STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0493

GGG, Incorporation,
Respondent,

vs.

Jon T. Samuelson,
Appellant.

Filed December 21, 2020
Affirmed
Bryan, Judge

Dodge County District Court
File No. 20-CV-17-341

Lee Novotny, Novotny Law Office, Chatfield, Minnesota (for respondent)

Matthew C. Rockne, Rachael Stein, Rockne Law Office, Zumbrota, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

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

BRYAN, Judge

In this appeal from the district court's judgment after a court trial in a contract action, appellant asserts that the district court erred by making the following five errors: (1) excluding Exhibit 113 as parol evidence; (2) discounting appellant's expert's testimony; (3) finding that respondent did not breach the contract; (4) declining to void the contract

under a variety of different legal theories; and (5) denying appellant's claims for unjust enrichment and quantum meruit.

First, we conclude that Exhibit 113 does not satisfy either of the appellant's asserted exceptions to the parol evidence rule. Second, we conclude that the record contains a reasonable basis in fact for the district court's decision to discount the testimony of appellant's expert. Third, we conclude that because the record supports the determination that respondent provided the services promised under the contract, the district court did not clearly err in making factual findings regarding respondent's performance. Fourth, we conclude that none of appellant's invalidity claims have merit. Fifth, we conclude that because a valid contract exists, the equitable remedies of unjust enrichment and quantum meruit are unavailable. We affirm the district court's judgment and the denial of appellant's motion for amended findings and new trial.

FACTS

In 1999, appellant Jon T. Samuelson and respondent GGG, Incorporation (GGG) reached an agreement regarding the design and creation of a wetland on Samuelson's property. The agreement also contemplated enrollment in a state conservation program that allows landowners to sell wetland credits to third parties. Pursuant to the agreement, Samuelson would pay GGG based on the sales price of the wetland credits from Samuelson's property. On May 8, 2017, GGG filed a civil lawsuit alleging that Samuelson breached the contract because Samuelson failed to pay GGG as previously agreed. The case proceeded to a three-day court trial, and after the close of evidence, the parties submitted proposed findings and legal memoranda. The district court entered judgment in

favor of GGG, and Samuelson moved for amended findings and a new trial. The district court denied the motion. Samuelson appeals.

Given the issues raised, we first describe the evidence presented and the district court's findings surrounding the creation of the wetland. Second, we outline the district court's decision to exclude Exhibit 113 pursuant to the parol evidence rule. Third, we summarize both parties' experts' testimony and the district court's findings regarding this testimony.

A. Design and Creation of the Samuelson Wetland

GGG's CEO, Geoffrey G. Griffin, testified about the wetland banking program. He explained that, for ten years, he designed numerous wetlands for the state as head hydraulic design engineer for the Minnesota Department of Natural Resources and also under contract for the Minnesota Board of Water and Soil Resources (BWSR). Griffin testified that under the Wetland Conservation Act, a person or entity who removes a wetland must either create another wetland or purchase wetland credits from a wetland bank to offset the removal of wetlands. The wetland bank consists of credits issued to private property owners upon approval from a Technical Evaluation Panel (TEP), which includes a member from the BWSR and the U.S. Army Corps of Engineers (COE).

In 1998, Samuelson contacted GGG to discuss creating a wetland for enrollment in the wetland-banking program (the Samuelson Wetland). Samuelson, who is not an engineer or soils expert, required Griffin's expertise to determine the viability of this idea and to create a wetland. After conducting some preliminary tests, Griffin confirmed that Samuelson's land was eligible for wetland credits. Griffin created a test wetland and began

the project. On September 25, 1999, GGG sent Samuelson a document containing contract terms and a signature line. The document, admitted into evidence without objection[1] as Exhibit 112, included the following terms:

> We are proposing to perform the civil engineering and land surveying work necessary to enroll the proposed 9.8 acres of wetland, existing test wetland and surrounding upland into the wetland conservation act banking program at the following rates:
>
> First 10 acres of credit - That portion of the sale price above $7,000/acre*
>
> Upland credit acres & test wetland - That portion of the sale price above $5,000/acre**
>
> *GGG will be paid for the first 5 acres of credits sold when the 5th acre is sold. After that sale, GGG will be paid upon receipt of the payment. GGG must approve in writing all sales less than $8,000/acre.
>
> **GGG will be paid upon receipt of the payment. GGG must approve in writing all sales less than $8,000/acre.

