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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0254

Glacial Plains Cooperative, a cooperative association,
formerly known as United Farmers Elevator,
Appellant,

vs.

Chippewa Valley Ethanol Company, LLLP,
successor to Chippewa Valley Ethanol Company, LLC,
Respondent.

Filed September 16, 2019
Affirmed
Bratvold, Judge

Swift County District Court
File No. 76-CV-14-332

Jason G. Lina, Fluegel, Anderson, McLaughlin & Brutlag, Chartered, Morris, Minnesota (for appellant)

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Considered and decided by Bratvold, Presiding Judge; Ross, Judge; and Larkin, Judge.

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

BRATVOLD, Judge

On appeal after remand in a breach-of-contract action that was tried to the district court, appellant argues that the district court erred in determining that the termination of a contract of indefinite duration occurred after a reasonable time had passed. Appellant also

argues that the district court erred in basing its reasonableness determination on recoupment caselaw and in finding that respondent gave reasonable notice of termination. We affirm.

FACTS

This appeal arises from a contractual dispute between appellant Glacial Plains Cooperative (Glacial Plains) and respondent Chippewa Valley Ethanol Company, LLLP (Chippewa Valley). This dispute has a long procedural history. *See Glacial Plains Coop. v. Chippewa Valley Ethanol Co. LLP (Glacial Plains I)*, No. A10-0869, 2011 WL 382710, (Minn. App. Feb. 8, 2011), *review denied* (Minn. Apr. 19, 2011); *Glacial Plains Coop. v. Chippewa Valley Ethanol Co. LLP (Glacial Plains II)*, 897 N.W.2d 834 (Minn. App. 2017), *rev'd*, 912 N.W.2d 233 (Minn. 2018); *Glacial Plains Coop v. Chippewa Valley Ethanol Co. LLP (Glacial Plains III)*, 912 N.W.2d 233 (Minn. 2018). This appeal seeks review of the district court's order following remand by the Minnesota Supreme Court. *See Glacial Plains III*, 912 N.W.2d at 237-38. We begin by briefly summarizing the relevant facts, which have been extensively discussed in previous appellate decisions.

In November 1994, Glacial Plains's and Chippewa Valley's predecessors-in-interest entered into a grain-handling contract. *Glacial Plains III*, 912 N.W.2d at 235. Chippewa Valley intended to build an ethanol plant and, in exchange for financing from Glacial Plains, agreed to provide Glacial Plains with land to build a "grain handling facility" and to make Glacial Plains "the exclusive handler of grain" to Chippewa Valley's ethanol facility.

The contract states that "[i]t is the intent of the parties that this agreement shall continue indefinitely until either terminated by the terms of this agreement, or by the mutual agreement of both parties." The contract does not, however, include any termination provisions. The contract states that if Glacial Plains fails its obligations under the contract, then Chippewa Valley has the "right to declare th[e] contract has been breached." Following notification of breach, Glacial Plains has 30 days to cure the breach and Chippewa Valley promised to inform Glacial Plains in writing whether it resolved the breach. If Glacial Plains fails to resolve the breach, then it is obligated to transfer the grain-handling facility and land to Chippewa Valley in exchange for consideration, as stated in the contract. If the parties dispute whether Glacial Plains is in breach, then the parties agreed to submit the dispute to arbitration.

Chippewa Valley's ethanol plant started operations in 1996, and the parties worked together until 2009.[1] In 2011, Chippewa Valley sued Glacial Plains to terminate the contract, claiming that Glacial Plains had materially breached its duties. The arbitration panel awarded damages to Chippewa Valley for one breach, but the panel determined that Glacial Plains "had not materially breached the contract in any other way" and the "arbitrators did not order that the contract be terminated." *Id.* at 236.

[1] In 2009, Glacial Plains sued Chippewa Valley for breach of contract based on grain-storage costs. *See Glacial Plains I*, 2011 WL 382710, at *1-2. The district court "issued its findings of fact, conclusions of law, order for judgment, and judgment, denying Glacial Plains' claims for relief." *Id.* at *2. On appeal, this court determined that the "district court's findings do not support its conclusions of law," and reversed and remanded the district court's conclusions of law and order for judgment "for the entry of judgment in favor of [Glacial Plains]." *Id.* at *1. This court's decision in *Glacial Plains I* is not relevant to the issues raised in this appeal.

