

**United States Court of Appeals**  
**For the Eighth Circuit**

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No. 22-3036

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Commercial Bag Company,

*Plaintiff - Appellant,*

v.

Land O'Lakes, Inc.,

*Defendant - Appellee.*

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Appeal from United States District Court  
for the District of Minnesota

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Submitted: May 9, 2023

Filed: August 25, 2023

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Before COLLOTON, WOLLMAN, and BENTON, Circuit Judges.

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COLLOTON, Circuit Judge.

Commercial Bag Company sued Land O'Lakes for breach of contract after Land O'Lakes terminated a supply agreement between the parties. The district court\*

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\*The Honorable David S. Doty, United States District Judge for the District of Minnesota.

granted summary judgment for Land O’Lakes. Commercial Bag appeals, and we affirm.

## I.

Land O’Lakes is a Minnesota agricultural cooperative. A subsidiary of Land O’Lakes manufactures and sells animal-feed products. This subsidiary packages most of its feed products in polypropylene bags. Polypropylene bags are designed to resist tears and punctures, and they can be embossed with high-quality graphics. Commercial Bag Company sells polypropylene bags and other packaging products.

In January 2015, Land O’Lakes and Commercial Bag entered into a “Packaging Materials Supply Agreement.” Under the Agreement, Land O’Lakes agreed to “make best reasonable efforts” to buy fifteen to twenty percent of its annual polypropylene bag volume from Commercial Bag. The Agreement’s initial term was two years—from January 2015 to December 2016—with a one-year renewal option. Either party could terminate the Agreement “for cause in the event of any default by the other if such default is not cured within ninety (90) days.” In late 2016, the parties orally renewed the Agreement for another year.

In August 2017, the parties extended the Agreement for an additional year. The extension was accomplished by an amendment to the Agreement entitled, “Amendment #1 to Packaging Materials Supply Agreement.” Amendment #1 extended the agreement and changed the termination provision of the Agreement from “for cause” to “without cause.” The amended provision stated that “[Land O’Lakes] may terminate this Agreement without cause upon 90 calendar days’ prior written notice to [Commercial Bag].”

In October 2017, Land O’Lakes issued a request for proposal from multiple bag manufacturers seeking a long-term partnership for the supply of polypropylene bags.

As part of the request for proposal, Land O'Lakes supplied the bidding manufacturers with a sample agreement setting forth the terms and conditions that Land O'Lakes anticipated would be included in any future agreement. The sample agreement contained a "for cause" termination provision similar to the provision included in the original Agreement.

Commercial Bag submitted a bid, and Land O'Lakes accepted. Instead of negotiating a new contract, however, the parties again amended the Agreement. Amendment #2 extended the Agreement's term for five years and three months, to expire on March 31st, 2024, "unless otherwise terminated in accordance with the Agreement." Amendment #2 also replaced the Agreement's exhibits with new Exhibits A through G.

New Exhibit A to Amendment #2 listed pricing for the polypropylene bags. In the heading above the price list, the parties included a parenthetical: "(as of January 1st, 2018, Estimated Annual Volume of 85M)." Exhibit A also provided that Commercial Bag would credit Land O'Lakes with \$375,000 in "plating costs." Plating costs are the costs of developing plates for printing graphics on the bags.

During the course of the Agreement, Commercial Bag acquired most of its polypropylene bags from factories in Vietnam. After the parties executed Amendment #2, however, the United States International Trade Commission began to investigate complaints that polypropylene bag factories in Vietnam were engaged in the illegal "dumping" of their products in the United States. In response, Land O'Lakes and Commercial Bag entered into a third amendment to the Agreement.

Amendment #3 served to "further amend" the Agreement. Under Amendment #3, Land O'Lakes agreed to pay any new tariffs on bags from Vietnam, and Commercial Bag committed to finding a new manufacturer if necessary "[t]o provide a cost competitive bag."

The Trade Commission ultimately imposed tariffs on polypropylene bags from Vietnam. Shortly thereafter, Commercial Bag located a new manufacturer in Thailand. Due to concerns with the new manufacturer, however, Land O'Lakes decided to purchase a portion of its polypropylene bags from a domestic manufacturer instead. Land O'Lakes informed Commercial Bag of this decision, and said that it would "result in a discontinuation of the business relationship between Land O'Lakes and Commercial" for polypropylene bags. In August 2020, Land O'Lakes gave Commercial Bag 90 days' notice that it was terminating the Agreement.