On September 29, 1999, Samuelson signed Exhibit 112 on the line provided, and accepted the proposal.

The district court found that the contract terms are clear and unambiguous. GGG "promised to perform civil engineering and land surveying work necessary to enroll property into the Wetland Conservation Act banking program" and Samuelson promised to pay GGG "any sale price amounts in excess of $7,000, per acre on wetland credit acres and any amount in excess of $5,000 per acre on upland credit acres." The district court

[1] The parties stipulated to the admissibility of all exhibits except Exhibit 113.

further determined that Samuelson also agreed to make the initial payment "once the fifth acre is sold and future payments were to be made as each sale occurred."

GGG completed the wetland design, which included soil borings, floodplain analysis, topographic surveying, hydrology and hydraulic design, structure design, and other forms of geotechnical engineering. GGG then staked out the project to match the design, and Samuelson hired a contractor with whom GGG worked to implement the project. On January 11, 2000, GGG submitted an official application for wetland banking credits, listing Samuelson as the applicant. The district court found that GGG completed the services necessary to file the wetland application.

In August 2000, the COE visited the project and approved the wetland bank creation of 10.15 acres of Type 3 wetland. The COE also approved 7.61 acres of the upland wetland for Type 3 wetland subject to several conditions, including excavating a certain area an additional four-to-six inches. In April 2001, GGG responded to the COE, identifying compliance with the requirements for Type 3 wetland. On July 22, 2002, the BWSR approved 7.75 acres of wetland credits and listed them as available for sale. Griffin testified that the other acres did not get approved because it is common in the industry for the agencies to want to monitor the land for at least a year. GGG's expert, Stephan Lawler, testified regarding the creation of wetlands, the process of applying for and granting of wetland credits, and wetland design. Lawler stated that he typically anticipates five years of monitoring after construction is completed because it takes time for the hydrology to develop to meet the approval criteria. Lawler also testified that it is typical for agencies to

initially approve only 15% of the acres, and that Samuelson's acreage-approval rate was well above this percentage.

Samuelson testified that at some point during 2002, he began taking "corrective actions" himself and altering the landscape from the original design. These actions, which continued through 2007, were not at the direction of GGG or any government entity. Based on Samuelson's testimony, the district court found that Samuelson took these actions even though he "did not understand how various wetland types worked or looked at various times of the year." According to the district court, "[t]he original Samuelson wetland credits approved were Type 3, shallow marsh," but Samuelson attempted to modify the landscape so that the area in question would hold water above ground, which would correspond to a different type of wetland: "the Type 4 or greater wetland." Based on Samuelson's "corrective actions," GGG stopped filing the annual reports but continued to visit the project. GGG noticed that, because Samuelson continued to alter the landscape, the project did not remain static as planned. Griffin testified that it is hard to get all credits approved when the project is not static and that the agencies kept calling him asking about the changes.

In 2008, the BWSR conducted a routine inspection of the project, and expressed concerns about all the work Samuelson was doing. The district court found that GGG continued to work on the project as needed, including providing additional services and updating the information and survey map previously prepared through September 2010. In 2010, the TEP conducted another review, and with the project finally static, the paperwork could be submitted to obtain the remaining credits. On December 3, 2010, the remaining

9.33 acres of wetland credits were added to the Samuelson Wetland Bank and available for purchase. GGG continued to visit the project once a year to ensure compliance. The district court found that GGG provided the services promised under the contract to create and establish the Samuelson Wetland into the wetland banking program and that Samuelson provided no evidence that GGG breached the contract. The district court ultimately determined that Samuelson's "corrective actions" made substantial changes to the original wetland area, resulting in delays to the approval and sale of wetland credits.

