STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0346

Myth Live II, Inc.,
Appellant,

vs.

City of Maplewood,
Respondent.

Filed December 6, 2021
Affirmed
Jesson, Judge

Ramsey County District Court
File No. 62-CV-19-6750

William R. Skolnick, Andrew H. Bardwell, Skolnick & Joyce, P.A., Minneapolis, Minnesota (for appellant)

Paul D. Reuvers, Aaron M. Bostrom, Iverson Reuvers, Bloomington, Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

JESSON, Judge

Following a shooting close to a Maplewood concert venue, respondent City of Maplewood's city council—concerned about criminal activity by patrons—demanded changes by the venue's owner, appellant The Myth Live II (the Myth). The council proposed an action plan that imposed conditions on the Myth's liquor license designed to

increase public safety. This included a provision that if there was substantial noncompliance with the action plan, the police chief could temporarily close the venue. After several meetings and passage of the action plan by the city council, the Myth sued the city, alleging that it did not consent to the action plan. Both parties moved for summary judgment. The district court granted the city's motion, finding that the Myth agreed to the action plan. The Myth appealed. Because there was an agreement to the terms of the conditions on the liquor license, we affirm.

FACTS

The Myth operates a concert and event center of the same name located in the city of Maplewood.[1] The venue's capacity is roughly 3,000 people and it operates 50 to 90 days a year, hosting acts that span many musical genres. Part of its business includes selling alcohol.

The Myth is required to have a liquor license from the Maplewood City Council (council) to provide liquor. The council approves liquor licenses to Maplewood businesses yearly. Following a shooting near the Myth's venue after a concert in March 2019,[2] the council conducted a public safety review at the next council meeting. The Maplewood Police Chief (chief), in addressing the city's broad statutory authority when authorizing liquor licenses, proposed that an operational action plan (action plan) be implemented that would include conditions for the Myth's liquor license. *See, e.g.*, Minn. Stat. § 340A.415

[1] The facts underlying this case are largely undisputed.
[2] The Myth disputes that the shooting was related to the venue, but this contested fact is only background to the council's actions—not related to the merits of this appeal.

(2020) (detailing the authority for a municipality to revoke or suspend a liquor license if a licensee violates an "applicable statute, rule, or ordinance"); *see also* Maplewood, Minn., City Code, § 6-130 (2019) (adopting the same language into ordinance). The parties understood that if there was an agreement between them on the conditions, limitations on the liquor license were proper.

Shortly thereafter, the chief and representatives from the Myth—including its security consultant, Richard Stanek—met to discuss the chief's concerns. The chief also provided a sample action plan used for a Maplewood nightclub as a starting point for discussion. The sample action plan included 21 conditions on the liquor license. A potential-closure provision in the recommendation section of the action plan that stated that "[u]pon evidence of substantial non-compliance with the requirements outlined in the above action plan, the chief of police is authorized to order the closure of the business until the next available council meeting at which time next steps and/or sanctions will be considered." The Myth and the city agreed to meet the following month, in part to give Stanek time to conclude his investigation and prepare a report. In May, the chief added 13 conditions to the sample action plan and proposed June 5 as the final meeting day.

On May 31, the Myth sent a letter to the city objecting to certain conditions and raising issues of how the venue and the criminal activity surrounding it were being characterized. According to the Myth, the proposed action plan was more appropriate for a nightclub rather than a music venue; the chief defamed the Myth by stating that incidents of rape had occurred at their venue; a mandatory dress code would be unenforceable; and the council members were not being fair because they "already made up their minds" about

the Myth. The Myth also included Stanek's report, in which he walked through each of the 34 proposed conditions to discuss the ease, difficulty, or appropriateness of compliance. But neither the letter nor Stanek's report explicitly objected to the potential-closure language. The Myth then threatened that it "will not consent to the imposition of onerous restrictions upon its liquor license."

At the June 5 meeting, which was transcribed, representatives for the Myth and the city exhaustively discussed all 34 items in the proposed action plan point-by-point using Stanek's report as a baseline for their potential agreements. By the end of the meeting the list was reduced to 25 conditions. The Myth's representatives agreed with all the conditions except for two regarding the use of metal detectors and a restrictive approach to alcohol service (specifically how to pour alcohol such that the standard amount is consistently served). The potential-closure language was included in the action plan refined at the end of the June 5 meeting, but was not objected to or discussed at that meeting, including when the chief asked if there was anything else the Myth would like to discuss.

