STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0189

Interboro Packaging Corporation,
Appellant,

vs.

City of Minneapolis,
Respondent,

Minneapolis Parks and Recreation Board,
Respondent.

Filed September 15, 2009
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-CV-07-22718

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Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and Harten, Judge.*

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

LARKIN, Judge

Appellant challenges the district court's award of summary judgment to respondents in a breach-of-contract case arising from a competitive-bid process. The distict court ruled that the parties' contract was void and that appellant's equitable claims failed as a matter of law. Appellant raises several claims but none are persuasive. Because the district court did not err by granting summary judgment in respondents' favor, we affirm.

FACTS

In the fall of 2006, respondent City of Minneapolis issued a call for bids for garbage bags on behalf of respondent Minneapolis Parks and Recreation Board pursuant to Minn. Stat. § 471.345 (2006). Bidders were required to reply on a bid form that included a set of precise specifications. The call for bids required bids to conform to the following specifications:

Approximately 750 cases:	Large size, 22" x 14" x 59"—All mil [thickness] measurements must be within 5% of 4 full mil (≥3.8 mil or ≤4.2 mil) polyethylene trash bags with heavy seam at the bottom and with gusset, 100 per case. **No substitute on size, color or weight.**

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Approximately 500 cases:	Small size, 23" x 10" x 40"—All mil measurements must be within 5% of 2 full mil (≥1.9 mil or ≤2.1 mil) polyethylene trash bags with gusset, 250 per case**. No substitute on size, color or weight.**

(Emphasis added.) The bid form required bidders to supply "the manufacturer's specifications guarantee on weight (mil) of the bags." The city provided a set of instructions in the call for bids, which contained the following language:

> Unless qualified by the provision "NO SUBSTITUTE," the use of the name of a manufacturer brand and/or catalog description in specifying any item does not restrict bidders to that manufacturer, brand, or catalog description identification. This is used simply to indicate the character, quality, and/or performance equivalence of the commodity desired, but the commodity on which bids are submitted must be of such character, quality, and/or equivalence that it will serve the purpose for which it is to be used equally well as that specified, and be acceptable to the using department.
>
> In submitting a bid on a commodity other than specified, bidder shall furnish complete data and identification with respect to the commodity he proposes to furnish. Consideration will be given to bids submitted on commodities to the extent that such action is deemed to serve the best interest of the department or boards of the City of Minneapolis.
>
> If a bidder does not indicate that the commodity he proposes to furnish is other than specified, it will be construed to mean that the bidder proposes to furnish the exact commodity as described.

The final product or commodity would need to be specifically manufactured due to the unique specifications. Bidders were required to submit sample bags. According to the park board, the only purpose of requiring a sample was to check the quality of the

material. The bid form did not contain language indicating that the bid would be awarded based on the sample or that approval of the sample would supersede the bid form's specifications.

Appellant Interboro Packaging Corporation submitted a bid and sent sample bags, inserting the language "as per sample" on its bid form. Despite the requirements of the bid form, Interboro did not supply "the manufacturer's specifications guarantee on weight (mil) of the bags" with its initial bid submission. Interboro attached a letter to its bid form acknowledging that the samples did not meet all specifications, but the letter informed the park board that the final product would match the sample in strength, and match the specifications in size and color.

Interboro's bid was the lowest. Because the price was so low, the city's purchasing agent, Nancy Pryzmus, was concerned that Interboro's product might not meet specifications. She sent a memo, along with the bid and sample, to the park board's store keeper, Benny Rodriguez, stating, "I recommend Interboro Pack Co. as the low bid if they meet specs. Do they meet specs?" Mr. Rodriguez did not have a micrometer to measure the thickness of the sample. He noticed that the sample bag was thinner than normal, but he pulled on the sample to test it and thought it was "pretty strong." Rodriguez claims that he called Interboro and spoke to an unidentified woman who informed him that Interboro's product would meet the park board's specifications but that the bags' weight was not specifically discussed. Rodriguez informed Pryzmus that the sample bags met specifications for thickness and strength, and the park board accepted Interboro's bid.