At the time of trial, Samuelson had sold 11.595 acres of the various types of wetland for $252,777.50. Under the terms of the agreement, Samuelson owed GGG $173,520.50. GGG sent Samuelson an invoice after the 5th acre was sold in 2014, but never received payment. Thus, the district court found that Samuelson breached the contract and ordered judgment in favor of GGG for $173,520.50.

B. Exhibit 113

At trial, Samuelson attempted to admit Exhibit 113 into evidence. Exhibit 113 is a handwritten note that Samuelson faxed to GGG along with the signed contract (Exhibit 112). In the handwritten note, Samuelson expressed his hope that the first part of the project could be completed within two years and conveyed his concerns that GGG might insist on a sales price in excess of $8,000 per acre:

> Hi. We are basing this proposal on several issues. We are using $7,000 per acre as a number given to us per the BWSR, . . . market value, our watershed southeastern Minnesota. I'm a little worried it might slow up sales if you want more than $8,000 per credit. As long as the purchasers are your clients, . . . local people you thought you were able to push through the sales. Remember this whole thing, phase l, is supposed to be

> approved and sold on an ASAP less than two-year basis. Our expectation is that phase 2, 18 to 21 acres, will begin in 2001 or 2002. I need that money to make that possible. If there are approval issues or a run greater than $20,000 . . . we might have to pay you the $3,000 to $4,000 you require . . . and see how we are able to raise money for assistance on the big area. . . . . Should be exciting to see our project take shape. Trust you are right and all will go without issue. Please phone me with all questions on issues as are material in this issue.

GGG objected to the admission of Exhibit 113 under the parol evidence rule. The district court reserved its admissibility ruling to allow for written arguments after the close of evidence. In his written posttrial brief, Samuelson argued that the district court should admit Exhibit 113 under an exception to the parol evidence rule that permits such evidence when a particular term has more than one reasonable meaning. The district court disagreed and sustained GGG's objection to Exhibit 113. The district court determined that the terms included in Exhibit 112 were not ambiguous, and it excluded Exhibit 113 as inadmissible parol evidence.

C. Conflicting Expert Testimony

At trial, geologist Jeffrey Broberg testified as an expert on behalf of Samuelson, but he admitted that he lacked the necessary qualifications to perform the floodplain analysis, hydraulic design, and geotechnical engineering provided by GGG. For its part, GGG presented the testimony of its expert, Lawler, as well as the testimony of Griffin himself. The district court received this conflicting testimony. For example, Broberg testified that GGG failed to comply with rules and regulations, including failing to make the appropriate filings with the required government agencies. Lawler disagreed. He testified that the landowner, or the person formally listed as the applicant, is responsible for making the

required filings. In addition, he noted that in his experience, applications get approved absent complete technical compliance because oftentimes, the TEP chooses not to object on those grounds. Broberg also testified that the contract created a conflict of interest under Minnesota Administrative Rule 1805.0300, subpart 1. Lawler disagreed again, stating that he saw no such conflict. Broberg also believed that the Samuelson Wetland application was deficient and had concerns about GGG's soil borings. Neither Lawler nor Griffin identified any such deficiencies.

The district court credited Lawler's and Griffin's testimony over Broberg's testimony. Specifically, the district court found that GGG properly designed and constructed the Samuelson Wetland, and that Samuelson, as the landowner and the applicant, was responsible for filing reports complying with wetland-bank rules. In addition, the district court found that, unlike Griffin and Lawler, "Broberg is not a wetland engineer," and that he "does not have the qualifications to perform the floodplain analysis, geotechnical engineering and hydraulic design of the water control structure and dike that were necessary for this project." The district court also found that "[d]espite Broberg's detailed testimony regarding rules and administrative process, the Samuelson Wetland Bank was approved by all the necessary government units."

Samuelson moved to amend these findings, arguing in support of Broberg's qualifications and testimony. The district court declined, stating, "Regarding the two expert witnesses, the Court found [GGG's] expert credible as to the creation of wetlands, the process of applying for and granting of wetland credits and wetland design." This appeal follows.

D E C I S I O N

Samuelson asserts that the district court erred by making the following decisions: (1) excluding Exhibit 113 as parol evidence; (2) rejecting Broberg's testimony; (3) finding that GGG did not breach the contract; (4) declining to void Exhibit 112 as an invalid contract; and (5) denying Samuelson's claims of unjust enrichment and quantum meruit. We address each in turn.

