STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0915

TMT Management Group, LLC, et al.,
Appellants,

vs.

U.S. Bank National Association, et al.,
Respondents,

Wilbur Tate,
Respondent,

United Credit Recovery, LLC,
Respondent,

Leonard Potillo,
Respondent.

Filed February 10, 2020
Affirmed
Florey, Judge

Dakota County District Court
File No. 19HA-CV-16-991

Kenneth R. White, Law Office of Kenneth R. White, P.C., Mankato, Minnesota (for appellants)

Brooks F. Poley, Justin H. Jenkins, Reid J. Golden, Winthrop & Weinstine, P.A., Minneapolis, Minnesota (for respondents U.S. Bank, et al.)

Wilbur Tate, III, Dacula, Georgia (pro se respondent)

United Credit Recovery, L.L.C., Sanford, Florida (pro se respondent)

Leonard Potillo, Longwood, Florida (pro se respondent)

Considered and decided by Johnson, Presiding Judge; Jesson, Judge; and Florey, Judge.

S Y L L A B U S

An allegation of commercial bribery does not relieve a litigant of the need to show targeting and market foreclosure in order to state an antitrust refusal-to-deal claim under Minn. Stat. § 325D.53, subd. 1(3) (2018).

O P I N I O N

FLOREY, Judge

Appellants TMT Management Group, LLC, et. al. (TMT) assert that the district court erred by: (1) imposing a sanction against TMT that precluded the introduction of evidence relating to alleged oral statements made by respondents U.S. Bank National Association, et. al. (U.S. Bank); (2) determining that TMT could not prove a clear and definite promise to support its promissory-estoppel claim; (3) granting U.S. Bank summary judgment dismissing TMT's failure-to-deal claim; and (4) dismissing TMT's derivative claims for lack of underlying tortious conduct. We affirm.

FACTS

This action involves a dispute between TMT, a debt-purchasing company, and U.S. Bank. TMT asserts that U.S. Bank conspired with another debt-purchasing company, United Credit Recovery, LLC (UCR), to prevent TMT from purchasing portfolios of overdrawn consumer checking accounts, which are referred to as demand deposit accounts (DDAs).

On March 16, 2011, the principals of TMT, Mark Bugni and respondent Thomas Leiferman, met with employees of U.S. Bank for the first time to discuss TMT's desire to

purchase DDA portfolios from U.S. Bank. U.S. Bank expressly rejected TMT's proposal for a five-year forward-flow agreement at that time.[1]

On February 18, 2011, prior to meeting with TMT, U.S. Bank executed a forward-flow agreement with UCR for the sale of DDA portfolios whereby U.S. Bank agreed to sell UCR all of its 2011 DDA portfolios. U.S. Bank cancelled its forward-flow agreement with UCR on June 7, 2011, and granted UCR a right of first refusal on the next portfolio sale.

U.S. Bank sold its May 2011 DDA portfolio to UCR pursuant to the entities' forward-flow agreement. TMT bid on U.S. Bank's July 2011 DDA portfolio, but UCR exercised its right of first refusal to purchase it. TMT executed a purchase agreement for U.S. Bank's September 2011 portfolio. In March 2012, U.S. Bank offered its last DDA portfolio for sale, which it also sold to TMT.

On May 8, 2013, TMT's principals again met with U.S. Bank to discuss possible future purchases of DDA portfolios. TMT alleges that U.S. Bank orally agreed to sell TMT $200 million in DDA debt for three cents on the dollar. U.S. Bank denies that it made a clear and definite promise to sell a DDA portfolio to TMT at that meeting.

In June 2014, federal authorities indicted UCR's principal, Leonard Potillo, for defrauding UCR's customers by misrepresenting the value of DDA debt purchased from U.S. Bank and other financial institutions. U.S. Bank was not charged with any wrongdoing. Wilber Tate, a former U.S. Bank employee, pleaded guilty to unrelated

[1] A forward-flow agreement allows the buyer to purchase all of the bank's DDA portfolios for a given period at specified prices.

bribery charges in Connecticut. However, there is no dispute that Tate received kickbacks from UCR and Potillo from 2007 until his resignation in January 2011 in exchange for inside information and preferential treatment regarding U.S. Bank's DDA sales.

