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STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1571

RKL Landholdings, LLC, et al.,
Appellants,

vs.

Appliance Recycling Centers of America, Inc., et al.,
Respondents.

Filed June 6, 2011
Affirmed
Johnson, Chief Judge

Hennepin County District Court
File No. 27-CV-10-15

Kirk M. Anderson, Anderson & McCormick, P.A., Minneapolis, Minnesota (for appellants)

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Considered and decided by Hudson, Presiding Judge; Johnson, Chief Judge; and Toussaint, Judge.

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

JOHNSON, Chief Judge

The parties to this appeal entered into a series of agreements for the purpose of conveying real property, but the conveyance never occurred because the buyer was unable to obtain financing by the agreed-upon dates. The buyer sued the seller to recover the

earnest money and extension fees that were paid, alleging six causes of action. The district court entered summary judgment for the seller. We affirm.

FACTS

The two business entities that are parties to this case own adjacent parcels of real property in the city of St. Louis Park. RKL Landholdings, Inc., purchased its parcel with the intention of developing a condominium. Appliance Recycling Centers of America (ARCA) uses its parcel to operate a factory-outlet appliance store. Between 2005 and 2008, the parties attempted to complete a transaction in which ARCA would sell some of its property to RKL, but the transaction never was consummated.

In June 2005, RKL contacted ARCA to inquire about purchasing some of ARCA's property, which RKL needed to pursue a planned condominium development. Later, RKL sent ARCA a proposed purchase agreement that stated a price of $6 million, required nonrefundable earnest-money payments totaling $700,000, and set a closing date of May 16, 2006. Accompanying the purchase agreement was a lease agreement whereby RKL would lease the appliance-store building back to ARCA for six months at a base rent of approximately $38,000 per month. The proposed lease agreement also would provide ARCA with options to renew the lease for two additional six-month periods at an increased amount of rent.

RKL's CEO, Emad Abed, and ARCA's CEO, Edward Cameron, signed the purchase agreement and the accompanying lease agreement on March 14, 2006. But RKL struggled to secure financing for the purchase, so the transaction did not close as scheduled on May

16, 2006. ARCA published a notice of cancellation of the purchase agreement in June 2006, which stated that the cancellation period expired on September 11, 2006.

On September 8, 2006, the parties entered into the first of two agreements to extend the cancellation period. The first agreement set a new closing date of October 26, 2006, and required Abed to pay an extension fee of $30,000, of which $20,000 would be applied to the purchase price and $10,000 was nonrefundable. The second extension agreement was an October 24, 2006, addendum to the September 8, 2006, agreement, which extended the cancellation period to December 15, 2006, and required Abed to pay another extension fee of $20,000, of which $10,000 would be applied to the purchase price and $10,000 was nonrefundable.

In early December 2006, RKL informed ARCA that it might need another extension. On December 14, 2006, RKL proposed a third extension of the cancellation period to December 31, 2006, with no extension fee. Abed and Cameron had a telephone conversation on the morning of December 15, 2006. Abed later testified in deposition that they reached two agreements during that telephone call. First, Abed testified that Cameron orally agreed to extend the cancellation period to December 28, 2006, in exchange for RKL's forfeiture of $30,000 in extension fees that were to apply to the purchase price. Second, Abed testified that Cameron orally agreed that ARCA and RKL would enter into a new purchase agreement and a new lease agreement, the terms of which would be identical to the existing agreements, with a new closing date of January 31, 2007.

Later on December 15, 2006, Abed sent an e-mail message to Cameron, ARCA's attorney, and his own attorney to "Confirm the Acceptance" of the following terms: ARCA

would extend the cancellation period to December 28, 2006; if Abed failed to close by that date, ARCA and Abed would execute a purchase agreement identical to the March 2006 agreements, with a closing date not later than January 31, 2007; and RKL's $700,000 in earnest money would be credited toward the new agreement. ARCA's counsel responded with an e-mail message that stated, "This is NOT the deal and no deal will be agreed upon until YOUR attorneys" draft an agreement to extend the closing date to December 28, 2006, in exchange for forfeiture of the $30,000 extension fee, "AND ARCA signs off on it. There is no other deal on anything else beyond 12/28/06." Later that day, Cameron and Abed signed a second addendum to the September 8, 2006, agreement, which extended the cancellation period for a third time, to December 28, 2006, in exchange for the forfeiture of $30,000 in extension fees. The second addendum also states that RKL may apply the $700,000 in earnest money payments to the purchase price.