I. Decision to Exclude Exhibit 113 as Inadmissible Parol Evidence

Samuelson argues that the district court erred in excluding Exhibit 113. We affirm the district court's decision because neither asserted exception to the parol evidence rule applies in this case.

The parol evidence rule is a matter of substantive law and not a rule of evidence. *Mollico v. Mollico*, 628 N.W.2d 637, 640 (Minn. App. 2001) (citing *Anchor Cas. Co. v. Bird Island Produce, Inc*., 82 N.W.2d 48, 54 (Minn. 1957)). The rule generally prohibits the admission of extrinsic evidence to alter or contradict the terms of a written agreement, and the application of the parol evidence rule is a question of law subject to de novo review. *Mollico*, 628 N.W.2d at 640. The Minnesota Supreme Court has recognized a few exceptions to this rule, such as when there are allegations of fraud, when the contract includes an ambiguous term, or when the parties had no intent for the written document to memorialize the complete agreement. *See, e.g.*, *Nord v. Herreid*, 305 N.W.2d 337, 340 (Minn. 1981) (permitting parol evidence to interpret the meaning of a particular term, after a finding that the term at issue was ambiguous); *Hanson v. Stoerzinger*, 299 N.W.2d 401, 404 n.4 (Minn. 1980) (permitting parol evidence due to allegations of fraud); *Bussard v.*

Coll. of St. Thomas, Inc., 200 N.W.2d 155, 161 (Minn. 1972) (permitting parol evidence to provide additional terms after finding that the parties "did not intend the document to be a complete and final statement of the whole transaction between them." (quoting *Phoenix Pub. Co. v. Riverside Clothing Co*., 55 N.W. 912 (Minn. 1893)).

In this case, GGG objected to the admission of Exhibit 113 as inadmissible parol evidence. Both parties' arguments centered on the ambiguity exception to the parol evidence rule. The district court rejected Samuelson's argument and excluded Exhibit 113. On appeal, Samuelson raises a different argument, relying on the integration exception to the parol evidence rule. In his brief to this court, Samuelson contends that Exhibit 113 is parol evidence,[2] but argues that "the issue is not one of whether [Exhibit 112] is ambiguous, but rather whether there was a meeting of the minds between the parties at the time of execution . . . . Parol evidence should have been admissible in determining whether there was a meeting of the minds."

We question whether Samuelson preserved his initial theory of admissibility under the ambiguity exception. We also question whether Samuelson's ultimate theory of admissibility under the integration exception falls within our scope of review, given that it was not clearly raised before the district court. Nevertheless, for purposes of this appeal,

[2] In his motion for new trial, Samuelson argued that Exhibit 113 "is not parol[] evidence" at all and, therefore, admissible. Samuelson no longer makes this argument, and we need not address whether Samuelson properly raised this argument for the first time in his motion for new trial. *See Antonson v. Ekvall*, 186 N.W.2d 187, 189 (Minn. 1971) ("The claim came too late when suggested for the first time by plaintiff's motions for a new trial.").

we address Samuelson's arguments regarding both exceptions, and we conclude that neither exception applies to the facts in this case.

We begin with the ambiguity exception. As noted above, once a district court concludes that a particular term is ambiguous, it can admit parol evidence. *Nord*, 305 N.W.2d at 340. A contract term is ambiguous if, judged by its language alone and without resort to parol evidence,[3] it has more than one reasonable interpretation. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003); *Metro Office Parks*, 205 N.W.2d at 123. The determination of whether a contract is ambiguous is a question of law that we review de novo. *Denelsbeck*, 666 N.W.2d at 346. We conclude that the ambiguity exception does not apply to Exhibit 112 for two reasons. First, Samuelson does not identify any particular written term that is susceptible to more than one meaning.