Following the dismissal of TMT's civil federal claims against U.S. Bank by the federal district court in February 2016, TMT initiated the present action in state district court against U.S. Bank, UCR, and various employees and principals of those entities, under the overarching theory that U.S. Bank and UCR conspired to prevent TMT from purchasing U.S. Bank's DDA portfolios. Near the close of discovery, TMT produced an email that it asserted memorialized an oral contract entered into by U.S. Bank and TMT during the initial March 16, 2011 meeting. Following a forensic analysis, the district court determined that Leiferman fabricated the email. The district court sanctioned TMT for perpetrating a fraud upon the court, precluding TMT from introducing any evidence of alleged oral statements made by, or on behalf of, U.S. Bank defendants, among other penalties.

TMT narrowed or withdrew a number of its claims, and the district court granted U.S. Bank summary judgment on all remaining claims, based, in part, on its evidentiary sanction against TMT. TMT appeals.

ISSUES

I. Did the district court abuse its discretion by imposing an evidentiary sanction on TMT?

II. Did the district court err by granting U.S. Bank summary judgment on TMT's promissory-estoppel claim?

III. Are the extant state-law refusal-to-deal precedents distinguishable when the plaintiff alleges commercial bribery as the basis of the claim?

IV. Did the district court err by dismissing TMT's derivative claims for lack of underlying tortious conduct?

ANALYSIS

I. Evidentiary sanction

TMT argues that the district court abused its discretion by precluding TMT from introducing any evidence of alleged oral statements made by, or on behalf of, U.S. Bank defendants as a sanction for TMT's fabrication of evidence related to a purported oral contract. The party challenging a district court's choice of sanction "has the difficult burden of convincing an appellate court that the [district] court abused its discretion—a burden which is met only when it is clear that no reasonable person would agree [with] the [district] court's assessment of what sanctions are appropriate." *Patton v. Newmar Corp.*, 538 N.W.2d 116, 119 (Minn. 1995) (quotation omitted); *accord In re Kujawa*, 270 F.3d 578, 582 (8th Cir. 2001) (stating that appellate courts review sanctions imposed pursuant to a court's inherent authority for an abuse of discretion).

TMT concedes that Leiferman fabricated evidence, but argues that the district court abused its discretion by failing to narrowly tailor the sanctions it imposed. In support of this proposition, TMT cites the Eighth Circuit's decision in *Kujawa*, but the language TMT relies on refers specifically to monetary sanctions. 270 F.3d at 583 ("The cornerstone of imposing a monetary sanction . . . should be the selection of an amount no greater than sufficient to deter future misconduct by the party.") Here, TMT does not challenge the

imposition of monetary sanctions by the district court, only the preclusion of evidence related to alleged oral statements.

TMT also relies on the supreme court's statement that courts "should impose the least severe sanction necessary to effectuate the purpose of deterrence." *Uselman v. Uselman*, 464 N.W.2d 130, 145 (Minn. 1990) (citations omitted). However, in *Uselman*, the supreme court specifically provided for the exclusion of evidence as an available sanction, which it ranked as the sixth most severe sanction out of twelve potential penalties, and stated that the district court "may also consider the presence or absence of bad faith in determining an appropriate sanction." *Id.*

The supreme court also noted in *Seagate Tech., LLC v. W. Digital Corp.* that while preclusion of evidence is a severe sanction, it has been applied in other jurisdictions as a penalty for fabricating evidence. 854 N.W.2d 750, 763-64 (Minn. 2014). Here, the record reflects that the district court seriously considered U.S. Bank's request that it dismiss all of TMT's claims as a sanction for TMT's fraud. While the district court noted that significant sanctions were warranted, it decided to impose the less-severe penalty of precluding TMT from introducing evidence of alleged oral statements made by, or on behalf of, U.S. Bank, as the most effective means of deterring TMT from any additional attempts to fabricate evidence of alleged oral statements. We conclude that the district court did not abuse its discretion.

II. Promissory estoppel

TMT argues that the district court erred by granting U.S. Bank summary judgment on TMT's promissory-estoppel claim. "We review the grant of summary judgment de

novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). "We view the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). Summary judgment "is inappropriate when reasonable persons might draw different conclusions from the evidence presented." *Montemayor*, 898 N.W.2d at 628.

