**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A09-1891**

John Amann, et al.,
Appellants,

vs.

Allianz Income Management Services, Inc., et al.,
Respondents.

**Filed August 17, 2010**
**Affirmed; motions denied**
**Kalitowski, Judge**

Hennepin County District Court
File No. 27-CV-08-3933

Richard T. Ostlund, Randy G. Gullickson, Cory D. Olson, Anthony Ostlund Baer & Louwagie, P.A., Minneapolis, Minnesota (for appellants)

Scott G. Knudson, Briggs and Morgan, P.A., Minneapolis, Minnesota; and

Neil Jacobs (pro hac vice), Wilmer Cutler Pickering Hale and Door LLP, Boston, Massachusetts (for respondents)

Considered and decided by Wright, Presiding Judge; Kalitowski, Judge; and Collins, Judge.*

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

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

**KALITOWSKI**, Judge

Appellants John Amann, Troy Auth, Donald Urban, and Deborah Wesenberg challenge the district court's orders (1) dismissing their claims for breach of contract and partnership agreement, unjust enrichment, breach of fiduciary duty, and tortious interference; (2) granting respondents' motion for summary judgment on promissory estoppel; and (3) denying appellants' motion to amend the claims. Appellants also challenge the district court's orders dismissing all claims against respondent Allianz SE for lack of personal jurisdiction and failing to sanction respondents for discovery violations. In addition, respondents have moved this court to strike appellants' reply brief and impose sanctions pursuant to Minn. Stat. § 549.211 (2008), and appellants have requested that respondents be ordered to pay their costs in responding to the motion for sanctions. We affirm and deny all motions.

## D E C I S I O N

Appellants are former employees of respondent Allianz Income Management Services, Inc. (AIMS), and this action arises out of their claims that respondents, part of the Allianz Group of financial services, improperly terminated their employment with AIMS. Respondent Allianz SE is a German corporation and the sole owner of respondent Allianz of America, Inc. (AZOA). AZOA in turn is the sole owner of respondent Allianz Life Insurance Company of North America (Allianz Life) and AIMS. After respondents terminated the unprofitable AIMS venture, appellants filed suit. On September 26, 2008, the district court granted respondents' motion to dismiss all of

appellants' claims except promissory estoppel, and dismissed all claims against Allianz SE for lack of personal jurisdiction. On November 5, 2008, appellants filed a motion to amend the complaint, but the district court denied the motion on grounds of futility. In August 2009, the district court granted summary judgment in favor of respondents on the remaining promissory estoppel claim.

**I.**

Appellants claim that the district court made multiple errors of law in its September 2008 order granting respondents' motion to dismiss with regard to five of appellants' six claims. Appellants also claim that the district court erred in its August 2009 order by granting summary judgment to respondents on promissory estoppel. In addition, appellants claim that the district court erred by denying their November 2008 motion to amend the complaint on the grounds that the claims were insufficient to withstand summary judgment and futile. We disagree.

When reviewing claims dismissed under Minn. R. Civ. P. 12.02(e) for failure to state a claim on which relief can be granted, the question before this court is whether the complaint sets forth a legally sufficient claim for relief. *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997). Our review is de novo. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). We must "consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party." *Id.*

Appellants claim that the district court applied the wrong standard to the motion to dismiss, because it considered respondents' extrinsic evidence, but ignored evidence

presented by appellants. We disagree. The record indicates that the district court declined to consider extrinsic information from either party. Appellants also repeatedly cite *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963), for the proposition that, to defeat a motion to dismiss, they need not "allege facts and every element of a cause of action." But more recent cases of this court, citing United States Supreme Court precedent, provide that to overcome a motion to dismiss, the complaint must state "enough factual matter or factual enhancement to suggest . . . plausible grounds for a claim—a pleading with enough heft to show entitlement." *See Bahr v. Capella University*, 765 N.W.2d 428, 437 (Minn. App. 2009) (quotations omitted).

This court generally reviews a district court's decision regarding amendment of a pleading for an abuse of discretion. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). A district court can deny a motion to amend when the additional claim cannot withstand summary judgment. *Ag Servs. of America, Inc. v. Schroeder*, 693 N.W.2d 227, 235 (Minn. App. 2005). Summary judgment is proper 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.

Appellants contend that the district court should have applied a motion-to-dismiss standard to its motion to amend. But the district court properly applied the summary-judgment standard consistent with the caselaw cited above. In addition, "the liberality to be shown in the allowance of amendments to pleadings depends in part upon the stage of the action and in a great measure upon the facts and circumstance of the particular case."