At the council meeting the following week, the council reviewed the action plan as refined at the June 5 meeting. The Myth's management and lawyers spoke before the council but raised no objections. This included moments when council members asked if any of the representatives had anything else to add. The Myth's lawyer emphasized that the venue was a safe establishment and otherwise was working on improvements. Another representative for the Myth explained that it agreed to the disputed alcohol service condition. And the council removed the disputed metal detector condition. In the 56 pages

of transcript for the portion of the council meeting involving the liquor license, the Myth's representatives spoke for nearly 20 of them. But the Myth's representatives did not object to the potential-closure language. Then after the mayor called for the motion and vote on the action plan, a lawyer for the Myth tried to speak but was cut off by the mayor. The council adopted the action plan.

Three months later, the Myth filed a lawsuit against the city claiming that the action plan amounts to the imposition of unlawful adverse conditions on its liquor license. The three counts were (1) declaratory relief and damages against the city for acting arbitrarily, capriciously, or otherwise in violation of the law for adopting the action plan, (2) injunctive relief against the enforcement of the action plan, and (3) a 42 U.S.C. section 1983 claim for the violation of the Myth's due-process rights. The Myth did not challenge the 2020 liquor license, which was issued after the lawsuit was filed. The city moved for summary judgment and the Myth moved for partial summary judgment. The district court granted summary judgment in favor of the city.

The Myth appeals.

DECISION

The Myth and the city do not dispute that the city may impose conditions on a liquor license so long as there is an *agreement* to the conditions. But the Myth alleges that the district court erred by granting summary judgment in favor of the city, arguing it never agreed to the potential-closure language in the action plan. This disputed fact, the Myth asserts, precludes summary judgment.

On an appeal from summary judgment, we review de novo a district court's application of the law and its determination that there are no genuine issues of material fact. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). We examine the evidence "in the light most favorable to the party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). But there is no genuine issue of material fact when the nonmoving party presents evidence "which merely creates a metaphysical doubt as to a factual issue." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

Here, the record reflects that representatives for the Myth, including management and lawyers, actively participated in crafting the action plan. The Myth agreed in April that they would discuss the terms of the action plan before the June 10 council meeting and sent representatives to discuss each term point-by-point on June 5, days after its May 31 objection letter.[3] Despite a disagreement on two specific points at the June 5 meeting, a representative for the Myth explained at the council meeting that it agreed to one of the two points: the alcohol service condition. And the council removed the metal detector condition. Before the council passed the action plan, each representative of the Myth was given the opportunity to address any grievances or express disagreement with the action

[3] The Myth contends that Minnesota Rule of Evidence 408 bars the district court's reliance on the discussion on June 5. Although the district court, sua sponte, asked about this issue, neither party raised it below, nor did the district court address it in the summary-judgment order. Therefore, it is not properly before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988) (stating that the reviewing court may address only issues "presented to and considered by" the district court).

plan in its final form.[4] This included a significant amount of back and forth during the city council meeting in which representatives of the Myth could have objected to the potential-closure provision, which had been included in every draft of the action plan. Given this lengthy discussion, we cannot construe the mayor cutting off one of the Myth's lawyers at the end of the meeting as thwarting the Myth's opportunity to voice disagreement about the potential-closure provision. To do so would only cast "metaphysical doubt" on the parties' agreement. *DLH, Inc.*, 566 N.W.2d at 71. Accordingly, even when viewed in the light most favorable to the Myth, there was an agreement to the terms of the conditions on the liquor license, including the potential-closure provision.

To convince us otherwise, the Myth argues that it could not have agreed to the potential-closure provision because it was never explicitly discussed.[5] Ordinarily, silence is not enough to constitute acceptance in an agreement. *Cargill Inc. v. Jorgenson*, 719 N.W.2d 226, 233 (Minn. App. 2006). But silence can be deemed acceptance when one party is "justified in expecting a reply." *Id.* (citing *Gryc v. Lewis*, 410 N.W.2d 888, 892 (Minn. App. 1987)). Here, the parties understood that the council sought an agreement on conditions to the Myth's liquor license. The council not only provided the Myth the opportunity to object to aspects of the action plan, but also directly asked for its input and

[4] While the Myth's May 31 objection letter—which predated the council meeting—did exclaim that it would not stand by an "onerous" condition from the city, the letter did not call out any specific condition other than a mandatory staff dress code—a condition that was agreed to for the Myth security staff in the final action plan. Nor did the letter say that the Myth was walking away from any future discussions, which indeed it did not.

