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STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0531

Capital One Bank (USA), NA,
Respondent,

vs.

Marina Y. Siruk,
Appellant.

Filed December 7, 2020
Affirmed; motion denied
Reyes, Judge

Sherburne County District Court
File No. 71-CV-19-1006

Nikolas D. Schaal, Gurstel Law Firm, PC, Golden Valley, Minnesota (for respondent)

Marina Y. Siruk, Becker, Minnesota (pro se appellant)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Gaïtas, Judge.

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

REYES, Judge

Appellant argues that the district court erred by granting summary judgment on respondent-plaintiff's breach-of-contract and account-stated claims when genuine issues of material fact existed, and raises additional issues. Appellant also filed a motion for a new trial with this court. We affirm the district court and deny appellant's motion.

FACTS

In August 2019, respondent Capital One Bank USA, NA (Capital One) sued appellant Marina Y. Siruk for (1) breach of contract; (2) account stated; and (3) unjust enrichment for an unpaid credit-card debt. Capital One's complaint alleged Siruk applied and had been extended credit for one of its credit cards. In Siruk's answer, she denied the allegations, requested a jury trial, and asserted two counterclaims: (1) fraudulent concealment and (2) unjust enrichment.

Capital One produced monthly account statements from January 2018 to January 2019. Each statement showed Siruk's full name, address, and the outstanding balance, which remained between $6,860.07 and $7,522.62 for that period. The statements show that there were at least three payments made during the first half of 2018 but do not show who made the payments or how the payments were made. Capital One also produced an unsigned customer agreement, describing the account holder's obligations.

On February 5, 2020, Capital One moved for summary judgment on its breach-of-contract and account-stated claims and moved to dismiss Siruk's counterclaims with prejudice for failure to state a claim under Minn. R. Civ. P. 12.02. The district court granted Capital One's summary-judgment motion and dismissed Siruk's counterclaims for failure to provide any facts entitling her to relief. Siruk does not challenge dismissal of her counterclaims. This appeal follows.

D E C I S I O N

I. The district court appropriately granted summary judgment to Capital One on its claims for breach of contract and account stated.[1]

Siruk appears to argue that the district court erred in granting summary judgment because Capital One did not provide her initial application for the credit card and because she denied ownership of the credit-card account, which she argues creates an issue of material fact as to the existence of the contract and the account stated.

A district court must "grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. Once the movant shows that there is no genuine issue of material fact, the burden shifts to the nonmovant to show that one exists. *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). "On appeal from summary judgment, we review [de novo] whether there are any genuine issues of material fact and whether the district court erred in its application of the law. We view the evidence in the light most favorable to the [nonmovant]." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002) (citations omitted).

[1] We note that, while not clear, Siruk appears to raise a number of other issues relating to jurisdiction, judicial contempt powers, judicial misconduct, and constitutional issues. Many of these issues were not raised before or decided by the district court, which we therefore do not consider. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Other arguments raised are not supported legally or factually. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). Nevertheless, we have carefully reviewed the issues raised and conclude that they are without merit.

A. Breach of contract

Siruk argues that her repeated denials of the debt and Capital One's failure to produce a customer agreement signed by her create a genuine issue as to the existence of the contract. We disagree.

To create a genuine issue of material fact, the nonmovant must do more than present "evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element" of the nonmovant's case. *Gunderson v. Harrington*, 619 N.W.2d 760, 764 (Minn. App. 2000) (quotations omitted), *aff'd*, 632 N.W.2d 695 (Minn. 2001). The nonmovant cannot simply rely on "unverified and conclusory allegations" or postulate "evidence that might be developed at trial." *Gradjelick v. Hance*, 646 N.W.2d 225, 230 (Minn. 2002).

Under Minnesota law, an enforceable contract requires an offer, acceptance, and consideration. *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polgaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008), *review denied* (Minn. Jan. 20, 2009). "Whether a contract is formed is judged objectively by the conduct of the parties, not by their subjective intent." *Crince v. Kulzer*, 498 N.W.2d 55, 57 (Minn. App. 1993) (citing *Cederstrand v. Lutheran Brotherhood*, 117 N.W.2d 213, 221 (Minn. 1962)).

To demonstrate the existence of a contract, Capital One produced monthly statements, to which Siruk did not object, showing Siruk's full name and address, the amount owed, payments made, and remaining credit. Capital One also produced the full customer agreement with all the material terms, albeit without Siruk's signature. Under the customer agreement, Capital One agreed to extend Siruk credit in exchange for Siruk's

promise to repay the amount. Siruk's admission concedes that she accepted the offer, which reads: "plaintiff bombarded with unsolicited marketing defendant, and have pressured into offer, in which material information was undisclosed, in which defendants reasonably could make decision based on facts." And by requesting return of payments under her unjust-enrichment counterclaim, Siruk admits to making payments to Capital One on the credit card she continued to use. Siruk did not provide any evidence to refute the existence of the contract or point to any material terms preventing mutual assent, instead providing only conclusory denials of the contract's existence. The parties' conduct demonstrates that they entered into an enforceable contract supported by consideration. We conclude that the district court did not err by granting Capital One summary judgment on its breach-of-contract claim.

B. Account stated

Similarly, Siruk appears to argue that Capital One's failure to produce a customer agreement bearing her signature creates a genuine dispute as to a material fact of assent to the account stated. We are not persuaded.

An account stated is an agreement that may be express or implied, specific to the circumstances. *Maegher v. Kavli*, 88 N.W.2d 871, 880 (Minn. 1958) (quotation omitted). Proving an account stated does not necessarily require an express examination of the respective demands "or an express agreement to the final adjustment." *Id.* at 881. If a party receives an account stated and fails to object to a charge or charges, courts may imply mutual assent. *Id.*

Siruk did not dispute the charges or the existence of the account stated. To the contrary, Siruk admits having personal knowledge of the accounts received because Capital One "bombarded" her, and she requested return of the payments she made to Capital One. Because Siruk admits she made payments to Capital One, there is no genuine dispute over her personal knowledge of the accounts or her duty to pay. The district court did not err in granting summary judgment to Capital One on its account-stated claim.

II. Siruk is not entitled to a jury trial.

Siruk filed a motion with this court seeking a jury trial based on "lawful defects," but does not state which facts she would provide to the jury. Siruk's arguments in her motion for a jury trial and brief challenging summary judgment are essentially identical. Because we conclude that Capital One is entitled to summary judgment and Siruk presents no issue to be tried, Siruk has no right to a jury trial. *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955) ("[S]ummary judgment is proper where there is no issue to be tried.").

Affirmed; motion denied.