Interboro sent the city a manufacturer's specification sheet, identifying the weight of the large bags as "4 mil nominal" and the weight of the small bags as "2 mil nominal." There is a factual dispute regarding whether Interboro sent this correspondence before or after receiving notification that the park board accepted Interboro's bid. Interboro also contacted Pryzmus to verify acceptance of Interboro's product. Interboro sent Pryzmus a document for the city and the park board to sign confirming that they had tested, evaluated, and approved a second set of samples that were sent along with the letter. Pryzmus did not sign or return the letter. According to Interboro, Pryzmus told Interboro over the phone that she knew that Interboro's sample was 2.6 mil and not 4 mil, that Interboro's first sample was satisfactory to the city, and that if Interboro shipped this product, it should have no problems; anything else would not be accepted. Interboro claims that Pryzmus stated that the park board needed immediate delivery and if delivery was not immediate, she would find Interboro in default, which would make it difficult for Interboro to secure future municipal contracts. Respondents deny that Pryzmus made these statements.

The park board received its first order of bags from Interboro in March 2007. The parties dispute whether or not the bags performed according to the park board's needs. The park board claims that the bags tore easily. Interboro presented evidence that the bags that tore were not Interboro's. None of the torn bags were retained or sent to Interboro for inspection. Based on the allegation that Interboro's bags tore easily, a park board supervisor recalled the Interboro bags and did not allow them to be used. The park

board then measured the bags' thickness and discovered that Interboro's large bags were only 2.6-2.8 mil thick and the small bags were only 1.0 mil thick.

A park board supervisor wrote to Interboro in March 2007 and informed them that its bags were being rejected because they were of nonconforming thickness and instructed Interboro to make arrangements to retrieve the bags. Interboro did not do so. In May 2007, the park board shipped the bags back to Interboro. Interboro refused to pay for the shipment or retrieve the bags from the carrier. The carrier then returned the bags to the park board. The park board maintains that it used another bidder to fulfill its order for trash bags and is not using Interboro's bags.

Interboro filed suit against the city and the park board alleging breach of contract, fraud, promissory estoppel, equitable estoppel, unjust enrichment, account stated, and quantum valebant. The parties filed cross-motions for summary judgment. The district court denied Interboro's motion for summary judgment on its breach-of-contract claim and granted respondents' motions on all counts of Interboro's complaint. The district court held that the parties' contract was void; Interboro's estoppel and fraud claims fail because Interboro's reliance was unreasonable as a matter of law; Interboro's unjust enrichment and quantum valebant claims fail because respondents did not retain a benefit; and Interboro's account-stated claim fails because Interboro failed to present sufficient evidence of an acknowledged debtor-creditor relationship between the parties. This appeal follows.

D E C I S I O N

A motion for summary judgment shall be granted when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show 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. "On appeal from summary judgment, we review de novo whether a genuine issue of material fact exists, and whether the district court erred in its application of the law." *Peterka v. Dennis*, 764 N.W.2d 829, 832 (Minn. 2009) (quotation omitted). "[T]he reviewing court must view 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). "Summary judgment should be affirmed if it can be sustained on any ground." *Winkler v. Magnuson*, 539 N.W.2d 821, 828 (Minn. App. 1995), *review denied* (Minn. Feb. 13, 1996).

I. The district court did not err by determining that the parties' contract was void.

The district court held that the parties' contract was void because Interboro's bid was nonconforming and acceptance of the bid violated the competitive-bidding law. Interboro challenges the district court's decision arguing that the park board accepted Interboro's substitute commodity as an approved equal, resulting in a valid contract that obligates respondents to perform. Interboro asserts that the call for bids allowed bidders to submit substitute commodities and that respondents had the discretion to waive bid defects and accept Interboro's bid even if substitutes were not permitted. Finally,

Interboro claims that it did not have a substantial advantage over other bidders because other bidders could have likewise proposed a substitute commodity and, therefore, Interboro's bid substantially complied with the requirements set out in the call for bids. In the alternative, Interboro claims that respondents are estopped from arguing that the contract is void because they accepted the bid and waited until after Interboro began performance to assert that the contract was void.