Commercial Bag sued, alleging that Land O'Lakes breached the contract by terminating the Agreement without cause, reducing its purchases of polypropylene bags from Commercial Bag, and refusing to pay Commercial Bag's invoice for plates and artwork. Alternatively, Commercial Bag pleaded a claim for reformation due to mutual mistake. On cross-motions for summary judgment, the district court ruled in favor of Land O'Lakes. Commercial Bag appeals, and we review the district court's decision *de novo*. *Noreen v. PharMerica Corp.*, 833 F.3d 988, 992 (8th Cir. 2016). The parties agree that Minnesota law applies.

## II.

### A.

We first address Commercial Bag's challenge to the district court's interpretation of the agreement between the parties. Commercial Bag contends that Land O'Lakes breached the Agreement by terminating without cause. Commercial Bag maintains that Amendment #2 unambiguously provided that Land O'Lakes could terminate the agreement only "for cause," as was the rule under the original agreement before Amendment #1. Alternatively, Commercial Bag argues that Amendment #2 is ambiguous, and that a jury must determine whether the agreement required Land O'Lakes to establish "cause" to terminate the relationship.

Amendment #2 provided that the Agreement could be terminated only “in accordance with the Agreement.” Commercial Bag argues that the term “Agreement” is ambiguous, because it could mean either the original “Agreement” or the “Agreement as amended by Amendment #1.”

We agree with the district court that the term “Agreement” in Amendment #2 is not ambiguous. Land O’Lakes was permitted under the contract to terminate the agreement without cause. Amendment #1 added the “without cause” termination provision to Section 2 of the Agreement, and Amendment #2 did not remove that provision. So the “Agreement” to which Amendment #2 referred was necessarily the original agreement as amended by Amendment #1. The parties themselves confirmed this understanding when they later adopted Amendment #3. The third amendment recited that the original agreement had been amended twice before by Amendment #1 and Amendment #2, and explained that the parties desired “to further amend the terms of the Agreement.” In short, Amendment #1 was part of the agreement when the parties adopted Amendment #2, so the “without cause” termination provision continued in effect. There is no ambiguity.

Commercial Bag also argues that Exhibit E to Amendment #2 suggests that Land O’Lakes could terminate only for cause. In Exhibit E, Land O’Lakes reserved its right under Section 2 of the Agreement, “up to termination for cause,” if Commercial Bag failed to comply with a quality improvement program. While Land O’Lakes seems to have reserved more rights in Exhibit E than were necessary to terminate the agreement, Section 28 of the Agreement provides that the terms of the main body of the Agreement prevail over any conflicting language in the exhibits. The unambiguous “without cause” termination provision of Amendment #1 is therefore controlling.

B.

Commercial Bag next argues that Land O'Lakes was required under the Agreement to buy a specific quantity of bags per year. Section 4.3 of the Agreement required Land O'Lakes to use its "best reasonable efforts" to purchase fifteen to twenty percent of its annual polypropylene bag requirements from Commercial Bag. The Agreement also stated that Commercial Bag "agrees to manufacture for and supply to [Land O'Lakes] . . . certain quantities of [polypropylene bags] as more specifically described on Exhibit A."

Amendment #2 included a new Exhibit A entitled "Pricing." The exhibit included a price list with the following heading: "Woven Poly Bags Price List (as of January 1st, 2018, Estimated Annual Volume of 85M)."

Commercial Bag argues that Exhibit A to Amendment #2 obligated Land O'Lakes to purchase a minimum of eighty-five million polypropylene bags per year. The exhibit, however, set forth only an "estimated" annual volume. The body of the agreement continued to require that Land O'Lakes exercise "best reasonable efforts" to purchase fifteen to twenty percent of its bag requirements from Commercial Bag. In any event, Land O'Lakes had a contractual right to terminate the agreement without cause, and it exercised that option. There is no ambiguity that warrants a trial on whether the agreement required purchase of eight-five million bags.

C.