Second, we agree with the district court that the terms contained in Exhibit 112 adequately set forth the parties' obligations. Exhibit 112 includes specific services to be provided: GGG promised to "perform the civil engineering and land surveying work necessary to enroll the proposed 9.8 acres of wetland, existing test wetland and surrounding upland into the wetland conservation act banking program." The parties also agreed to the specific payments to be made, as well as the terms defining when the payments are due. The contract even distinguishes between two separate areas, the "first 10 acres" and the

[3] To the extent that Samuelson's argument relies on parol evidence to determine whether either exception applies, we disagree. For example, we determine ambiguity "without resort to parol evidence." *E.g.*, *Landwehr v. Landwehr*, 380 N.W.2d 136, 138 (Minn. App. 1985); *Metro Office Parks Co. v. Control Data Corp.*, 205 N.W.2d 121, 123 (Minn. 1973). Parol evidence is not admissible to determine whether parol evidence is admissible.

"surrounding upland." The parties set forth separate price terms for the two specified areas. In the absence of a more detailed explanation from Samuelson, we cannot identify any of the written terms in Exhibit 112 that have more than one reasonable interpretation. Accordingly, we conclude that the terms of Exhibit 112 are unambiguous, and the ambiguity exception does not apply.

We are also not persuaded by Samuelson's argument under the integration exception. The argument rests on a belief that Exhibit 112 is silent regarding the timing of GGG's performance and that Exhibit 113 completes the contract because it indicates that the parties agreed to a two-year time frame for GGG to complete its performance.[4] We disagree that Exhibit 113 is admissible to add unwritten terms to the parties' agreement for two reasons.

First, we conclude that Exhibit 112 contains an implied term regarding the timing of GGG's performance that cannot be contradicted by parol evidence. Where a contract is silent as to the time of performance, the law implies that it was to be performed within a reasonable time. *Liljengren Furniture & Lumber Co. v. Mead*, 44 N.W. 306, 308 (Minn. 1890); *see also Davis v. Macy's Retail Holdings, Inc.*, No. A16-1318, 2017 WL 393928, at

[4] To the extent that Samuelson argues that parol evidence is admissible to determine whether the parties had a sufficient meeting of the minds, we also conclude that this position is contrary to well-settled law. *See, e.g.*, *City of St. Paul v. Dahlby*, 123 N.W.2d 586, 592 (Minn. 1963) ("parol evidence is inadmissible to prove that a written instrument was executed"); *Grant v. King*, 134 N.W. 291, 292 (Minn. 1912) ("The test of completeness of a written contract is the writing itself, and parol evidence to show that the written contract is incomplete is not competent."); *Trobaugh v. Trobaugh*, 397 N.W.2d 401, 404 (Minn. App. 1986) ("Parol evidence cannot be received to create an agreement, as opposed to interpreting an existing one."), *review denied* (Minn. Feb. 13, 1987).

*3 (Minn. App. Jan. 30, 2017) (quoting *Liljengren Furniture & Lumber Co.*); *Holasek v. Holasek*, No. A04-2199, 2005 WL 2008721, at *3 (Minn. App. Aug. 23, 2005) (same). Our caselaw is also clear that "[t]he terms and conditions of a written contract implied by law are no more subject to variation by parol evidence than the express terms of a contract." *Jimmerson v. Troy Seed Co.*, 53 N.W.2d 273, 277 (Minn. 1952); *see also Liljengren Furniture & Lumber Co.*, 44 N.W. at 308 ("[I]f the contract be in writing, parol evidence of an antecedent or contemporaneous oral agreement is inadmissible to vary the construction to be thus legally implied from the writing itself."). Thus, the statements in Exhibit 113 cannot be admitted under the integration exception because the contract's terms are not incomplete.

Second, while Samuelson is correct to observe that Exhibit 113 conveys Samuelson's subjective intent, it does not establish an agreement to complete performance within two years. "Formation of a contract is judged by the objective conduct of the parties rather than their subjective intent." *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008), *review denied* (Minn. Jan. 20, 2009). In Exhibit 113, Samuelson states his "worry" that GGG "might slow up sales" and his "expectation" "that phase 2, 18 to 21 acres, will begin in 2001 or 2002." Samuelson also writes that "this whole thing, phase l, is supposed to be approved and sold on an ASAP less than two-year basis." Such statements regarding Samuelson's concerns and expectations do not establish any promise or agreement by GGG to complete performance within this timeline. In addition, the objective conduct of the parties shows that two years is not a reasonable time of performance as Samuelson suggests. Both parties

acknowledged at trial that, generally, five years of monitoring is required to get a project of this nature approved. For these reasons, we conclude that Exhibit 113 is inadmissible under the integration exception to the parol evidence rule.