In June 2014, Chippewa Valley notified Glacial Plains of "its intent to terminate the contract" and Glacial Plains sued to enjoin Chippewa Valley from terminating the contract. *Id.*; *see also Glacial Plains II*, 897 N.W.2d at 837.

Chippewa Valley sought summary judgment, claiming that "the contract was one for an indefinite duration that could be terminated by either party at will." *Glacial Plains II*, 897 N.W.2d at 837. Glacial Plains opposed summary judgment, arguing that "the contract was for a perpetual duration, unless and until [Glacial Plains] breached the contract and [Chippewa Valley] took over the operations" of the grain-handling facility. *Id.* The district court denied Chippewa Valley's motion for summary judgment and, agreeing with Glacial Plains, concluded that the contract was perpetual because "the only way the Contract can terminate under its terms is if [Glacial Plains] defaults on its duties to [Chippewa Valley]. In other words, it is written so as to continue so long as [Glacial Plains] performs satisfactorily." *Id.*

The district court conducted a bench trial and, in August 2016, the district court issued findings of fact, conclusions of law, and an order for judgment (2016 decision), finding Chippewa Valley had breached the contract and "requiring [Chippewa Valley's] specific performance of the contract." *Id.* On appeal, this court affirmed the district court's 2016 decision, reasoning that the intent of the parties when they signed the contract and the lack of a termination clause in the contract meant "the contract provides for a perpetual duration, and that the general rule for contracts of indefinite duration does not apply to render the contract terminable at will." *Id.* at 840.

The supreme court granted Chippewa Valley's petition for further review. *See Glacial Plains III*, 912 N.W.2d at 233. The supreme court reversed and remanded, determining that the fundamental issue was whether the contract is one of perpetual duration. *Id.* at 236. The supreme court noted that courts generally disfavor perpetual contracts unless expressly provided for in a contract, and that appellate courts "construe ambiguous language regarding duration against perpetual duration." *Id.* Analyzing the parties' contract, the supreme court determined that the contract suggested a permanent relationship, but "[n]owhere is such an intent clearly and directly expressed." *Id.* at 237. Instead, "the use of the word 'indefinitely' creates uncertainty as to whether the contract is meant to be of indefinite duration or perpetual duration" and was thus ambiguous. *Id.* The supreme court held that, because perpetual contracts are disfavored, "the contract must be one of indefinite duration" and that "[b]ecause the parties' contract . . . is one of indefinite duration, *it is therefore terminable at will by either party upon reasonable notice after a reasonable time has passed*." *Id.* (emphasis added).

The supreme court then considered "the appropriate method to determine whether a reasonable time has passed." *Id.* The supreme court disagreed with Chippewa Valley's contention that a 20-year length of time for a contract is, as a matter of law, a reasonable time. *See id.* Instead, the supreme court held that "[a] 'reasonable time' is determined not by a specific number of years, but by the individualized circumstances surrounding each case. It is for the district court, sitting in its role as factfinder, to weigh the evidence and

apply the law to determine whether a reasonable time has passed." *Id.* The supreme court then remanded the case "to the district court for proceedings consistent with th[e] opinion." *Id.*

On remand, the district court held a telephone hearing, during which it asked the parties "whether it had sufficient facts to determine" the issues on remand. The district court determined that it "d[id] have sufficient facts such that further evidentiary proceedings are unnecessary." On the merits of the remanded issues, the parties disagreed on whether a reasonable time had passed and whether Chippewa Valley gave reasonable notice of termination. Chippewa Valley argued that a reasonable time for termination was "when the non-terminating party recoups its investment." Glacial Plains argued that "a reasonable time will have passed only when [Glacial Plains] stops performing under the terms of the contract, because this was the intent of the parties." As for the reasonableness of the notice, Chippewa Valley argued it had given Glacial Plains 30 days' formal notice of termination in 2014 and, more importantly, it put Glacial Plains on notice when Chippewa Valley sued for a declaration that the contract was terminable in 2011.