TMT seeks to estop U.S. Bank from rescinding an alleged oral promise to sell TMT a $200 million DDA portfolio for three cents on the dollar. Promissory estoppel is an equitable doctrine which requires proof of the following three elements: "(1) a clear and definite promise, . . . (2) the promisor intended to induce reliance and the promisee in fact relied to his or her detriment, and (3) the promise must be enforced to prevent injustice." *Martens v. Minn. Min. & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000). The district court granted U.S. Bank summary judgment on the bases that TMT failed to establish a dispute of material fact regarding the existence of a clear and definite promise, and also as a result of the sanction precluding TMT from introducing evidence of U.S. Bank's alleged oral statements.

TMT alleged that a U.S. Bank vice chairman orally promised to sell TMT a DDA portfolio during the May 8, 2013 meeting. TMT asserts that the deposition testimony of its own principals, along with that of a local U.S. Bank employee, created a dispute of material fact regarding whether the U.S. Bank vice chairman made the alleged oral promise.

As an initial matter, the U.S. Bank employee did not testify to the existence of a clear and definite promise. The U.S. Bank employee testified as follows:

> Q: Can you tell me whether you think that a final, finished deal had been reached for U.S. Bank to sell TMT DDA by the end of the lunch meeting?
> A: A final deal, no.
>
> . . . .
>
> Q: [D]o you remember [U.S. Bank employees] saying, "Yeah, that price sounds good to us"?
> A: I don't recall that, that they verbally agreed to it. I can't recall 100 percent.
> Q: Do you remember them shaking hands or hugging or giving high fives during the meeting?
> A: I do remember at the end of the meeting . . . they were shaking and hugging making comments that . . . [they were] looking for a way to make a deal happen.

Even when viewed in the light most favorable to TMT, the bank employee's testimony established the existence of a negotiation, not a clear and definite promise upon which TMT could rely.

Furthermore, TMT was precluded from introducing any evidence of oral statements allegedly made on behalf of U.S. Bank. TMT identified no other evidence in the record that could potentially create a dispute of material fact regarding the existence of a clear and definite promise. Accordingly, the district court properly granted summary judgment to U.S. Bank on the promissory-estoppel claim. *See Leamington Co. v. Nonprofits' Ins.*, 661 N.W.2d 674, 679 (Minn. App. 2003) ("A party must present specific admissible facts showing that there was a genuine issue for trial to avoid summary judgment." (quotation omitted)).

III. Refusal to deal

TMT argues that the district court erred by granting U.S. Bank summary judgment on TMT's antitrust refusal-to-deal claim. TMT concedes that it cannot prevail under controlling Minnesota precedent, but asserts that those holdings are distinguishable when the purportedly collusive agreement is the result of commercial bribery.

TMT initially brought a number of antitrust claims, first in federal district court under federal antitrust law, and then following the dismissal of those claims, in state district court under Minnesota antitrust law—all centered around its allegation that a bribery scheme between UCR and Tate operated to artificially control the market for U.S. Bank's DDA portfolio sales. However, TMT eventually limited its antitrust allegations to a single claim of refusal to deal under Minn. Stat. § 325D.53, subd. 1(3), which, with certain exceptions, makes "a contract, combination, or conspiracy between two or more persons refusing to deal with another person" unlawful.

A. Refusals to deal under Minnesota antitrust law

The parties have identified two cases that interpret the Minnesota refusal-to-deal statute. In *Minn.-Iowa Telev. Co. v. Watonwan T.V. Impr. Ass'n*, the supreme court analyzed a contract between a local ABC affiliate, KAAL, and a broadcasting company, Watonwan, which prevented Watonwan from broadcasting any signal that duplicated KAAL's network programming. 294 N.W.2d 297, 301 (Minn. 1980). When Watonwan began carrying the signal of another ABC affiliate, KSTP, KAAL sued to enforce the non-duplication provision, and Watonwan asserted that the provision constituted an invalid refusal to deal. *Id.* at 302. The supreme court held that the non-duplication provision did

not constitute a refusal to deal on two principal bases. *Id*. at 307. First, the contract did not target KTSP, but instead applied to any station carrying ABC network programming. *Id*. Second, because KTSP could still broadcast its signal using a carrier other than Watonwan, it was not foreclosed from the relevant market. *Id*.