Thereafter, the parties exchanged proposed purchase and lease agreements, but they never entered into any further written agreements. On December 21, 2006, RKL proposed an agreement with a base rent of $50,000 and a requirement that 12 months' rent be paid in advance. On December 27, 2006, ARCA proposed an agreement with a base rent of approximately $38,000 (the amount of rent contained in the original purchase agreement) and a six-month renewal option that did not increase the rent. On December 28, 2006, RKL proposed an agreement with a base rent of approximately $46,000 with the advance-payment term. On December 29, 2006, ARCA rejected both of RKL's proposals and stated that its board of directors would not consider any other proposals. On January 4, 2007, RKL's attorney requested via an e-mail message that ARCA extend the closing date to

February 28, 2007, but no such agreement was reached. On January 31, 2007, RKL's attorney sent an e-mail message to ARCA's attorney, stating, "I know we have no existing deal. I'm just letting you know what [is] up. I hope your guys will consider Emad's proposal when appropriate." RKL and ARCA continued to communicate sporadically in 2007 and 2008. RKL made several proposals, all of which were different from the March 2006 agreements. ARCA rejected all of RKL's proposals.

In December 2009, Abed and RKL commenced this action against ARCA and Cameron. The complaint alleged six causes of action: (1) breach of contract, (2) promissory estoppel, (3) unjust enrichment, (4) conversion, (5) fraudulent misrepresentation, and (6) tortious interference with prospective advantage. ARCA and Cameron moved for summary judgment in July 2010. The district court granted the motion and entered summary judgment in August 2010. Abed and RKL appeal.

D E C I S I O N

Appellants argue that the district court erred by granting summary judgment to respondents on all six claims. A district court must grant a motion for summary judgment if the evidence demonstrates "that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the non-moving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court applies a *de novo* standard of review to a grant of summary judgment, and we view the evidence in the light most favorable to the nonmoving party. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008).

I. Breach of Contract

"A claim of breach of contract requires proof of three elements: (1) the formation of a contract, (2) the performance of conditions precedent by the plaintiff, and (3) the breach of the contract by the defendant." *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).

Appellants do not seek to prove a breach of the written purchase agreement, which states clearly that the $700,000 in earnest money is nonrefundable. Rather, appellants seek to prove that ARCA and Cameron breached an alleged oral agreement arising from the December 15, 2006, telephone conversation.[1] But appellants do not adequately explain the factual and legal bases of their breach-of-contract claim. Appellants' brief contains only one paragraph of argument concerning its breach-of-contract claim:

> Simply put, should the jury find the agreement entered into on December 15, 2006 was a binding oral contract, sufficient allegations have been made relating to Respondents' breach of said contract. A material question of fact exists as to the contents of the conversation on December 15, 2006 and whether, as a fact, a contract existed. Thus, the district court's grant of summary judgment on this claim was in error.

This paragraph is insufficient to put the district court's analysis at issue on appeal. The second sentence pertains only to the first element of a breach-of-contract claim, which asks whether a contract was formed. *See Thomas B. Olson & Assocs.*, 756 N.W.2d at 918.

[1]We doubt whether the alleged oral contract is enforceable in light of the statute of frauds. "Every contract for . . . the sale of any lands, or any interest in lands, shall be void unless the contract . . . is in writing and subscribed by the party by whom the lease or sale is to be made . . . ." Minn. Stat. § 513.05 (2010); *see also Bouten v. Richard Miller Homes, Inc.*, 321 N.W.2d 895, 899 (Minn. 1982) (concluding that oral contract for purchase of real estate and construction of home did not meet requirements of statute of frauds). Nonetheless, we will not decide the issue because respondents have not raised it.

But the district court did not conclude that appellants could not prove the first element. Rather, the district court reasoned that RKL could not prove the third element of its claim because ARCA had fully performed its obligations under the written agreements, because ARCA did not commit a breach of the alleged oral agreement, and because RKL first breached the oral agreement, *see Carlson Real Estate Co. v. Soltan*, 549 N.W.2d 376, 379 (Minn. App. 1996) (noting that "party who first breaches a contract is usually precluded from successfully claiming against the other party"), *review denied* (Minn. Aug. 20, 1996). Appellants' argument does not address the district court's reasoning. The first sentence of the argument states merely that "sufficient allegations have been made relating to Respondents' breach of said contract." But appellants do not identify the relevant allegations or explain why the evidence is sufficient to prove a breach of the alleged oral contract. More is required to persuade this court to reverse a district court's ruling. *See State Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address issue that was inadequately briefed); *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (declining to consider "mere assertion" not supported by argument or authority "unless prejudicial error is obvious on mere inspection" (internal quotations omitted)). Because appellants have not adequately briefed their argument, we need not review the district court's analysis of the breach-of-contract claim.