The district court issued an "Order on Remand" in which it incorporated its previous findings of fact from its 2016 decision. In its attached memorandum, the district court first considered "whether a 'reasonable time' [had] elapsed in terms of recoupment of expenditures plus reasonable profit." The district court considered evidence from the 2016 bench trial in which "[Glacial Plains] itself adduced testimony on profitability" and concluded that "[Glacial Plains] recouped all of its investment and made a substantial profit over the 20-year duration of the contract." The district court also found that Chippewa

Valley gave Glacial Plains reasonable notice of termination based on the "years of litigation relative to [Chippewa Valley's] attempts and obvious desire to escape the grain-handling contract." The district court thus found that Chippewa Valley had reasonably notified Glacial Plains after a "reasonable time [had] elapsed" to terminate the contract. The district court determined that the grain-handling contract was terminated and dismissed Glacial Plains's claims with prejudice, entering judgment for Chippewa Valley. Glacial Plains appeals.

D E C I S I O N

I. The district court did not clearly err in finding that a reasonable amount of time had passed, and that Chippewa Valley could terminate the contract.

Glacial Plains argues that the district court erred in determining that a reasonable time had passed by "ignoring the parties' intent that the contract run as long as Glacial Plains was complying with all the warranties and agreements of the parties' contract." Instead, Glacial Plains contends that "[a] reasonable period of time, under these facts and under these circumstances is that the Contract endures so long as [Glacial Plains] is performing the services the Contract demands of it."

The supreme court's decision in this case binds the district court and this court. *See Sigurdson v. Isanti Cty.*, 448 N.W.2d 62, 66 (Minn. 1989) ("Law of the case applies when [an] appellate court has ruled on a legal issue and remanded for further proceedings on other matters. The issue decided becomes 'law of the case' and may not be relitigated in the trial court or reexamined in a second appeal."). "A trial court's duty on remand is to execute the mandate of the remanding court strictly according to its terms." *Duffey v.*

Duffey, 432 N.W.2d 473, 476 (Minn. App. 1988). A district court "may not . . . decide issues beyond those remanded." *Harry N. Ray, Ltd. v. First Nat'l Bank of Pine City*, 410 N.W.2d 850, 856 (Minn. App. 1987).

Whether a reasonable amount of time has passed so that an indefinite contract may be terminated at will by either party is a question of fact. *See Glacial Plains III*, 912 N.W.2d at 237; *see also Bly v. Bublitz*, 464 N.W.2d 531, 535 (Minn. App. 1990) (noting that "what constitutes a reasonable time for the performance of contract obligations is a question of fact or mixed law and fact for determination by a [fact-finder]"). Appellate courts "review the district court's factual findings for clear error." *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013).

Here, the district court relied on recoupment theory to determine whether Chippewa Valley had performed its contract with Glacial Plains for a reasonable time, and was therefore allowed to terminate the contract. "[E]quitable recoupment is a theory for determining when to construe an oral or written contract which contains no duration term as continuing for a reasonable duration." *Retail Assocs., Inc. v. Macy's E., Inc.*, 245 F.3d 694, 698 (8th Cir. 2001). The Eighth Circuit, while applying Minnesota law, has held that a reasonable time for performance of a contract of an indefinite duration is the time necessary for a company "to recoup [its] expenditures" in pursuit of the contractual relationship. *Ag-Chem Equip. Co. v. Hahn, Inc.*, 480 F.2d 482, 486 (8th Cir. 1973); *see also Sofa Gallery, Inc. v. Stratford Co.*, 872 F.2d 259, 261-62 (8th Cir. 1989) (providing that a reasonable time for performance of a contract of indefinite duration "is measured by the length of time reasonably necessary for a dealer to recoup its investment"); *Cambee's*

Furniture, Inc. v. Doughboy Recreational, Inc., 825 F.2d 167, 173, (8th Cir. 1987) (discussing prior holdings under Minnesota law).

