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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0294**

Mark Moe,
Appellant,

vs.

Perham Stockyards, Inc.,
Respondent.

**Filed December 7, 2020
Affirmed
Reilly, Judge**

Otter Tail County District Court
File No. 56-CV-19-1708

John E. Mack, New London Law, P.A., New London, Minnesota (for appellant)

Scott M. Strand, Cahill Law Office PA, Moorhead, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Larkin, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant was a partner in a farming operation forced to liquidate its assets after defaulting on a loan. Respondent held an auction for the partnership and although appellant requested that respondent include his name on the check for the proceeds, respondent made the check out to the partnership and its lender. Appellant sued respondent claiming breach

of contract and breach of quasi-contract. The district court granted summary judgment for respondent. Appellant challenges the district court's grant of summary judgment arguing that genuine issues of material fact preclude summary judgment. Appellant also contends that the district court prematurely determined that appellant did not suffer damages. We affirm.

FACTS

Appellant and his brother (brother) were partners in a farm operation, Moe Farms Partnership (Moe Farms), until a judicial decree dissolved it in August 2018. In early 2016, Moe Farms and its partners received notice from CHS Capital LLC (CHS) of default on its 2015 loan. In January 2017, CHS required liquidation of Moe Farms' assets to satisfy the debt. Brother arranged for respondent Perham Stockyards to sell Moe Farms' remaining cattle in February 2017. Before the cattle sale, appellant contacted respondent's owner by text message:

Appellant: [Owner of respondent], as U know I[']m still a partner of Moe farms[/]Moe farms trucking inc. I haven[']t agreed or been involved in [brother's] decision to sell cattle. Because [brother] and I have a dispute about partnership financial matters and he has not kept me informed, I ask that the checks for sale proceeds include my name Mark Allan Moe on them from here on out until notified differently. Thanks. Please send a message back to confirm message.

[Owner of respondent]: Yes, no problem

After respondent sold the cattle at auction, respondent made the check payable to Moe Farms and CHS. Appellant again contacted respondent's owner by text message:

Appellant: B-l-lsh-t!!! CHS has [the check] that[']s why I wanted my name on it. You know I could have stopped you

selling those Cattle and I asked just to put my name on the check and you agreed and re-nigged! No[w] it just costs more with attorney[']s that[']s all! But guess what [Owner of respondent] I will survive just like I have in the past but now I know who[']s word is good and who[']s not worth a f-ck! Have a great day [Owner of respondent]

CHS collected Moe Farms' share of the cattle proceeds and applied it to the 2015 loan. In the Moe Farms' partnership-dissolution action, neither appellant nor brother contested the amount of (1) the auction proceeds, or (2) the application of the proceeds to the loan. Appellant sued respondent as "Mark Moe Individually and as a partner in Moe Farms Partnership" claiming breach of contract and breach of quasi-contract. Respondent moved for summary judgment and the district court granted respondent's motion. This appeal follows.

DECISION

Appellant challenges the district court's decision to grant summary judgment, arguing that there are genuine issues of material fact and the district court prematurely determined that appellant did not suffer damages. Summary judgment is appropriate if the moving party shows that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01. This court reviews a district court's summary-judgment decision de novo by analyzing whether any genuine issues of material fact exist and whether the district court misapplied the law. *Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 819 (Minn. 2016).

A genuine issue of material fact exists "when reasonable persons might draw different conclusions from the evidence presented." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69

(Minn. 1997). “[T]here is no genuine issue of material fact . . . when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue.” *Id.* at 71. Instead, the nonmoving party must come forward with specific facts to satisfy its burden and may not rely on mere averments in the pleadings or unsupported allegations. *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001). We view the evidence in the light most favorable to the nonmoving party and resolve any doubts regarding the existence of a material fact in that party’s favor. *Senogles v. Carlson*, 902 N.W.2d 38, 42 (Minn. 2017).

I. The district court did not err in granting summary judgment on appellant’s breach-of-contract claim.

Appellant argues that a genuine issue of material fact exists whether a contract formed to auction the cattle. “A contract consists of a binding promise or set of promises.” *Lyon Fin. Servs., Inc. v. III. Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014) (footnote and citation omitted). To prevail on a breach-of-contract claim, the plaintiff must establish three elements: (1) the formation of a contract, (2) performance by plaintiff of any conditions precedent to its right to demand performance by the defendant, and (3) breach of contract by the defendant. *Id.* Here, only element one, the formation of a contract, is at issue and requires communication of a specific definite offer, acceptance, and consideration. *Commercial Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. App. 2006) (citing *Pine River State Bank v. Mettelle*, 333 N.W.2d 622, 626-27 (Minn. 1983)). Consideration is the giving of something of value to one who is not otherwise entitled to it. *Sorenson v. Coast-to-Coast Stores, Inc.*, 353 N.W.2d 666, 669

(Minn. App. 1984), *review denied* (Minn. Nov. 7, 1984). Consideration does not include a promise to do something that one is already legally obligated to do. *Deli v. Hasselmo*, 542 N.W.2d 649, 656 (Minn. App. 1996), *review denied* (Minn. Apr. 16, 1996).