II. Decision to Discount Broberg's Expert Testimony

Samuelson challenges the district court's decision to discount Broberg's testimony. Because the district court's credibility determination is supported by the record, we affirm the district court.

The weight of expert testimony is for the trier of fact. *Behlke v. Conwed Corp.*, 474 N.W.2d 351, 357 (Minn. App. 1991) ("Where an expert is qualified and his or her opinion has a relevant basis, the credibility and weight of the testimony is to be decided by the jury."), *review denied* (Minn. Oct. 11, 1991); *State ex rel. Trimble v. Hedman*, 192 N.W.2d 432, 440 (Minn. 1971) ("The weight and credibility to be given to the opinion of an expert lies with the factfinder. It is no different in this field than in any other."). When a factfinder relies on the opinion of one expert over that of another, "the decision of the [factfinder] is not open to review on appeal," as long as that "opinion has a reasonable basis in fact." *Shymanski v. Nash*, 251 N.W.2d 854, 857 (Minn. 1977).

In this case, the district court admitted and received Broberg's testimony.[5] The district court also received testimony from GGG's expert witness, Lawler, and from Griffin. Faced with this conflicting testimony, the district court made a credibility

[5] Samuelson does not argue that the district excluded this testimony or misapplied Rule 702 of the Minnesota Rules of Evidence. Instead, Samuelson contests the district court's decision to favor of the testimony of Lawler over the contrary testimony of Broberg.

determination and expressed concerns about the weight of Broberg's testimony: "Broberg is not a wetland engineer. Broberg does not have the qualifications to perform the floodplain analysis, geotechnical engineering and hydraulic design of the water control structure and dike that were necessary for this project." The district court also found that "[d]espite Broberg's detailed testimony regarding rules and administrative process, the Samuelson Wetland Bank was approved by all the necessary government units." In declining to amend its previous findings, the district court stated: "Regarding the two expert witnesses, the Court found [GGG's] expert credible as to the creation of wetlands, the process of applying for and granting of wetland credits and wetland design." These findings are supported by the record. Broberg himself testified that he does not have the qualifications to perform certain geotechnical engineering services that were required for the project. The record also shows that, despite Broberg's testimony concerning GGG's alleged deficiencies in the design and application process, the necessary government entities approved the Samuelson Wetland Bank. Thus, we decline to reverse based on Samuelson's argument because the district court's credibility determination has "a reasonable basis in fact." *See Shymanski*, 251 N.W.2d at 857.

III. Determination that GGG Did Not Breach the Contract

Samuelson also challenges the district court's factual findings regarding GGG's performance, arguing that GGG breached the contract. Because the record supports the determination that GGG provided the services promised under the contract, the district court did not clearly err in making this factual finding.

"The elements of a breach of contract claim are (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." *Lyon Fin. Servs., Inc. v. Illinois Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014) (quotation omitted). A breach of contract is a failure, without legal excuse, to perform any promise that forms the whole or part of the contract. *Id.*; *see also* 23 Richard A. Lord, *Williston on Contracts* § 63:1 (4th ed. 2002); *Associated Cinemas of Am. v. World Amusement Co.*, 276 N.W. 7, 10 (Minn. 1937). "When the language is clear and unambiguous, we enforce the agreement of the parties as expressed in the language of the contract." *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). "[W]e review the district court's factual findings for clear error." *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013).

