participate in the preliminary rounds of the tournament. Therefore, the WSOP Agreement is not a modification of a prior unilateral contract, but is the first and only contract formed. Appellant's allegations do not support the existence of a unilateral contract with a cash-value term. And the WSOP Agreement does not contain such a term. Appellant's claim that respondent breached the parties' contract by failing to pay him the cash value of the WSOP entry fee therefore fails as a matter of law. Consequently, judgment on the pleadings in respondent's favor as to appellant's breach-of-contract claim was proper.

II.

Appellant also challenges the district court's grant of judgment on the pleadings to respondent on its breach-of-contract counterclaim, arguing that respondent cannot succeed on this claim because the WSOP Agreement is invalid. The validity of a contract is an issue of law, which we review de novo. *Agency Rent-a-Car, Inc. v. Am. Family Mut. Auto. Ins. Co.*, 519 N.W.2d 483, 485 (Minn. App. 1994).

Appellant contends that the WSOP Agreement required new consideration because it modified the terms of "the original contract." But, as we concluded, no contract existed between the parties before appellant signed the WSOP Agreement. This claim, therefore, fails.

Appellant also argues that he signed the WSOP Agreement under duress. But because appellant has failed to allege that respondent coerced him by physical force or unlawful threats, the contractual defense of duress is unavailable to him. *See Bond v. Charlson*, 374 N.W.2d 423, 428 (Minn. 1985) (requiring coercion by physical force or unlawful threats to support a claim of duress).

Finally, appellant contends that the WSOP Agreement was unconscionable. "A contract is unconscionable if it is such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other." *Kauffman Stewart, Inc. v. Weinbrenner Shoe Co.*, 589 N.W.2d 499, 502 (Minn. App. 1999) (quotation omitted). To demonstrate unconscionability, a party must show (1) that it had "no meaningful choice but to accept the contract term as offered"; and (2) that the terms were "unreasonably favorable to the other party." *Dorso Trailer Sales, Inc. v. Am. Body & Trailer, Inc.*, 372 N.W.2d 412, 415 (Minn. App. 1985) (quotations omitted), *review denied* (Minn. Oct. 18, 1985). Appellant's argument as to the unconscionability of the WSOP Agreement is premised on the agreement being a modification of a prior contract between the parties. But again, there was no prior contract. And there is nothing objectively unconscionable about the terms of the agreement that appellant now challenges, including the requirements that the $2,500 be paid to the winner in two installments, that the winner cannot sell or transfer the WSOP seat, that the winner must attend the WSOP or return the expense money, and that the winner wear clothing provided by respondent during the WSOP.

It is undisputed that appellant did not attend the WSOP. It is also undisputed that respondent paid appellant $2,500 for expenses in accordance with the WSOP Agreement. Because respondent is entitled to the return of the $2,500 under the agreement, the district court did not err by granting judgment on the pleadings to respondent on its breach-of-contract counterclaim.

Affirmed.