Recoupment seeks to "remedy the inequity" that might otherwise occur when one party requires another to make a "sizeable investment in the furtherance" of a contract and, following termination of that contract, the investing party has "substantial unrecovered expenditures." *Ag-Chem*, 480 F.2d at 486. Although recoupment is typically applied in a franchise or distributor context, the courts first adopted recoupment under "general contract principles" and it may be available in "'relational contracts' posing the same practical problems" as franchises or distributorships. *Cambee's Furniture*, 825 F.2d at 173 n.10; *see also Sofa Gallery*, 872 F.2d at 263 (holding that "under Minnesota law the recoupment doctrine is not limited to exclusive distributorships"). Recoupment usually considers profits only to the extent that a party has recouped its investment.[2] *See Sofa Gallery*, 872 F.2d at 262-63.

Here, the district court commented that the Eighth Circuit has recognized recoupment and federal caselaw provides persuasive guidance regarding what is a reasonable time to perform before termination. The district court noted that recoupment has typically applied to franchises, but the theory also applied to the Chippewa Valley-Glacial Plains contract because of "the inherent exclusivity of their arrangement"

[2] Minnesota has a similarly-named "recoupment doctrine," which functions as a defense to a plaintiff's breach-of-contract claim and "must arise out of the same transaction that is the subject matter of the plaintiff's action and it can only be utilized to reduce or avoid the plaintiff's recovery." *Household Fin. Corp. v. Pugh*, 288 N.W.2d 701, 703-04 (Minn. 1980). "Recoupment" in the context of the district court's order and this opinion is distinct from the "recoupment doctrine" defense.

and the "typical investment in facilities in reliance upon the contract." The district court then considered evidence from the 2016 bench trial in which "[Glacial Plains] itself adduced testimony on profitability" and concluded that "[Glacial Plains] recouped all of its investment and made a substantial profit." The district court also determined that actual profit was an appropriate consideration here based on the parties' intent to have a relationship "of long duration and mutual[] profit[]."[3]

Glacial Plains argues that the district court should have considered the extrinsic evidence of the parties' alleged intent when they signed the contract, which it contends supports its position that the parties intended a perpetual contract. Glacial Plains also contends that the district court should have concluded that "[a] reasonable period of time, under these facts and under these circumstances is that *the Contract endures so long as* [*Glacial Plains*] *is performing* the services the Contract demands of it." (Emphasis added).

Glacial Plains mainly relies on *Minnesota Deli Provisions, Inc. v. Boar's Head Provisions Co.* for the proposition that "Minnesota law does not, however, permit unilateral termination at will in cases where the contract provides that it will continue 'as long as' one party performs satisfactorily." 606 F.3d 544, 549 (8th Cir. 2010). Glacial Plains then contends that until it has breached the contract, a reasonable time cannot have run and

[3] The Eighth Circuit has rejected considering a party's future profit in a recoupment case and considers actual profit only to the extent that such profits "amortized" a party's initial investments in the contractual relationship. *See Ag-Chem*, 480 F.2d at 489, 492.

therefore Chippewa Valley cannot terminate the contract before Glacial Plains has breached it.[4]

We agree with the district court that Glacial Plains's argument conflicts with the supreme court's decision. In *Glacial Plains III*, the supreme court held that the contract is not perpetual and is "terminable *at will by either party*." 912 N.W.2d at 237 (emphasis added). Glacial Plains, therefore, mistakenly relies on *Minnesota Deli* because the Minnesota Supreme Court has *already* ruled that *this contract* is terminable at will by either party after a reasonable time and with reasonable notice. *See id.* As the district court correctly reasoned, "[a] contract that has the *potential* to last forever is a perpetual contract, and since this contract is not perpetual then something more than future non-performance must be able to bring it to an end."

Glacial Plains contends that the district court erred in relying on recoupment caselaw. We disagree. It is true that no binding Minnesota caselaw directed the district court to assess recoupment when determining whether a reasonable time has passed for a contract of an indefinite length. Instead, the district court applied Eighth Circuit caselaw, which we agree is persuasive. And the district court did not mechanically apply Eighth Circuit caselaw, but also considered the intent of these parties to have a long, profitable relationship. The district court determined that because the parties' "[i]ntent for a perpetual

[4] We recognize that the arbitration panel determined that Glacial Plains had committed one nonmaterial breach, but did not order the contract terminated, and that the district court did not find Glacial Plains to have materially breached the contract. Yet whether Glacial Plains breached the contract is immaterial given the supreme court's opinion that either party may terminate the contract *at will* after a reasonable time and with reasonable notice.

contract can no longer be considered," it would instead consider that the parties' "intent [was] that the enterprise would be of long duration and mutually profitable." Thus, the district court correctly reasoned that the profitability of the contract is one factor in determining whether the contract had run a "reasonable time."