Competitive bidding is a condition precedent to the letting of public contracts. *See, e.g.*, Minn. Stat. § 471.345, subd. 3 (2006) (requiring sealed bids on any contract entered into by a municipality for the purchase of supplies when the contract's amount may exceed $50,000); *Coller v. City of St. Paul*, 223 Minn. 376, 387-88, 26 N.W.2d 835, 841-42 (Minn. 1947). A bid constitutes a definite offer that a municipality may accept without further negotiations. *Id.* at 385, 26 N.W.2d at 840. But in order for a bid to be valid, it must substantially comply with the requirements of law and the call for bids. *Nielsen v. City of St. Paul*, 252 Minn. 12, 17, 88 N.W.2d 853, 857 (Minn. 1958). A bid that does not comply with the issued call for bids is a new offer rather than a bid. *Sutton v. City of St. Paul*, 234 Minn. 263, 269, 48 N.W.2d 436, 440 (Minn. 1951). A contract entered into based on a new offer is void because it was not arrived at by competitive bidding, as required by statute. *Griswold v. County of Ramsey*, 242 Minn. 529, 536, 65 N.W.2d 647, 652 (Minn. 1954).

The Minnesota Supreme Court has held that a contract, let without competitive bidding where required by statute, is void as a matter of sound public policy, explaining: "A fundamental purpose of competitive bidding is to deprive or limit the discretion of

contract making officials in the areas which are susceptible to such abuses as fraud, favoritism, improvidence, and extravagance." *Id.*; *see also Coller*, 223 Minn. at 376-77, 26 N.W.2d at 836. The purpose of competitive bidding is to give "all contractors an equal opportunity to bid and of assuring to the taxpayers the best bargain for the least money." *Nielsen*, 252 Minn. at 19, 88 N.W.2d at 858.

Interboro argues that the standard of review for administrative acts, such as the respondents' acceptance of Interboro's bid, or acceptance of a substitute or approved equivalent, is abuse of discretion and that we should hold that the contract was not void if respondents' acceptance of Interboro's bid was not arbitrary or capricious. Interboro cites two cases in support of this argument, *R.E. Short Co. v. City of Minneapolis*, 269 N.W.2d 331, 337 (Minn. 1978), and *Bud Johnson Constr. Co. v. Metro. Transit Comm.*, 272 N.W.2d 31, 33 (Minn. 1978). Both cases are factually distinguishable.

R.E. Short concerned the scope of review for a legislative determination regarding a particular expenditure. 269 N.W.2d at 337 (explaining that "a reviewing court should overrule a legislative determination that a particular expenditure is made for a public purpose only if that determination is manifestly arbitrary and capricious"). *Bud Johnson Constr. Co.* involved an agency's refusal to award a construction contract to the lowest bidder. 272 N.W.2d at 33 (concluding that the district court did not abuse its discretion by holding that the agency's decision to accept a higher bid was not arbitrary and capricious). Here, we are not concerned with respondents' expenditure, and we are not called upon to review a decision not to accept the lowest bid. The issue is whether

respondents' acceptance is void because Interboro's bid fails to conform to the required bid specifications.

The proper inquiry is whether Interboro's bid substantially complied with the call for bids, or more precisely, whether Interboro enjoyed a substantial advantage over other bidders. *See Coller*, 26 N.W.2d at 840 (applying the test of whether a bidder enjoyed a substantial advantage to the existing evidence). A contract entered into with the lowest bidder containing substantial provisions beneficial to that bidder that were not included in the bid specifications is void. *Diamond v. City of Mankato*, 89 Minn. 48, 52, 93 N.W. 911, 912-13 (1903).