Appellant claims that he and respondent formed a valid contract through the text message exchange, detailed above. The district court determined there was no genuine issue of material fact as to offer because “there was no express offer to contract contained in [appellant’s] text messages.” We agree. The text messages do not include any definitive offer. Before the cattle sale, appellant texted respondent’s owner, “Because [brother] and I have a dispute about partnership financial matters and he has not kept me informed, I ask that the checks for sale proceeds include my name . . . from here on out.” Appellant offered nothing in exchange. Appellant also claims that he called respondent’s owner and stated that he objected to the cattle sale. But appellant points to no evidence in the record to show that a genuine issue of material fact exists as to whether appellant offered to refrain from legally interfering with the cattle sale in exchange for his name being placed on the check.

Even if appellant made a valid offer to respondent, consideration must support it. Appellant claims that consideration was present because appellant could have agreed not to block the cattle sale in a legal action in exchange for respondent’s promise to place appellant’s name on the check. The district court determined there was no genuine issue of material fact as to consideration because “the ostensible consideration offered by [appellant] is not something he could offer in his individual capacity.” We agree. The consideration appellant claims to have offered was not present for two reasons. First, as the district court observed, CHS required Moe Farms to sell its cattle to satisfy an

outstanding debt. Consideration does not include a promise to do something—such as sell the cattle—that one is already legally obligated to do. *Id.* Second, appellant had no authority to block the cattle sale in his individual capacity. Instead, only the partnership, not appellant, could offer to give consideration on behalf of the partnership.

Contract formation requires a specific definite offer, acceptance, and consideration. *Commercial Assocs., Inc.*, 712 N.W.2d at 782. On summary judgment, appellant cannot rely on unsupported allegations. *Bebo*, 632 N.W.2d at 737. Appellant has not shown that a genuine issue of material fact exists as to whether an offer was present in his text message exchange with respondent’s owner or whether consideration supported his offer. We conclude the district court did not err in granting summary judgment for respondent on the breach-of-contract claim.

II. The district court did not err in granting summary judgment on appellant’s quasi-contract claim.

Appellant argues that under the theory of quasi-contract, it is inequitable for respondent to keep the commission received from the cattle sale because respondent breached its agreement with appellant. Appellant was prepared to testify that CHS would have permitted him to retain some of the proceeds if the check included his name.

Minnesota courts have long recognized the theory of quasi-contract. *Marking v. Marking*, 366 N.W.2d 386 (Minn. 1985). Quasi-contracts are not contracts at all because “neither promise nor privity, real or imagined, is necessary” for an obligation to form. *Id.* at 387 (citation omitted). Instead, the obligation “is independent of any real or expressed intent of the parties.” *Id.* (citation omitted). The obligation is “defined in equity and good

conscience and is imposed by law to prevent unjust enrichment at the expense of another.” *Id.* (citation omitted). To recover under a quasi-contract claim a plaintiff must show the defendant was wrongfully enriched at the plaintiff’s expense. *Id.* To survive summary judgment, appellant must show that a genuine issue of material fact exists. *DLH, Inc.*, 566 N.W.2d at 70. In doing so, appellant cannot rely on unsupported allegations but must come forward with specific facts. *Bebo*, 632 N.W.2d at 737.

Here, the relevant, undisputed facts are: (1) respondent sold Moe Farms’ cattle, and (2) respondent retained the commission from the cattle sale. Appellant does not point to anything in the record nor provide any legal citation to support his proposition that because respondent retained the commission from the cattle sale, respondent was wrongfully enriched at appellant’s expense. Appellant similarly points to no evidence in the record to support his assertion that CHS would have permitted him to retain a portion of the proceeds if his name was on the check.

Appellant has not shown that a genuine issue of material fact exists as to whether respondent was wrongfully enriched. And we conclude the district court did not err in granting summary judgment for respondent on the quasi-contract claim.

III. The district court did not err in determining appellant failed to produce evidence sufficient to permit a fact-finder to award damages.

Finally, appellant argues that summary judgment is not appropriate because respondent failed to meet its initial burden under Minn. R. Civ. P. 56.03 of showing that damages cannot be awarded. Appellant’s argument lacks merit. The burden on the party moving for summary judgment “may be discharged by ‘showing’—that is, pointing out to

the district court—that there is an absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554 (1986).

Here, to support its motion for summary judgment, respondent pointed out to the district court that there was an absence of evidence to support appellant’s claim that he was injured. The district court agreed and found “[t]he evidence fails to establish a genuine dispute of fact as to any of these claimed damages.” On appeal, appellant argues he should have a right to make a claim for (1) the commission respondent retained from selling the cattle, (2) the tax liability that appellant will incur as a result of the sale, and (3) nominal damages.

We are not persuaded. Appellant has no right to make a claim for the commission that respondent retained from the cattle sale. Moe Farms, not appellant, owned the cattle and incurred the fee from the sale. Any damages from the cattle sale were, therefore, recoverable by Moe Farms, not appellant. And even if appellant had standing to bring a claim on behalf of the partnership, the record shows that CHS required Moe Farms to sell the cattle to satisfy its debt to CHS.

Appellant is similarly not entitled to make a claim for tax liability from the cattle sale. Appellant argues that if the proceeds from the cattle sale had gone directly to him rather than the partnership, his tax liability would have been reduced. On appeal, however, appellant states that the amount of “this [tax liability] loss has not been calculated” and points to no evidence in the record to show that the sale of the cattle impacted appellant’s tax liability. And Moe Farms owned the cattle and was the proper entity to receive the proceeds from the sale and realize the capital gains. Finally, because appellant does not

have a claim for breach of contract or quasi-contract, he has no right to nominal damages on those claims.

We conclude that appellant has failed to establish a genuine issue of material fact on the damages issue. The district court did not err in granting summary judgment for respondent.

Affirmed.