In this case, Samuelson relies on Broberg's testimony to argue that GGG breached the contract because GGG did not file annual reports, did not mail "a copy of the bank plan" to "members of the TEP," did not give proper advice regarding the implications of signing a restrictive covenant, and did not include a mitigation plan in its application or in its submission to the Army COE. As noted above, the district court discounted Broberg's testimony and made contrary factual findings. These findings are supported by the record. GGG's expert and Griffin credibly testified that GGG completed all the necessary engineering and surveying work, as well as the necessary wetland design work, including conducting soil borings, floodplain analysis, topographic surveying, hydrology and hydraulic design, structural design, and other forms of geotechnical engineering. GGG also staked out the project to match the design, and Samuelson hired a contractor with

whom GGG worked to implement the project. On January 11, 2000, GGG submitted an official application for wetland banking credits, listing Samuelson as the applicant. In addition, GGG presented evidence that Samuelson, as the landowner and the applicant, was the responsible party for filing reports complying with wetland bank rules. Similarly, the trial evidence established that Samuelson altered the landscape because he wanted the area to hold water above ground, which corresponds to a different wetland type than the Type 3 credits initially approved. Therefore, the record supports the district court's finding that "Samuelson's 'corrective action' made substantial changes to the original wetland area and contributed to the delay of the project." For these reasons, we conclude that the district court did not clearly err in its factual findings regarding GGG's performance.

IV. Determination that the Contract is Valid

Samuelson also raises several arguments challenging the validity and enforceability of the contract, contending that the contract is void for containing speculative terms, void as contrary to public policy, impossible to satisfy, and unconscionable. We are not persuaded by any of these arguments.

First, relying on language from *King v. Dalton Motors Inc.*, Samuelson argues that the contract in this case "is void and unenforceable" because Exhibit 112 is "so vague, indefinite, and uncertain as to place the meaning and intent of the parties in the realm of speculation." 109 N.W.2d 51, 52 (Minn. 1961). "[T]he existence and terms of a contract are questions for the fact finder," *Morrisette v. Harrison Int'l. Co.*, 486 N.W.2d 424, 427 (Minn. 1992), but "[t]he construction and effect of a contract are questions of law subject to de novo review by this court." *Logan v. Norwest Bank Minn.*, 603 N.W.2d 659, 662

(Minn. App. 1999) (citing *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn. 1979)).

In *King*, the parties agreed only to allow for a lease renewal, but expressly left open the terms of the renewed lease until the time of renewal. 109 N.W.2d at 52. The Minnesota Supreme Court acknowledged the difficulty of enforcing an agreement to negotiate a future agreement: "[s]uch a provision provides no standard for ascertaining the price or any other condition of the sale and is, in our opinion, fatally uncertain and unenforceable in any form of action." *Id.* at 54. The supreme court also cautioned against using the result in *King* to unnecessarily declare agreements void: "the law does not favor the destruction of contracts because of indefiniteness, and if the terms can be reasonably ascertained in a manner prescribed in the writing, the contract will be enforced." *Id.* at 53 (citation omitted). As noted above, none of the written terms contained in Exhibit 112 have more than one reasonable meaning. Rather, the contract is clear and unambiguous. Given this contractual language, and the supreme court's caution against "the destruction of contracts because of indefiniteness," *id.*, we decline to extend *King* to contracts like the one at issue here. The definite obligations and certain payment terms do not resemble the open-ended agreement to negotiate a future agreement analyzed in *King*.

Second, Samuelson argues that the contract is void as against public policy. A contract may be void as against public policy if "it is injurious to the interests of the public or contravenes some established interest of society." *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 725 N.W.2d 90, 93 (Minn. 2006) (quotation omitted). Whether a contract is void is a question of law that we review de novo. *Id.* at 92. "[T]he power of courts to declare a

contract void for being in contravention of sound public policy is a very delicate and undefined power, and, like the power to declare a statute unconstitutional, should be exercised only in cases free from doubt." *Hollister v. Ulvi*, 271 N.W. 493, 498-99 (Minn. 1937) (quoting *Cole v. Brown-Hurley Hardware Co.*, 117 N.W. 746, 747 (Iowa 1908)). A court should not invalidate a contract unless it violates public policy or the court can say with certainty that enforcement thereof would be "hurtful to the public welfare." *Perkins v. Hegg*, 3 N.W.2d 671, 672 (Minn. 1942).