It is undisputed that Interboro's bid did not propose to supply a product that met the mil requirements of the call for bids. Yet, Interboro claims that its bid complied with the bid requirements because the call for bids permitted substitute commodities. We apply contract principles to determine whether the call for bids allowed a substitute product that did not meet mil requirements.

"The interpretation of a contract is a question of law if no ambiguity exists, but if ambiguous, it is a question of fact and extrinsic evidence may be considered." *City of Va. v. Northland Office Props. Ltd. P'ship*, 465 N.W.2d 424, 427 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991). On its bid form, the park board provided specific mil requirements. The bid form expressly equates mil with weight in its requirement that bidders supply the "manufacturer's specifications guarantee on weight (mil) of bags." Finally, the bid form clearly provided for "No substitute on size, color or weight." This

language is clear and unambiguous. It does not allow for a substitute product that does not meet mil requirements.

Interboro cites other language in the bid form that appears to permit substitutions. This language provides, "[u]nless qualified by the provision 'NO SUBSTITUTE,' the use of the name of a manufacturer brand and/or catalog description in specifying any item does not restrict bidders to that manufacturer, brand, or catalog description identification." This language clearly refers to substitution of a manufacturer, brand, or catalog description and does not render the clause that prohibits substitutions on size, color, or weight ambiguous. Contrary to Interboro's argument, the call for bids unambiguously expressed that no substitutions were allowed on the weight of the bags. It is undisputed that Interboro's bid offered a product that did not comply with the weight, i.e., mil, specifications included in the call for bids. Thus, Interboro's bid was nonconforming.

Minnesota Statute Section 471.345, subdivision 3, requires competitive bidding for the contract at issue. And the purpose of competitive bidding is to provide "all contractors an equal opportunity to bid," thus assuring that the taxpayers will receive the best value. *Nielsen*, 252 Minn. at 19, 88 N.W.2d at 858. Because Interboro's bid offered a material that did not conform to the call for bids' clear and unambiguous mil requirements, the other bidders did not have an opportunity to compete with Interboro. Interboro's nonconforming bid circumvented the purpose of competitive bidding. Interboro had a substantial advantage over other bidders as a result, and respondents' acceptance of the nonconforming bid was in violation of law. *See Griswold*, 242 Minn.

at 536; 65 N.W.2d at 652; *see also Coller*, 223 Minn. at 388, 26 N.W.2d at 842. Thus, the district court did not err by concluding that the parties' contract is void.

Interboro argues that even if the call for bids did not allow substitutions, the city had discretion to waive bid defects. This argument is unavailing because, as discussed above, the contract at issue is subject to municipal competitive bidding laws. Minn. Stat. § 471.345. A fundamental purpose of competitive bidding is to limit the discretion of contracting officials. *Griswold*, 242 Minn. at 536, 65 N.W.2d at 652. Respondents were not permitted to accept Interboro's bid unless the bid offered a commodity that substantially complied with the call-for-bids specifications; Interboro's bid did not.

Interboro argues that respondents should be estopped from claiming that the contract is void because Interboro began performance and incurred expenses related to its performance. The park board argues that this issue is not properly raised on appeal because Interboro did not raise it below and the district court did not address it. We agree. "A reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). But even if Interboro had raised this issue below, the argument fails.

Interboro cites *City of Staples v. Minn. Power & Light Co.*, 196 Minn. 303, 306, 265 N.W. 58, 59 (Minn. 1936), to support its argument that a city is estopped or prevented by laches from later claiming that a contract is void after a party has begun performance, even if the contract violated law. *City of Staples* involved a contract that failed to comply with charter requirements. The supreme court held that the city was

estopped from claiming that the contract was void when the city was a party to a contract and the other party had fully performed for half of a ten-year term. *Id.* at 306, 265 N.W.2d at 59. The supreme court reasoned that after five years of performance under the contract, the city had effectively ratified the contract. *Id.* But the supreme court also noted that, "[t]he argument for the city would doubtless prevail were the contract still wholly executory . . . or even, in a proper case, where it remains in an early stage of performance." *Id.*, 265 N.W.2d at 60 (citation omitted).