Commercial Bag further contends that Land O'Lakes breached the Agreement by refusing to pay an invoice from Commercial Bag for plates and dies. The claim is based upon an invoice from September 2020 in which Commercial Bag billed Land O'Lakes in the amount of \$1,196,250.00 for "WPP ARTWORK & CYLINDERS."

There is no evidence that Commercial Bag actually incurred any costs for the specified artwork and cylinders before the supply agreement was terminated.

Exhibit A of Amendment #2 provided that Land O'Lakes "will pay [Commercial Bag] for the first set of plates and dies for each new print copy." A provision on "Plating Cost Allocation" stated that Commercial Bag "agrees to waive \$375,000 in plating costs as it relates to [Land O'Lakes's] rebranding campaign."

The district court concluded that the provision regarding payment for plates and dies was "unambiguously a reimbursement provision," and we agree. The agreement contemplated that Land O'Lakes would pay for a set of plates and dies, and that Commercial Bag would waive a portion of the plating costs. The agreement therefore contemplated that there would be "costs" that could be waived before any payment obligation was triggered. Because Commercial Bag produced no evidence that it actually incurred costs for plates and dies, the district court correctly granted judgment for Land O'Lakes on this claim.

### III.

Commercial Bag also challenges the district court's dismissal of its equitable claim for reformation of the agreement. Commercial Bag claims that regardless of the written agreement, the parties did not intend for the "without cause" termination provision from Amendment #1 to continue after the parties signed Amendment #2. Commercial Bag argues that the parties intended to reinstate the "for cause" provision from the original Agreement, and that the retention of the "without cause" provision from Amendment #1 was the result of a mutual mistake.

To prevail on a reformation claim, Commercial Bag must show that: "(1) there was a valid agreement between the parties expressing their real intentions; (2) the written instrument failed to express the real intentions of the parties; and (3) this

failure was due to a mutual mistake of the parties.” *Nichols v. Shelard Nat’l Bank*, 294 N.W.2d 730, 734 (Minn. 1980). Where, as here, a claim for reformation is based on a mutual mistake, the evidence “must be clear, precise, and convincing.” *Farmers’ Store of Wheaton v. Del. Farmers’ Mut. Fire Ins. Co.*, 59 N.W.2d 889, 892 (Minn. 1953). The district court concluded that the evidence was clear that Land O’Lakes intended for the “without cause” provision to continue, and there was no genuine issue for trial on mutual mistake.

Commercial Bag contends that the “without cause” termination provision is inconsistent with the intent of the parties as reflected in the Land O’Lakes request for proposal from 2017. A transmittal message with that document said that Land O’Lakes would “look to partner long-term” with suppliers. A sample agreement accompanying the request for proposal included a “for cause” termination provision. Commercial Bag maintains that there is no evidence that Land O’Lakes intended to continue the “without cause” termination provision of Amendment #1.

We agree with the district court that the record is insufficient to create a submissible case on mutual mistake. Commercial Bag emphasizes its own intent, but mutual mistake requires clear and convincing evidence that Land O’Lakes also did not intend to enter into the agreement as written. A sample agreement with a “for cause” termination provision carries little weight when the parties ultimately signed a different agreement in Amendment #2 that continued a “without cause” termination provision. That Land O’Lakes aspired to “partner long-term” with a supplier is not inconsistent with its retaining a right to terminate without cause if circumstances warranted. Indeed, the companies did business for three years under the amended agreement, and the termination was prompted by a change in circumstances involving use of a new manufacturer abroad.

Land O’Lakes presented evidence that the company started to include “without cause” termination provisions in all of its supply agreements as of May 2017, well



before the parties executed Amendment #2 in January 2018. A Land O'Lakes manager explained that the company wanted flexibility to terminate the Agreement in this case if Commercial Bag changed manufacturers or increased prices. Internal documents from Land O'Lakes in 2019 show that the company understood that the Agreement with Commercial Bag allowed for termination without cause. Documentary evidence shows that Land O'Lakes employed "without cause" termination provisions in agreements with other suppliers after May 2017, and in a sample contract for another request for proposal in 2019. Even allowing for the prerogative of a factfinder to assess conflicting evidence and the credibility of witnesses, the record is insufficient to support a finding by the high standard of clear and convincing evidence that the parties mutually intended something other than the terms of the written agreement regarding termination.

The judgment of the district court is affirmed.

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