In this case, Samuelson generally argues that the contract violated the prohibition against conflicts of interest in the rules of professional conduct regarding engineering and land surveying. *See* Minn. R. § 1805.0300, subp. 1 (2019). We do not agree with Samuelson and have significant doubt that the contract at issue here contravenes public policy. *See Hollister*, 271 N.W. at 499. According to the clear terms of the contract, GGG promised to "perform the civil engineering and land surveying work necessary to enroll the proposed [] acres . . . into the wetland conservation act banking program." Samuelson's obligation to pay GGG for these services would occur only after the sale of the credits occurred. Based on the general argument presented, we can discern no conflict of interest or any other injury to the public welfare created by the parties' agreement.

Third, Samuelson argues that the contract is "unenforceable due to impossibility." Minnesota law recognizes the defense of impossibility, which excuses a party from performance and from liability for breach. *See, e.g.*, *Powers v. Siats*, 70 N.W.2d 344, 348 (Minn. 1955) ("[P]erformance of a contractual duty may be excused when, due to the existence of a fact or circumstance of which the promisor at the time of the making of the

contract neither knew nor had reason to know, performance becomes impossible . . . ." (citations omitted)). The impossibility defense is not available when the "impossibility or impracticability of performance is wholly attributable to the subjective inability of the promisor." *Id.* at 348 (citations omitted). Samuelson bears the burden to establish this defense. *See Den Mar Constr. Co. v. Am. Ins. Co.*, 290 N.W.2d 737, 743 (Minn. 1979).

Samuelson's argument here derives entirely from his belief that GGG failed to perform its contractual duty and was responsible for the delays that occurred. As explained above, the district court did not clearly err in discounting Samuelson's expert, or in making its factual finding that Samuelson's actions caused the delays in this case. This factual finding precludes Samuelson's impossibility defense because the complained-of "impossibility or impracticability of performance" was "attributable to the subjective inability" of Samuelson, not GGG. *See Powers*, 70 N.W.2d at 348.

Fourth, Samuelson argues that the contract is unenforceable because its terms are unconscionable. "A contract is unconscionable if it is 'such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other.'" *In re Estate of Hoffbeck*, 415 N.W.2d 447, 449 (Minn. App. 1987) (quoting *Hume v. United States*, 132 U.S. 406, 411, 10 S. Ct. 134, 136 (1889)), *review denied* (Minn. Jan. 28, 1988). "Whether a contract provision is unconscionable is a question of law for the court." *Osgood v. Medical, Inc.*, 415 N.W.2d 896, 901 (Minn. App. 1987), *review denied* (Minn. Feb. 12, 1988).

Samuelson argues that the following two conditions render the contract unconscionable: (1) the "lack of safeguards protecting Samuelson's financial and

regulatory risks in the project;" and (2) the disparity between the amount of the judgment ($173,520.50) and Samuelson's valuation of the services provided by GGG, as estimated by Broberg ($10,000). This argument does not persuade us to reverse the district court. As noted above, the payment provisions of the contract adequately protected Samuelson because he owed GGG nothing unless and until five acres were sold. In addition, the district court did not clearly err in discounting Broberg's testimony. Finally, not every perceived unfairness renders an agreement unconscionable, and we are aware of no case that characterizes similar conditions as being so unfair as to implicate the unconscionability doctrine.

V. Denial of Unjust Enrichment and Quantum Meruit Claims

Samuelson argues that the district court erred when it denied him the equitable remedies of unjust enrichment and quantum meruit. We disagree. "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). "Quantum meruit is restitution for the value of a benefit conferred in the absence of a contract under a theory of unjust enrichment." *Faricy Law Firm, P.A. v. API, Inc. Asbestos Settlement Tr.*, 912 N.W.2d 652, 657-58 (Minn. 2018) (quotation omitted). We conclude that because the contract is valid, these claims are unavailable. *U.S. Fire Ins. Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn. 1981) (denying unjust enrichment claim because "equitable relief cannot be granted where the rights of the parties are governed by a valid contract"); *Sterling Capital Advisors, Inc.*

v. Herzog, 575 N.W.2d 121, 126 (Minn. App. 1998) ("The existence of an express contract between the parties precludes recovery under the theories of quasi-contract, unjust enrichment, or quantum meruit.").

Affirmed.