STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1737

Bradley A. Hoyt,
Appellant,

vs.

Piper Jaffray & Co.,
Respondent.

Filed August 12, 2008
Affirmed
Klaphake, Judge

Hennepin County District Court
File No. 27-CV-06-9811

Rolin L. Cargill, III, William Skolnick, Skolnick & Associates, PA, 527 Marquette Avenue South, #2100, Minneapolis, MN 55402 (for appellant)

Sandra S. Smalley-Fleming, Lindquist & Vennum, 80 S. 8th Street, Suite 4200, Minneapolis, MN 55402 (for respondent)

Considered and decided by Klaphake, Presiding Judge; Peterson, Judge; and Worke, Judge.

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

KLAPHAKE, Judge

Appellant Bradley A. Hoyt challenges the district court's grant of summary judgment in favor of respondent Piper Jaffrey & Co. on Hoyt's claims of breach of contract and promissory estoppel. Because conditions precedent to the formation of a

contract were not satisfied and the record does not establish a promise definite enough to reasonably support Hoyt's claim of promissory estoppel, we affirm.

D E C I S I O N

Summary judgment shall be granted if the pleadings, discovery, and affidavits in the record show that there are no genuine issues of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. The reviewing court determines whether there are material fact issues and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). The district court may not weigh evidence or assess credibility on a motion for summary judgment. *Hoyt Prop., Inc. v. Production Resource Group, L.L.C.*, 736 N.W.2d 313, 320 (Minn. 2007). The district court must view the evidence in the light most favorable to the nonmoving party. *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001). Once the moving party establishes a prima facie case, the nonmoving party must produce specific facts, rather than relying on "mere averments . . . or unsupported allegations," in opposition to the motion for summary judgment. *Id.*

Hoyt asserts that the district court improperly weighed evidence, failed to view evidence in the light most favorable to him, and erred in its application of the law. Hoyt further argues that genuine issues of material fact remain to be resolved. "A fact is material if its resolution will affect the outcome of the case." *Id.* (quotation omitted).

Whether a contract exists is a question for the factfinder, unless the record as a whole could not lead "a rational trier of fact to find for the nonmoving party." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). In *Hansen v. Phillips Beverage Co.*, 487

N.W.2d 925 (Minn. App. 1992), this court concluded that an offer clearly described as "non-binding" did not create a contract and affirmed the district court's grant of summary judgment. *Id.* at 927. We stated:

> No contract is formed by the signing of an instrument when one party knows the other does not intend to be bound by the document. No contract exists in this case where the parties have, by their letter of intent, clearly indicated an intent not to be bound. Paragraph IX of the letter is entitled "Non-Binding Offer" and states that the letter "shall not be a binding legal agreement, and neither party shall have any liability to the other until the execution of the definitive purchase agreement."

Id. (citation omitted). This is similar to the language found in the July 29, 2005 letter signed by both parties, which forms the basis for Hoyt's claim that there was a binding contract between the parties. In that letter, Piper states:

> This proposal is preliminary and should not be construed as a commitment to make the loans. This proposal is subject for further due diligence by Piper and must be approved by the Piper loan committee. Any commitment of Piper to make the loans will only be made in written format.

(Emphasis in original.)

In *Northway v. Whiting*, 436 N.W.2d 796 (Minn. App. 1989), this court affirmed the district court's grant of summary judgment against a claimant of breach of contract, reasoning that no contract is formed when there are outstanding conditions precedent, including the execution of a written contract embodying the parties' agreement. *Id.* at 799. On its face, the July 29, 2005 letter outlines conditions precedent to the creation of a contract, including further due diligence, approval by the Piper loan committee, and execution of a written document. Piper performed at least some of the due diligence and

Piper's loan committee apparently approved the commitment, although this fact was not disclosed to Hoyt in written form. It is undisputed that the July 29, 2005 letter is the only written document issued by Piper, and the letter states on its face that it is not a loan commitment. Thus, the condition precedent of a written commitment was not satisfied. We therefore conclude that the district court correctly determined that no contract was formed.

Hoyt argues that even if the parties did not enter into a written contract, Piper should be estopped from denying its promise to lend Hoyt the money. "Promissory estoppel is an equitable doctrine that implies a contract in law where none exists in fact." *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000). To maintain a claim of promissory estoppel, the claimant must show that (1) a clear and definite promise was made and the promisor intended the promisee to rely on it; (2) the promisee relied on the promise to his or her detriment; and (3) it would be unjust not to enforce the promise. *Id.*

A promisee's reliance must be reasonable; reasonableness is generally a question of fact for the factfinder. *Norwest Bank Minn. N.A. v. Midwestern Mach. Co.*, 481 N.W.2d 875, 880 (Minn. App. 1992), *review denied* (Minn. May 15, 1992). But if the party asserting reasonable reliance fails to produce specific admissible facts that create a genuine issue for trial, the district court may grant summary judgment. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995).

In *Nicollet Restoration*, the city's mayor and director of planning assured the developer that the city would approve a financing package for the acquisition and

financing of a project. *Id.* at 846-47. When it became clear that the developer and the city would be unable to reach an agreement, the mayor and director of planning did not submit the proposal to the city council, so no financing was forthcoming. *Id.* at 847. The developer sued, asserting several claims, including promissory estoppel. *Id.* at 846. The supreme court ultimately concluded that the developer failed to provide evidence of reasonable reliance that would support a claim of promissory estoppel. *Id.* at 848. The court reasoned that the promises of the mayor and the director of planning could not bind the city council, whose resolution was needed to authorize financing, and that therefore the developer could not reasonably rely on these promises. *Id.* The supreme court concluded that the city was entitled to summary judgment. *Id.*

Here, Hoyt, who is an experienced real estate developer and investor, relied on a document that states that it is not a commitment for financing; presumably, as an experienced developer, he was also aware of the requirements of Minn. Stat. § 513.33 (2006), which states that "[a] debtor may not maintain an action on a credit agreement unless the agreement is in writing, expresses consideration, sets forth the relevant terms and conditions, and is signed by the creditor and the debtor." The equivocal language of the July 29, 2005 letter does not create a definite promise on which a person of Hoyt's experience could reasonably rely. Thus, Hoyt failed to produce any evidence to establish his reasonable reliance on the loan committee's actions.

On this record, we conclude that the district court did not err by determining that Hoyt was not entitled to promissory estoppel.

Based on our decision, Hoyt's remaining issues alleging failure to use best efforts and the standard for damages are without merit.

Affirmed.