Thus, appellants have not demonstrated that the district court erred by granting summary judgment on the breach-of-contract claim.

II. Promissory Estoppel

To establish a claim of promissory estoppel, a plaintiff must prove that "1) a clear and definite promise was made, 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. Minnesota Mining & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000).

The district court concluded that the evidence is sufficient to prove the first element because Cameron made a clear and definite promise to extend the closing date to December 28, 2006, or, failing that, to enter into a new agreement that was identical to the original agreements, with a closing date of January 31, 2007. The district court also concluded that the evidence is sufficient to prove the second element because Cameron intended for RKL and Abed to rely on his promise (although the district court did not consider whether RKL or Abed actually relied on the promise). But the district court concluded that the evidence is insufficient to prove the third element. Appellants challenge the district court's reasoning on the third element, arguing that it would be an "injustice" for RKL to forfeit $700,000 in earnest money in light of Cameron's "promise that a deal would get done in 2007."

A plaintiff alleging a promissory estoppel claim must prove that the promise he or she seeks to enforce has not been fulfilled. *See Martens*, 616 N.W.2d at 746. But as the district court noted, it was RKL that did not fulfill its part of the alleged oral agreement because it did not propose a new purchase agreement with terms identical to the original agreement. RKL's proposals would have required ARCA to pay substantially higher amounts of rent. ARCA, on the other hand, proposed a new purchase agreement with a base

rent at the original amount of approximately $38,000. Accordingly, RKL was primarily responsible for the parties' failure to enter into a new purchase agreement after December 15, 2006. RKL cannot claim that justice requires the enforcement of a promise that RKL itself never attempted to fulfill. *See Ruud v. Great Plains Supply, Inc.*, 526 N.W.2d 369, 372 (Minn. 1995) (describing promissory estoppel as "creature of equity"). In light of the undisputed evidence, the district court properly concluded, as a matter of law, that enforcement of Cameron's alleged promise is not necessary to prevent injustice.

Thus, the district court did not err by granting summary judgment on the claim of promissory estoppel.[2]

III. Unjust Enrichment

To establish a claim of unjust enrichment, a plaintiff must prove that a defendant knowingly received something of value to which it is not entitled and that the circumstances are such that it would be unjust for the defendant to retain the benefit. *Servicemaster v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 306 (Minn. 1996).

[2]Respondents also have not argued that appellant's promissory estoppel claim is barred by the statute of frauds. The law in Minnesota is unsettled as to whether a claim of promissory estoppel is viable in the face of a statute-of-frauds defense. Under one possible interpretation of the law, "promissory estoppel will defeat the statute of frauds only when the promise relied upon is a promise to reduce the contract to writing." *Del Hayes & Sons, Inc. v. Mitchell*, 304 Minn. 275, 283, 230 N.W.2d 588, 593-94 (1975); *see also Lunning v. Land O'Lakes*, 303 N.W.2d 452, 459 (Minn. 1980). Under another possible interpretation, promissory estoppel will defeat the statute of frauds only if "the detrimental reliance is of such a character and magnitude that refusal to enforce the contract would permit one party to perpetuate a fraud." *Del Hayes & Sons*, 304 Minn. at 284, 230 N.W.2d at 594. It appears that appellants cannot satisfy either standard. Nonetheless, we will not decide the issue because respondents have not raised it.

Appellants argued to the district court that ARCA would be unjustly enriched by retaining the earnest money payments and extension fees it received from RKL. The district court concluded that ARCA's retention of those funds is not unjust because ARCA fulfilled its obligations up to the extended closing date of January 31, 2007. More importantly, the purchase agreement and extension agreements expressly state that the earnest money and extension fees paid to ARCA are nonrefundable. In other words, ARCA has a contractual right to retain the earnest money and extension fees. In this situation, if a valid contract governs the rights and obligations of two parties, an unjust-enrichment claim is not viable. *Stein v. O'Brien*, 565 N.W.2d 472, 474-75 (Minn. App. 1997); *see also Sharp v. Laubersheimer*, 347 N.W.2d 268, 271 (Minn. 1984) (stating that "proof of an express contract precludes recovery in quantum meruit," and equating quantum meruit to unjust enrichment).