Interboro also cites *Chisholm Water Supply Co. v. City of Chisholm*, 205 Minn. 245, 285 N.W. 895 (Minn. 1939), for the position that because Interboro expended considerable sums, respondents are estopped from denying the contract's validity. In *City of Chisholm*, the supreme court concluded that the city was estopped from denying the validity of a contract to be performed over a period of 20 years, by which the city took water from Chisholm Water Supply Co.'s wells. 205 Minn. at 249-50, 285 N.W.2d at 897. There, like in *City of Staples*, the city permitted the Chisholm Water Supply Co. to assume that water taken from the wells was taken pursuant to a contract for a period of more than five years. *Id.* at 249, 285 N.W.2d at 897. The supreme court noted that the expenditures made in reliance on the contract, and the loss that would be suffered by the well owner if the contract were to be voided, were considerable. *Id.* at 250, 285 N.W.2d at 897. The supreme court concluded that *City of Chisholm* was no different in principle than *City of Staples* and held that the city was estopped from asserting that the contract was invalid. *Id.* at 251, 285 N.W.2d at 898.

The facts of this case are distinguishable from *City of Staples* and *City of Chisholm* because the park board notified Interboro that its bags were nonconforming within the same calendar month that it received the first shipment. Thus, the contract was in an early stage of performance, unlike the circumstances in *City of Staples* and *City of Chisholm*. The city and park board did not permit Interboro to continue for an extended period under the assumption that the contract was valid and that its final product conformed to the bid specifications. Thus, Interboro's argument that respondents are estopped from arguing that the contract is void because Interboro partially performed and incurred expenses is unavailing.

Interboro also argues that it created a genuine issue of material fact as to whether or not its bags were defective and that by refusing to produce the torn bags, respondents created a spoliation-of-evidence issue that must be resolved in Interboro's favor. The park board argues that this issue is not properly raised on appeal because Interboro failed to raise it in district court. *See Thiele*, 425 N.W.2d at 582. But, as the district court explained, "[r]egardless of whether it was [Interboro's] bags that tore, it is undisputed that [Interboro's] bags were not of the thickness required by the bid specifications." The contract is void because Interboro's bid did not substantially comply with the call for bids. The alleged performance defect is immaterial.

We conclude that the district court did not err by awarding summary judgment for respondents on Interboro's breach-of-contract claim. Because we affirm summary judgment on this ground, we do not address the city's alternative argument that it was not a party to the contract between Interboro and the park board.

II. The district court did not err by concluding that Interboro's promissory estoppel, equitable estoppel, and fraud claims fail as a matter of law.

Interboro challenges the district court's dismissal of its fraud and estoppel claims. Interboro claims that it reasonably relied upon Pryzmus's oral statement that respondents would accept the thinner, 2.6-mil bags in conformance with Interboro's original samples.

To prove a claim for promissory estoppel, equitable estoppel, or fraud, Interboro must demonstrate that it detrimentally relied on respondents' statements. *Pollard v. Southdale Gardens of Edina Condo. Ass'n*, 698 N.W.2d 449, 454 (Minn. App. 2005) (equitable estoppel); *Axelson v. Minneapolis Teachers' Ret. Fund Ass'n*, 544 N.W.2d 297, 299 (Minn. 1996) (promissory estoppel); *M. H. v. Caritas Family Servs.*, 488 N.W.2d 282, 289 (Minn. 1992) (fraud). Interboro must also establish that its reliance was reasonable. *See Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995) ("establishing the reasonableness of the reliance is essential to any cause of action in which detrimental reliance is an element"). Whether a party reasonably relied on a statement is generally a question of fact for the jury. *Norwest Bank Minn. v. Midwestern Mach. Co.*, 481 N.W.2d 875, 880 (Minn. App. 1992), *review denied* (Minn. May 15, 1992). But this court has held that reliance on an oral representation is unjustifiable as a matter of law if a written contract provision explicitly states a fact completely contradictory to the claimed oral misrepresentation. *Johnson Bldg. Co. v. River Bluff Dev. Co.*, 374 N.W.2d 187, 194 (Minn. App. 1985), *review denied* (Minn. Nov. 18, 1985).