[5] The parties did not raise, so we need not determine, whether the potential-closure provision was truly a "condition" of the action plan, as opposed to an enforcement aspect of the action plan, which is allowed by statute. Minn. Stat. § 340A.415.

whether it had any additional concerns. In every chance to reply and object, the Myth was silent to the potential-closure language and instead raised other issues like the feasibility of metal detectors. Therefore, given the relationship between the parties and the context of the agreement, the council was justified in expecting a reply from the Myth to aspects of the action plan it disagreed with.[6]

Additionally, the Myth argues that strict principles of contract formation preclude summary judgment. The Myth urges us to apply principles applicable to settlement agreements, which are subject to a contract's requirements. *Ittel v. Pietig*, 705 N.W.2d 203, 207 (Minn. App. 2005) (citing *Ryan v. Ryan*, 193 N.W.2d 295, 297 (Minn. 1971) ("It is well settled that a compromise and settlement of a lawsuit is contractual in nature.")).

We first observe that there was no underlying lawsuit or other litigation here at the time of the discussions over the action plan. Thus, we do not construe the agreement here as a settlement agreement to which contract principles apply. But even if we were to apply contract formation law to the agreement between the Myth and the city, the Myth's arguments are unavailing. First, the Myth claims that because they were "merely attempting to address the issues that were of concern" to the city, they actually did not agree to anything, and the "mirror image" rule of contracts should apply. *See Gresser v. Hotzler*, 609 N.W.2d 379, 382 (Minn. App. 2000) (stating that under the mirror image rule, "an acceptance must be coextensive with the offer and may not introduce additional terms

[6] This is particularly true since the potential-closure provision was included in each draft starting with the sample and through to the final version.

or conditions" (quotations omitted)). But as explained above, based on the Myth's conduct, they did agree to the terms of the action plan. *See Cederstrand v. Lutheran Bhd.*, 117 N.W.2d 213, 221 (Minn. 1962) (stating that whether parties, by words or conduct, formed a contract should be judged objectively, not subjectively).

Nor are we persuaded by the Myth's argument regarding the lack of consideration when it asserts the agreement was "in no respect either detrimental to the city or beneficial to the Myth." Consideration does not require both a detriment *and* a benefit. *See Cityscapes Dev., LLC v. Scheffler*, 866 N.W.2d 66, 71 (Minn. App. 2015) ("Consideration may consist of *either* a benefit accruing to a party *or* a detriment suffered by another party." (emphasis added) (quotation omitted)). And the Myth benefitted from the agreement, as the city was also considering fines or removing the liquor license entirely without the action plan.

In sum, because there was an agreement to the terms of the conditions on the liquor license, including the potential-closure provision, there is no genuine dispute of material fact whether there was an agreement made between the Myth and the city.[7] Therefore, the

[7] The Myth further argues that the district court erred as a matter of law by concluding that there was not a due-process violation, and claims they are entitled to "an opportunity to present, confront, or cross-examine any witnesses." Due process requires reasonable notice and a hearing. *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 563 (Minn. App. 2001). No process is due if the government's action does not deprive an individual of a protected interest. *Rew v. Bergstrom*, 845 N.W.2d 764, 785 (Minn. 2014). Here, the due-process claim is about the hearing surrounding the conditions to the liquor license. But there is no property right in an existing liquor license. *Arens v. Vill. of Rogers*, 61 N.W.2d 508, 519 (Minn. 1953). And even if there were, the Myth does not demonstrate why here we should deviate from the general rule in Minnesota that due process simply requires notice and a hearing. *See CUP Foods, Inc.*, 633 N.W.2d at 567. The Myth received both. And given the ample opportunities throughout the council meeting for the Myth's lawyer

district court did not err as a matter of law when granting summary judgment in favor of the city.

Affirmed.

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and members of management to speak, the cutting-off of one lawyer at the end of the meeting does not change that fact. The district court did not err by concluding as a matter of law that there was no due-process violation.