Thus, the district court did not err by granting summary judgment on the claim of unjust enrichment.

IV. Conversion

To prevail on a claim of conversion, a plaintiff must prove that the defendant deprived the plaintiff of a property interest. *Olson v. Moorhead Country Club*, 568 N.W.2d 871, 872 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997). "[A] 'plaintiff's lack of an enforceable interest in the subject property is a complete defense against conversion.'" *Thomas B. Olson & Assocs., P.A*, 756 N.W.2d at 920 (quoting *Lassen v. First Bank Eden Prairie*, 514 N.W.2d 831, 838 (Minn. App. 1994), *review denied* (Minn. June 29, 1994)).

Appellants argued to the district court that ARCA had wrongfully deprived appellants of the earnest money and extension fees. The district court concluded that appellants could not prove that they had a property interest in those funds. The district court correctly reasoned that appellants have no enforceable property interest in those funds. The money rightfully belongs to ARCA by operation of the March 2006 agreements and the subsequent extension agreements.

Thus, the district court did not err by granting summary judgment on the claim of conversion.

V. Fraud

To establish a claim for fraudulent misrepresentation, a plaintiff must prove that:

> (1) there was a false representation by a party of a past or existing material fact susceptible of knowledge; (2) made with knowledge of the falsity of the representation or made as of the party's own knowledge without knowing whether it was true or false; (3) with the intention to induce another to act in reliance thereon; (4) that the representation caused the other party to act in reliance thereon; and (5) that the party suffer[ed] pecuniary damage as a result of the reliance.

Hoyt Props., Inc. v. Production Res. Grp., L.L.C., 736 N.W.2d 313, 318 (Minn. 2007) (quotation omitted) (alteration in original).

Appellants claim that Cameron fraudulently represented to Abed that the parties would enter into an agreement on terms identical to the March 2006 agreements. The district court concluded that this claim failed for both procedural and substantive reasons: procedurally because appellants failed to plead the circumstances constituting ARCA's

fraud with sufficient particularity, *see* Minn. R. Civ. P. 9.02, and substantively because the undisputed facts would not support the claim.

Appellants' fraud claim fails because, among other reasons, the undisputed evidence would not allow appellants to prove the first element. The representation does not concern a past or existing fact. "[A] representation or expectation as to future acts is not a sufficient basis to support an action for fraud merely because the represented act or event did not take place." *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 368-69 (Minn. 2009) (quotation omitted). The mere fact that the real-estate transaction failed to close after December 15, 2006, does not demonstrate that Cameron made a fraudulent misrepresentation on December 15, 2006.

Thus, the district court did not err by granting summary judgment on the claim of fraud.

VI. Tortious Interference with Prospective Business Advantage

To establish a claim of tortious interference with prospective business advantage, a plaintiff must prove that a defendant intentionally and improperly committed a wrongful act, that the act interfered with the plaintiff's prospective contractual relationship, and that the plaintiff suffered pecuniary harm as a result. *See United Wild Rice, Inc. v. Nelson*, 313 N.W.2d 628, 632-33 (Minn. 1982).

In the district court, appellants sought to prove that respondents wrongfully interfered with the prospective contractual relationship between the two parties. Such a claim is not viable. "Parties to a contract cannot be held liable for tortious interference." *Lipka v. Minnesota Sch. Emps. Ass'n Local 1980*, 537 N.W.2d 624, 631 (Minn. App. 1995). "The

general rule is that a party cannot interfere with its own contract." *Nordling v. Northern States Power Co.*, 478 N.W.2d 498, 505 (Minn. 1991).

Cameron is not a party to the contract between ARCA and RKL. But a corporate employee generally may not be held personally liable for tortious interference. *Bouten*, 321 N.W.2d at 900 (holding corporation president not liable for tortious interference with contract because actions were within scope of duties). Rather, a corporate employee may be held liable for tortious interference only if he or she acted in bad faith and outside the scope of his or her official duties. *See Nordling*, 478 N.W.2d at 506. There is no evidence in the record that Cameron exceeded his official duties as CEO of ARCA, acted in bad faith, or was not pursuing ARCA's business interests. As a matter of law, Cameron cannot be held personally liable for tortious interference.

Thus, the district court did not err by granting summary judgment on the claim of tortious interference with prospective business advantage.

In sum, there is no genuine issue as to any material fact regarding any of appellants' six causes of action. Thus, the district court did not err by granting summary judgment to ARCA and Cameron.

Affirmed.