In *Hough Transit, Ltd. v. Nat'l Famers Org.*, this court analyzed an exclusive milk-hauling agreement between a dairy cooperative and a former Hough Transit employee, where Hough Transit asserted that the agreement constituted a refusal to deal. 472 N.W.2d 358, 359 (Minn. App. 1991). Relying on the analysis set forth in *Watonwan*, this court held that the agreement did not constitute a refusal to deal under the statute on the same two bases. *Id.* at 361. First, because the exclusive arrangement between the co-op and the former employee prevented competition from all other haulers, it did not target Hough Transit for exclusion. *Id*. Second, because Hough Transit was not prevented from hauling for other dairy farmers, it was not foreclosed from the relevant market. *Id*.

Based on *Watonwan* and *Hough*, the district court granted U.S. Bank summary judgment on TMT's refusal-to-deal claim because the undisputed evidence established that the allegedly collusive arrangement between U.S. Bank and UCR applied to all entities seeking to purchase DDA portfolios from U.S. Bank, not just TMT, and TMT could still purchase DDA portfolios from entities other than U.S. Bank.

TMT asks this court to look to federal antitrust law in order to distinguish *Watonwan* and *Hough* when a refusal-to-deal claim is premised on commercial bribery. "Minnesota's antitrust laws are generally interpreted consistently with federal courts' construction of federal antitrust laws." *Minn. Twins P'ship v. State ex rel. Hatch*, 592 N.W.2d 847, 851

(Minn. 1999). While there is no direct federal analogue of Minn. Stat. § 325D.53, subd. 1(3), the Supreme Court has analyzed federal refusal-to-deal claims under sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2 (2012). *See Times-Picayune Publ'g Co. v. United States, 345 U.S.*, 594, 624-26, 73 S. Ct. 872, 889-90 (1953) (analyzing an asserted refusal-to-deal claim under 15 U.S.C. § 1); *see also Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 407-08, 124 S. Ct. 872, 878-79 (2004) (analyzing an asserted refusal-to-deal claim under 15 U.S.C. § 2).

TMT's argument overlooks two important aspects of federal antitrust law. As fully set forth below, under the federal precedents identified by the parties, a claim for commercial bribery is potentially actionable under the Robinson-Patman Act, 15 U.S.C. § 13(c) (2012), not sections 1 and 2 of the Sherman Act. Therefore, commercial bribery is an entirely distinct claim from refusal to deal.

Furthermore, none of the federal cases identified by the parties have held that commercial bribery constitutes the antitrust injury necessary to establish standing under section 4 of the Clayton Act, 15 U.S.C. § 15(a) (2012), the section under which a litigant must bring a private action for violation of the Robinson-Patman Act. Therefore, there is no basis to distinguish the precedential approach to refusal-to-deal claims under state law solely because a plaintiff's claim is premised upon an allegation of commercial bribery. *See Lake George Park, L.L.C., v. IBM Mid-Am. Emps. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998) ("This court, as an error correcting court, is without authority to change the law."), *review denied* (Minn. June 17, 1998).

B. Commercial bribery under federal antitrust law

Commercial bribery is already potentially actionable under federal antitrust law. Under section 2(c) of the Robinson-Patman Act:

> It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

15 U.S.C. § 13(c). "Precision of expression is not an outstanding characteristic of the Robinson-Patman Act . . . ." *Automatic Canteen Co. of Am. v. FTC*, 346 U.S. 61, 65, 73 S. Ct. 1017, 1020 (1953); *see also Blue Tree Hotels Inv. (Canada), Ltd. v. Starwood Hotels & Resorts Worldwide, Inc.*, 369 F.3d 212, 218 (2nd Cir. 2004) (providing an overview of the interaction of the various clauses of the act).

Section 2(c) of the Robinson-Patman Act was enacted primarily to combat the practice of dummy brokerages, *Blue Tree Hotels*, 369 F.3d at 221, but "[t]he sine qua non of a § 2(c) violation . . . is an improper payment, i.e., a payment of a commission, brokerage, or discount other than for services actually rendered." *Blue Tree Hotels*, 369 F.3d at 223. In *Blue Tree Hotels*, the Second Circuit noted that other federal circuits had held that section 2(c) proscribes commercial bribery, but did not actually decide if the section applied because it held that the appellant failed to establish that the purportedly illicit payments constituted commercial bribery. *Id.* at 221.