The call-for-bids clearly contained a weight or mil requirement and disallowed substitutions on weight. In addressing whether Interboro's reliance on the alleged oral statement of Pryzmus was reasonable, the district court noted that before submitting its bid, "[Interboro] was provided with written documentation that explicitly required the large bags to be '4 full mil . . . no substitutes on size, color, or weight.'" Given the explicit contract provision, the district court did not err in determining that Interboro's reliance on the alleged oral misrepresentation was unreasonable as a matter of law. We therefore affirm the district court's award of summary judgment in favor of respondents on Interboro's promissory estoppel, equitable estoppel, and fraud claims.

III. The district court did not err by concluding that Interboro's unjust enrichment and quantum valebant claims fail as a matter of law.

Interboro challenges the district court's award of summary judgment on its equitable claims for unjust enrichment and quantum valebant,[1] arguing that whether or not respondents choose to use the bags provided by Interboro, they received value in the form of custom-manufactured bags and Interboro is entitled to compensation for that value. Interboro claims that the bags it provided worked "perfectly" and that the district court inappropriately relied on cases that involved defective products. *See Lundin v. Butternut Valley Twp.*, 172 Minn. 259, 262, 214 N.W. 888, 889 (Minn. 1927) (discussing that no value was received pursuant to an invalid contract where a bridge collapsed prior to completion); *Fargo Foundry Co. v. Village of Callaway*, 148 Minn. 273, 276, 181 N.W. 584, 585 (Minn. 1921) (concluding that no value was received when a heating

[1] Interboro seeks to recover on quantum valebant for $20,577.50, plus interest, for the bags it sent to the park board.

system did not perform and was discarded by the village). Both the park board and the city argue that they retained no benefit from Interboro's bags.

Even when a contract is invalid for failure to comply with competitive bidding requirements, a municipality may be held liable under theories of unjust enrichment. *Layne Minn. Co. v. Town of Stuntz*, 257 N.W.2d 295, 300 (Minn. 1977). "[C]ontractors have been allowed to recover to the extent of the benefit received by the municipality, as distinguished from the value of the goods or services furnished." *Id.* And "relief has been denied under circumstances where a municipality has received no benefit at all." *Id.* at 301 (discussing *Lundin*, where relief was denied because a bridge collapsed prior to completion). The elements of an unjust-enrichment claim are: (1) a benefit conferred by the plaintiff on the defendant; (2) the defendant's knowing acceptance of the benefit; and (3) the defendant's acceptance and retention of the benefit where it would be inequitable to retain it without paying for it. *Acton Constr. Co. v. State*, 383 N.W.2d 416, 417 (Minn. App. 1986), *review denied* (Minn. May 22, 1986).

> To establish an unjust enrichment claim, the claimant must show that the defendant has knowingly received or obtained something of value for which the defendant in equity and good conscience should pay. Unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term "unjustly" could mean illegally or unlawfully.

ServiceMaster of St. Cloud v. GAB Bus. Servs. Inc., 544 N.W.2d 302, 306 (Minn. 1996) (quotations and citations omitted).

Under an implied contract for quantum valebant, the theory of recovery is similar to that in unjust enrichment; the party seeking relief is allowed to recover for the value of the benefit received. *See, e.g.*, *Tracy Cement Tile Co. v. City of Tracy*, 143 Minn. 415, 418, 176 N.W. 189, 190 (Minn. 1919) ("When a contract which a municipality had the power to make has been performed, with the acquiescence of the municipality, and the municipality has received the benefit, it has been held that recovery may be had on quantum valebant."). The district court addressed these equitable claims together and concluded that:

> Regardless of whether the bags provided by [Interboro] could have been used by [respondents], whether in the parks, in the shop, or elsewhere, the Park Board returned the bags to [Interboro] because they did not meet the specifications required by the bidding documents. It is only because [Interboro] refused to accept the return of the bags that the Park Board retains possession of them.

