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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1734

North Country Tire and Auto, Inc., et al.,
Appellants,

vs.

David Leonard Anderson, et al.,
Respondents.

Filed October 15, 2018
Affirmed
Kirk, Judge

Cass County District Court
File No. 11-CV-15-1456

Richard C. Kenly, Backus, Minnesota (for appellants)

John E. Valen, Walker, Minnesota (for respondents)

Considered and decided by Kirk, Presiding Judge; Reilly, Judge; and Smith, John, Judge.[*]

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

UNPUBLISHED OPINION

KIRK, Judge

Appellants challenge the dismissal of their breach-of-contract claim, arguing that the district court erred by failing to determine which party breached the parties' contract first and by failing to award damages under a theory of unjust enrichment. We affirm.

FACTS

Appellants Kenneth Poliwoda and Cynthia Cressy jointly own and operate appellant North Country Tire and Auto, Inc. (North Country). Respondent David Anderson brought a 2003 Ford truck to North Country for repairs in June, October, and November of 2013.[1] Anderson paid the service bill in full for the June repairs, put down only $400 for the October repairs, and paid nothing for the November repairs. After the November repairs, North Country returned the truck to Anderson.

In January of 2014, Poliwoda, Cressy, and Anderson orally agreed that Anderson would install kitchen cabinets, a center island, vanities, and linen cabinets in Poliwoda and Cressy's home for a flat fee of $12,500, which would first be credited to the cost of the unpaid truck repairs. They anticipated that past and future truck repairs would cost less than $12,500 and Poliwoda and Cressy would pay Anderson the difference. They did not memorialize their agreement to exchange services.

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[1] The complaint also listed David Anderson's parents as defendants because his truck was titled under their names. However, the district court found that David Anderson was the equitable owner of the truck and dismissed his parents from the action. No party has challenged the district court's decision to dismiss David Anderson's parents from the action, and although they are nominally respondents, they have not filed a brief in this appeal.

In February 2014, Anderson took the truck to North Country for further repairs, and work on the truck continued through April 2014. Poliwoda, Cressy, and Anderson disputed whether Anderson approved all of the work on the truck and whether Anderson saw work orders for the repairs as the repairs were being made. Anderson did not receive bills, invoices, or work orders for any repairs done after October 2013. Following attempts to repair the truck, Poliwoda and Cressy determined that the truck needed a new engine, and in June 2014, they purchased and installed a used engine for the truck. Poliwoda and Cressy did not return the truck to Anderson at that time because they wanted him to finish the cabinets first.

When Anderson began working on the cabinets in January 2014, Poliwoda gave Anderson a check for $3,000 for building materials. Poliwoda testified that he also gave Anderson cash payments, but Anderson denied that he received any cash payments. Anderson did not provide Poliwoda or Cressy with any regular billing statements or receipts for any cash that he may have received. As of September 2014, Poliwoda and Cressy appeared to be satisfied with Anderson's work, as Cressy sent him a text noting that the work that Anderson had done so far looked beautiful.

As of the spring of 2015, Poliwoda and Cressy still were in possession of the truck, and the cabinets had not been completed. They brought the truck from North Country's storage area to their home because they were concerned that Anderson would try to take it. Anderson confronted Poliwoda about the location of the truck, and a physical altercation ensued. Following the altercation, Anderson did not do any more work on the cabinets. Poliwoda testified that, after the altercation, he was "done" with Anderson. Anderson

testified that he would not complete the cabinets until Poliwoda and Cressy returned his truck. Cressy then obtained an estimate from a third party to finish the cabinets.

In July 2015, Anderson received a bill for the truck repairs in the amount of $16,612, which he testified was the first time he was told the cost of the repairs. After seeing the amount of the bill, Anderson went to Poliwoda and Cressy's home and took back the truck. Upon retrieving the truck, Anderson noted several signs that someone else had driven it, including dents in the door, dog hair and french fries in the seats, and missing personal items. Anderson asserted that Cressy had been using the truck regularly for personal reasons, but she only admitted to using the truck on one occasion.

Appellants ultimately brought suit for breach of contract to recover the cost of the truck repairs, as well as the money that Poliwoda and Cressy paid Anderson for the unfinished cabinet work. Anderson countersued for breach of contract, claiming damages based on an hourly rate for the work he had done and the cost of materials. Following a bench trial, the district court dismissed all claims. The district court concluded that Poliwoda, Cressy, and Anderson formed an oral contract to exchange services, but that no party met its burden to prove a breach-of-contract claim, and that no party was entitled to damages under a theory of unjust enrichment. This appeal follows.

D E C I S I O N

I. The district court did not clearly err in finding that appellants did not prove that Anderson breached the contract first.