Even though the Second Circuit did not address the applicability of section 2(c) to a claim for commercial bribery, it noted that the Robinson-Patman Act does not provide a private cause of action for treble damages; instead, a claim must be pursued via section 4 of the Clayton Act, which authorizes private suits by "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws," 15 U.S.C. § 15(a). *Blue Tree Hotels*, 369 F.3d at 218. "[A] private litigant seeking treble damages for such a violation under § 4 of the Clayton Act must nevertheless allege an antitrust injury." *Id.* at 220.

"To establish antitrust injury, a private litigant must prove injury in its business or property by reason of the violation and that the violation was at least a material cause of the plaintiff's injury. In other words, a plaintiff must show (1) an injury-in-fact; (2) that has been caused by the violation; and (3) that is the type of injury contemplated by the statute." *Blue Tree Hotels*, 369 F.3d at 220 (quotations and citation omitted). Therefore, under the Second Circuit's approach, a plaintiff must not only state a claim for commercial bribery, but must also demonstrate an antitrust injury in order to invoke the jurisdictional provision of section 4 of the Clayton Act.

Unlike the Second Circuit's approach, the federal district court of Idaho awarded damages for commercial bribery under the Robinson-Patman Act, but dismissed claims under sections 1 and 2 of the Sherman Act because of the lack of an antitrust violation. *Sterling Nelson & Sons, Inc. v. Rangen, Inc.*, 235 F. Supp. 393 (D. Idaho 1964), *aff'd on*

other grounds, 351 F.2d 851 (9th Cir. 1965).[2] This approach appears to be called into question by the more recent decision of the Second Circuit in *Blue Tree Hotels*.

In *Sterling Nelson*, the federal district court of Idaho found that Rangen violated section 2(c) of the Robinson-Patman Act by bribing a state official to influence the state to purchase all of its fish food from Rangen, to the detriment of Sterling Nelson. *Id.* at 398-99. After reciting the general purpose of the Sherman Act set forth by the Supreme Court in *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 60 S. Ct. 982 (1940), the district court characterized the scheme as "a simple case of buying influence, sometimes called commercial bribery, which is cognizable under the anti-trust laws only because of the specific language of 15 U.S.C. § 13(c) . . . . The case falls short of proving actionable wrongs under the Sherman Act." *Sterling Nelson*, 235 F. Supp. at 400.

The federal district court of Idaho's characterization is relevant because TMT asks this court to alter its analysis of a specific type of antitrust claim—refusal to deal in accordance with Minn. Stat. § 325D.53, subd. 1(3)—because of the presence of an allegation of commercial bribery. *Sterling Nelson* specifically held that no violation of the Sherman Act occurred, which is the closest federal analogue to Minn. Stat. § 325D.53, subd. 1(3).

The Ninth Circuit relied on this language from *Sterling Nelson* when affirming in part the dismissal of claims under sections 1 and 2 of the Sherman Act premised on commercial bribery. *Calnetics Corp. v. Volkswagen of Am., Inc.*, 532 F.2d 674, 687 (9th

[2] The Ninth Circuit's opinion in *Sterling Nelson* was overruled on other grounds by *Rotec Indus. v. Mitsubishi Corp.*, 348 F.3d 1116, 1122 (9th Cir. 2003).

Cir. 1976). There, the Ninth Circuit stated that "VW's and Subsidiary's claim of commercial bribery, standing alone, does not constitute a violation of the Sherman Act." *Id*. The Ninth Circuit went on to clarify the impact of *Sterling Nelson*, stating:

> VW's and Subsidiary reliance on the Ninth Circuit opinion in *Sterling Nelson* for the proposition that antitrust claims may be based on commercial bribery is misplaced. This court decided merely that, according to congressional intent, a claim under [§] 2(c) of the Clayton Act, could be based on commercial bribery. The district court holding in *Sterling Nelson* that Sherman Act claims may not be predicated on commercial bribery was never presented to the Ninth Circuit for review . . . .