The district court therefore concluded that respondents did not retain a benefit that would be inequitable to retain without payment. We agree.

The park board revoked its acceptance of the nonconforming bags and attempted to return them to Interboro within the same calendar month of receipt. The bags remain in the park board's possession only because Interboro refused to accept return of the bags. Respondents have not received a benefit that would be inequitable to retain without payment. *See Acton Constr. Co.*, 383 N.W.2d at 417; *City of Tracy*, 143 Minn. at 418, 176 N.W. at 190. Thus, Interboro's unjust enrichment and quantum valebant claims fail as a matter of law. The district court did not err by awarding summary judgment in respondents' favor on these claims.

IV. The district court did not err by concluding that Interboro failed to present sufficient evidence of an acknowledged debtor-creditor relationship between the parties.

The account-stated doctrine is an alternative means of establishing liability for a debt other than recovery pursuant to a contract claim. *Am. Druggists Ins. v. Thompson Lumber Co.*, 349 N.W.2d 569, 573 (Minn. App. 1984). An account stated is a manifestation of an agreement between a debtor and creditor that a stated amount is an accurate computation of an amount due. *Id.* An account stated constitutes prima facie evidence of the liability of the debtor. *Erickson v. Gen. United Life Ins. Co.*, 256 N.W.2d 255, 259 (Minn. 1977). To establish an account-stated claim, a party must show that a prior debtor-creditor relationship existed between the parties, mutual assent to the correct balance owed, and a promise by one of the parties to pay the balance. *See Roehrdanz v. Schlink*, 368 N.W.2d 409, 412 (Minn. App. 1985) (discussing the requirements for an account-stated claim). The retention of a statement of account without objection for more than a reasonable period of time demonstrates debtor acquiescence, implies a promise to pay the balance owed without further proof, and operates to create an account stated. *Meagher v. Kavli*, 251 Minn. 477, 487, 88 N.W.2d 871, 879 (1958); *Am. Druggists*, 349 N.W.2d at 573.

The district court concluded that Interboro "presented no evidence of such an agreement between the parties." Interboro challenges this conclusion and argues that it did present evidence that it sent an invoice to the park board and the park board did not respond in any way. Interboro contends that this is sufficient evidence to present the account-stated claim to the jury. The park board argues that a debtor-creditor relationship

could have developed if the park board had not revoked its acceptance of the bags within the same month of receipt, but since its revocation occurred within a reasonable timeframe, no creditor-debtor relationship was established.

"[W]hen the nonmoving party bears the burden of proof on an element essential to the nonmoving party's case, the nonmoving party must make a showing sufficient to establish that essential element." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997); *see also Schroeder v. St. Louis County*, 708 N.W.2d 497, 507 (Minn. 2006) (describing *substantial evidence* as "incorrect legal standard" and clarifying that "summary judgment is inappropriate if the nonmoving party has the burden of proof on an issue and presents *sufficient evidence* to permit reasonable persons to draw different conclusions").

Interboro has not presented sufficient evidence to support its account-stated claim. It is undisputed that the park board revoked its acceptance of Interboro's bags within a reasonable time. *See Meagher*, 251 Minn. at 487, 88 N.W.2d at 879 (discussing when an account stated "comes into being through an acknowledgment or an acquiescence in the existing condition of liability"). And it is also undisputed that Interboro did not send invoices to the city. Accordingly, there is insufficient evidence of an account-stated, and respondents were entitled to summary judgment on this claim.

We affirm the district court's award of summary judgment for respondents on all of Interboro's claims.

Affirmed.

Dated: _____ _____

Judge Michelle A. Larkin