The supreme court's remand instructions to the district court required it to "sit[] in its role as factfinder, to weigh the evidence and apply the law to determine whether a reasonable time has passed." *Id.* That is exactly what the district court did: the district court weighed the evidence before it, applied the most-analogous caselaw, and concluded that the parties had performed the contract for a reasonable time, therefore, Chippewa Valley could terminate the contract by reasonable notice. The district court's determination that a reasonable time had passed is not clearly erroneous.

II. The district court did not clearly err in finding that Chippewa Valley gave reasonable notice of termination.

Glacial Plains argues that the district court erred in determining that Chippewa Valley provided reasonable notice of termination. Glacial Plains also contends that the district court "can only look to whether a reasonable time has run after it looks to whether a reasonable notice has been given."

"A contract having no definite duration term, expressed or implied, is terminable by either party at will upon reasonable notice." *Hayes v. Northwood Panelboard Co.*, 415 N.W.2d 687, 691 (Minn. App. 1987), *review denied* (Minn. Jan. 28, 1988); *see also Benson Co-op. Creamery Ass'n v. First Dist. Ass'n*, 151 N.W.2d 422, 426 (Minn. 1967).

Whether Chippewa Valley gave reasonable notice is a question of fact for the fact-finder. *Glacial Plains III*, 912 N.W.2d at 237.

The district court did not find that Chippewa Valley had provided notice on a specific date, but generally referenced the years of litigation as providing adequate notice of Chippewa Valley's intent to terminate the contract. The district court found that "[f]ollowing years of litigation relative to [Chippewa Valley's] attempts and obvious desire to escape the grain-handling contract herein, this Court cannot say reasonable notice of termination has not been provided. At this point Glacial Plains has all the notice it needs that [Chippewa Valley] seeks to terminate." The district court cited a federal district court decision for the proposition that "nothing could send a clearer message of intent to terminate and provide more reasonable notice of such termination than service of a complaint" seeking termination of the contract. *Plainview Milk Prod. Co-op. v. Marron Foods, Inc.*, 3 F. Supp. 2d 1074, 1079 (D. Minn. 1998).

Glacial Plains argues that "[r]easonable notice cannot be given by [Chippewa Valley] until Glacial Plains in is in breach," but that "a 'reasonable time' cannot run unless and until a valid . . . notice is given." But the supreme court held that the contract "is terminable at will by either party upon reasonable notice *after* a reasonable time has passed." *Glacial Plains III*, 912 N.W.2d at 237 (emphasis added). That is to say, the district court must first determine whether a reasonable time has passed *and then* determine whether the notice given was reasonable. This reading is also supported by the supreme court's next sentence, where it stated that the district court should consider "whether a

reasonable time has passed, such that a contract of indefinite duration may be terminated at will with reasonable notice." *Id*.

The district court's determination that Chippewa Valley's notice was reasonable is not clearly erroneous. Chippewa Valley provided notice to Glacial Plains in summer 2011 by its initial lawsuit to terminate the contract based on material breach, and again in June 2014, after the arbitration panel's decision, when Chippewa Valley informed Glacial Plains that it would terminate the contract in one month. Thus, Glacial Plains had, at the very least, four years' notice before the district court terminated the contract.[5]

We affirm the district court's decision that a reasonable time had passed for contract performance so that Chippewa Valley could terminate at will and that Chippewa Valley provided reasonable notice of termination. Thus, the district court did not err when it ordered the contract terminated and we affirm the judgment.

Affirmed.

[5] We also note that the district court determined, based on Glacial Plains's evidence, that Glacial Plains had recouped its costs and reaped a profit. And we observe that Glacial Plains has never contended that a one-month notice was insufficient; in fact, the one-month termination notice echoes the thirty-day period for cure of a breach under the parties' contract.