Id. Therefore, in the Ninth Circuit, a claim for commercial bribery is potentially actionable under the Robinson-Patman Act (i.e. section 2(c) of the Clayton Act), but a claim for commercial bribery, standing alone, does not state a claim under the Sherman Act. TMT has not identified any analogous federal precedent where a refusal-to-deal claim was found to be actionable under the Sherman Act due to an accompanying allegation of commercial bribery. Thus, there is no basis to distinguish *Watonwan* and *Hough* in light of federal refusal-to-deal precedent.

C. Antitrust injury

As discussed above, if a claim for commercial bribery is actionable under federal antitrust law, it is under section 2(c) of the Robinson-Patman Act. Also discussed above, in order to maintain a private cause of action under the Robinson-Patman Act, a litigant must establish an antitrust injury in accordance with section 4 of the Clayton Act. TMT alleges that it suffered an antitrust injury as a result of UCR's commercial bribery of Tate, which it then attempts to use as the basis of its refusal-to-deal claim, despite the fact that

these are distinct aspects of antitrust law. TMT asserts that due to the illegal commercial bribery scheme,[3] it was prevented from competing for DDA portfolios offered for sale by U.S. Bank. Even assuming that TMT has sufficiently alleged damages resulting from commercial bribery, the federal caselaw does not support TMT's argument that it has alleged the antitrust injury necessary to bring a private cause of action for violation of the Robinson-Patman Act via section 4 of the Clayton Act.

The United States District Court for the southern district of New York discussed under what aspects of the antitrust laws a claim for commercial bribery may arise in *World Wrestling Entm't, Inc. v. Jakks Pac., Inc.*, 425 F. Supp. 2d 484, 517-23 (S.D.N.Y. 2006), *aff'd*, 328 F. App'x 695 (2d Cir. 2009). Notably, the court distinguished an allegation of a per se violation of section 1 of the Sherman Act from an allegation of an antitrust injury. "The per se rule is a method of determining whether § 1 of the Sherman Act has been violated, but it does not indicate whether a private plaintiff has suffered antitrust injury and thus may recover damages under § 4 of the Clayton Act." *Id.* at 519 (*quoting Atl. Richfield Co. v. USA Petrol. Co.*, 495 U.S. 328, 341-42, 110 S. Ct. 1884, 1893 (1990)).

TMT asserts that because a refusal to deal is a per se antitrust violation, the allegation of that violation alone, especially an allegation premised upon a claim of commercial bribery, is sufficient to excuse it from meeting the elements of a state-law claim for refusal to deal, namely, targeting and market foreclosure. However, as the Supreme Court made clear in *Atl. Richfield*, the allegation of a per se violation is

[3] Minn. Stat. § 609.86 makes commercial bribery illegal under state law.

insufficient to convey a private right of action under the Clayton Act. *Atl. Richfield*, 495 U.S. at 341-42, 110 S. Ct. at 1893. Instead, the plaintiff must also establish an antitrust injury.[4]

In *World Wrestling Entm't*, the plaintiff (WWE) alleged that one of its employees conspired with its licensing agent and an action-toy seller, among others, to ensure that the toy seller obtained valuable licenses from WWE. *Id.* at 488-89, 515. The district court characterized this arrangement as "an extensive and, if true, astounding commercial bribery scheme." *Id*. at 520. However, the district court held that the bribery scheme did not state a claim for an antitrust injury, because even if the license-bidding process was rigged as a result of the bribes paid to the employee, WWE was not compelled to accept the artificially low bid. *Id*. at 522. "Indeed, the allegations . . . are even more problematic for [WWE] . . . because the Amended Complaint identifies competitors that were active in the bidding process. . . ." *Id*. at 521. The same is true here, where TMT alleges that it was harmed as a result of the bribes paid by UCR to Tate, which allowed UCR access to inside information. There is no allegation that U.S. Bank was forced to accept UCR's bid instead of TMT's or the bids of other competitors.[5] Therefore, TMT has not alleged the antitrust

[4] Again, it is worth noting that TMT has not even alleged the existence of a per se refusal-to-deal antitrust violation. As discussed above, the Ninth Circuit held that an allegation of commercial bribery does not state a claim under the Sherman Act. *Calnetics*, 532 F.2d at 687. The United States District Court for the southern district of New York came to a similar conclusion in *World Wrestling Entm't*, 425 F. Supp. 2d at 522.