On appeal from the decision of a district court sitting without a jury, appellate courts "determine whether the evidence sustains the findings of fact and whether the findings

sustain the conclusions of law and judgment." *Roberts v. Brunswick Corp.*, 783 N.W.2d 226, 230 (Minn. App. 2010), *review denied* (Minn. Aug. 24, 2010). We apply the clear-error standard of review, give due regard to the district court's credibility findings, and view the evidence in the light most favorable to the district court's findings. Minn. R. Civ. P. 52.01; *see In re Pamela Andreas Stisser Grantor Trust*, 818 N.W.2d 495, 507 (Minn. 2012) (applying the clear-error standard of review to a claim that a trust pay a personal representative compensation and attorney fees). Findings of fact are clearly erroneous when "we are left with a definite and firm conviction that a mistake has been made." *Stisser*, 818 N.W.2d at 508 (quotation omitted). The district court is not entitled to any deference on purely legal conclusions. *Roberts*, 783 N.W.2d at 230.

To establish a breach-of-contract claim, a party must prove three elements: "(1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant." *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011). The claimant bears the burden of proving the essential elements of a claim "by a fair preponderance of the evidence." *Carpenter v. Nelson*, 101 N.W.2d 918, 921 (Minn. 1960). "Both the existence and terms of an oral contract are issues of fact, generally to be decided by the fact-finder." *Rios v. Jennie-O Turkey Store, Inc.*, 793 N.W.2d 309, 315 (Minn. App. 2011). When a material breach has occurred, the non-breaching party is excused from further performance and may sue for damages. *BOB Acres, LLC v. Schumacher Farms, LLC*, 797 N.W.2d 723, 728 (Minn. App. 2011), *review granted* (Minn. June 14, 2011) *and appeal dismissed* (Minn. Aug. 12, 2011). Generally, the materiality of a breach is a

question of fact. *Cloverdale Foods of Minn., Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 49-50 (Minn. App. 1998).

In this case, the district court found that Poliwoda, Cressy, and Anderson formed an oral contract and that no party proved which party was the first to materially breach the contract. Appellants argue that the district court erred in not finding that Anderson breached the contract first because they fixed the truck and therefore did not breach the contract. However, Poliwoda and Cressy did not return the truck to Anderson once it was fixed in June 2014. Instead, they maintained possession of the truck for nearly one year. Although the record is not clear as to whether the contract required Poliwoda and Cressy to return the truck after it was repaired, Anderson initially maintained possession of the truck, despite outstanding repair bills. This suggests that the contract did not provide for Poliwoda and Cressy to keep the truck indefinitely as collateral and that they may have materially breached the contract by doing so.

Appellants argue that Anderson breached the contract by failing to complete the cabinets. The record does not indicate that Anderson was required to complete the cabinets by any specific time. Poliwoda and Cressy were satisfied with the work through at least September of 2014. The work on the cabinets continued into the spring of 2015, at which point, the decision to end the work appears to have been mutual. Accordingly, it is not clear if or when Anderson may have breached the contract by failing to complete the cabinets. Appellants also argue that Anderson breached the contract by unilaterally changing the contract to charge Poliwoda and Cressy an hourly rate for his work. However,

Anderson never told Poliwoda and Cressy that he would charge them an hourly rate and only asserted that he should be paid hourly after litigation began.

This record contains evidence that could support either a finding that Poliwoda and Cressy initially breached the contract or that Anderson initially breached the contract. Each party had the burden to prove its respective claims. On this record, we cannot conclude that the district court clearly erred in finding that appellants did not prove that Anderson breached the contract first.

II. The district court did not abuse its discretion by declining to award damages under the theory of unjust enrichment.

"In order to establish a claim for unjust enrichment, the claimant must show that another party knowingly received something of value to which he was not entitled, and that the circumstances are such that it would be unjust for that person to retain the benefit." *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. App. 2001). It is not enough to show that one party benefited from the efforts of another; the benefit must be unjust in the sense that it is illegal or morally wrong. *Id.* Recovery under an unjust-enrichment theory is an equitable remedy. *Southtown Plumbing, Inc. v. Har-Ned Lumber Co., Inc.*, 493 N.W.2d 137, 140 (Minn. App. 1992). Appellate courts review a district court's decision regarding equitable relief for an abuse of discretion. *City of Cloquet v. Cloquet Sand & Gravel, Inc.*, 251 N.W.2d 642, 644 (Minn. 1977).

In this case, the district court found that "each party owes the other roughly the same amount" and that "[b]alancing the equities of the parties' trades, and the parties' conduct . . . on the whole, the equities balance." Poliwoda, Cressy, and Anderson offered

conflicting evidence about the value and quality of the services that they provided. Each also offered testimony of bad conduct on the part of the other party, including Anderson's testimony that Poliwoda and Cressy did work on the truck without his approval, used the truck for personal reasons, and took his personal items from the truck. On this record, the district court did not abuse its discretion in finding that the equities balance and declining to award damages under a theory of unjust enrichment.

Affirmed.