[5] During oral argument, counsel stated that there were four or five bidders for the June 2011 DDA portfolio.

injury necessary to bring a commercial-bribery claim via section 4 of the Clayton Act for violation of the Robinson-Patman Act.

In the civil federal litigation initiated by TMT that preceded the present state-court action, the federal district court characterized the commercial-bribery scheme as follows:

> Potillo's [a principal of UCR] plea stated that Tate . . . would provide information to Potillo concerning the highest bids for the DDA Portfolios and the lowest minimum price U.S. Bank would accept. Based on that information, Potillo would submit bids that were slightly higher than the next highest bid and also above the minimum bids deemed acceptable to U.S. Bank. Potillo paid Tate for providing this information.

TMT Mgmt. Grp., LLC v. U.S. Bank Nat'l Assoc., No. 14-4692, 2016 WL 730254 at *27 (D. Minn. Jan. 4, 2016). Nothing in this arrangement relates to an agreement not to deal with TMT. Nothing in the bribery scheme prevented U.S. Bank from accepting a higher bid from TMT.

Here, the alleged antitrust violation involves U.S. Bank's refusal to deal, not UCR's conduct constituting commercial bribery. While TMT points to federal caselaw relating to claims for commercial bribery, nothing in the cases discussed above establishes a basis for excusing a plaintiff asserting a refusal-to-deal claim from establishing that it was singled out for exclusion and was entirely foreclosed from the relevant market. Furthermore, as the above cases show, a claim of commercial bribery neither provides the antitrust injury necessary to convey a private right of action under section 4 of the Clayton Act, nor is commercial bribery actionable under sections 1 and 2 of the Sherman Act.

While TMT is correct that the presence of an allegation of commercial bribery makes this case factually distinguishable from *Watonwan* and *Hough*, TMT does not

present any authority that stands for the proposition that the normal analytic framework applied to refusal-to-deal claims does not apply when a plaintiff asserts that the refusal to deal is the result of commercial bribery. If a federal antitrust claim based on commercial bribery lies anywhere, it is pursuant to section 2(c) of the Robinson-Patman Act,[6] not in a state-law claim for refusal to deal. Therefore, we decline to distinguish *Watonwan* and *Hough* in the manner urged by TMT when the principal distinguishing fact is an accompanying allegation of commercial bribery.

IV. Derivative claims

Finally, TMT argues that if this court remands either the promissory-estoppel or refusal-to-deal claims, TMT's derivative claims for respondeat superior, civil conspiracy, and punitive damages should be reinstated, as TMT would once again have a tort claim to support them. *See DeRosa v. McKenzie*, 936 N.W.2d 342, 347 n.5 (Minn. 2019). Because we affirm the dismissal of the tort claims, the derivative liability-based claims necessarily fail.

D E C I S I O N

The district court did not abuse its discretion by precluding TMT from introducing oral statements allegedly made on behalf of U.S. Bank into evidence as a sanction for

[6] We note that the federal district courts possess exclusive jurisdiction over claims arising under section 4 of the Clayton Act. *General Talking Pictures Corp. v. De Marce*, 279 N.W. 750, 753 (Minn. 1938) ("[T]he above-quoted provision of the Clayton Act, supplementing a similar one in the Sherman Act (section 7, 15 U.S.C.A. §15 note), has been widely construed by both state and federal courts to vest exclusive jurisdiction of issues arising under the anti-trust laws in the federal courts alone." (*citing Blumenstock Bros. Advert. Agency v. Curtis Publ'g Co.*, 252 U.S. 436, 40 S. Ct. 385 (1920))).

TMT's fabrication of evidence relating to an alleged oral statement. The district court properly granted summary judgment to U.S. Bank on TMT's promissory-estoppel claim because TMT did not possess any admissible evidence of a clear and definite promise. The district court also appropriately granted U.S. Bank summary judgment on TMT's refusal-to-deal claim because TMT did not establish the existence of a dispute of material fact as to whether it was the sole target of the supposed exclusive agreement between U.S. Bank and UCR or whether it was foreclosed from the entire DDA-portfolio market. Finally, the dismissal of TMT's derivative claims was appropriate following the dismissal of the tort claims upon which they relied.

Affirmed.