*Bebo v. Delander*, 632 N.W.2d 732, 741 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001). Here, the claims that the district court found to be futile were largely repetitive of pleaded and dismissed claims; significant discovery had already taken place; and appellants should have known of their claims at earlier stages of litigation.

**Breach of Contract and Breach of Partnership Agreement**

Appellants claim that the district court erred by applying the statute of frauds and dismissing their claims for breach of contract and breach of partnership agreement arising from their allegations that the parties had (1) a contract to form and operate a partnership in AIMS; and (2) a contract for appellants' employment at AIMS. We disagree.

The statute of frauds states that no action shall be maintained upon any agreement that, by its terms, cannot be performed within one year unless the agreement is in writing. Minn. Stat. § 513.01 (2008). The test is whether the contract is fully performable within a year, not whether performance within a year is likely. *Eklund v. Vincent Brass & Aluminum Co.*, 351 N.W.2d 371, 375 (Minn. App. 1984), *review denied* (Minn. Nov. 1, 1984). If either party to a contract can fulfill their obligation within a year, the statute of frauds does not apply. *See Langan v. Iverson*, 80 N.W. 1051, 1052 (Minn. 1899). The district court determined that the statute of frauds applied because appellants' pleadings, alleging a five-year employment contract, did not contain facts showing that there was an agreement performable within a year. The district court concluded that because the contracts were not supported by sufficient writing, the claims were barred by the statute of frauds. We agree.

*Eklund* involved an oral contract for permanent employment until retirement, so long as the employee performed satisfactorily. 351 N.W.2d at 375. This court concluded that the contract could be performed within one year if Eklund died, voluntarily departed, or failed to perform satisfactorily. *Id.* at 375-76. Conversely, *Roaderick v. Lull. Eng. Co.* addressed an alleged employment contract with a minimum term of more than one year, which, by definition, cannot be performed in less than one year. *See Roaderick*, 296 Minn. 385, 388, 208 N.W.2d 761, 763 (1973) (indicating that the employee's alleged oral contract provided for a minimum of two years' employment). In *Bolander v. Bolander*, a contract was allegedly extended for a two-year maximum, and this court concluded that the facts were more analogous to *Eklund* because the employee could have died, voluntarily departed, or been fired during that time. 703 N.W.2d 529, 547 (Minn. App. 2005).

Here, like the employee in *Roaderick*, appellants allegedly entered into a contract with a minimum term of more than one year. Appellants' complaint, which repeatedly referenced a term of five years, does not allege facts that, if proved, show that the agreement could be completed in less than a year.

On appeal, appellants claim that the statute of frauds does not apply because appellants never agreed to perform for five years, and they could fulfill their obligation within a year. But in their complaint, appellants alleged that they "agreed to work at AIMS through at least 2011." Thus, we conclude that the district court did not err in concluding that the breach-of-partnership-agreement and breach-of-contract claims fell within the statute of frauds, because on the face of appellants' pleadings, neither side of

the alleged contract was performable within a year. *See Barton*, 558 N.W.2d at 749 (reviewing claims dismissed under rule 12 for whether the complaint sets forth a legally sufficient claim for relief).

In the alternative, appellants contend that, if the statute of frauds applies, their breach-of-contract and breach-of-partnership-agreement claims were not barred because numerous writings support them. We disagree. Appellants claim that they alleged in a letter to the district court that "approvals for implementation of the AIMS project . . . were reflected in several key internal Allianz memoranda." But appellants did not allege that these memoranda show agreements for employment or agreements establishing a partnership and the consideration agreed upon thereof. *See* Minn. Stat. § 513.01 (requiring agreements that fall within the statute of frauds to be in a writing that expresses the consideration). And none of the writings provide details of any such agreements. We conclude that the district court properly dismissed appellants' claims pursuant to the statute of frauds. *See* Minn. Stat. § 513.01 (barring claims based on agreements that by their terms are not performable within a year, unless the agreement is in writing).

In addition, appellants claim that the district court erred in finding futile their breach-of-partnership claim in the November 2008 amended complaint. The district court concluded that appellants' amended breach-of-partnership-agreement claim was futile because they showed no consideration for any partnership agreement. The district court's finding of lack of consideration is supported by the record. Furthermore, appellants failed to allege any agreement between respondents and appellants to share

profits, an essential element of a partnership agreement. *See Hansen v. Adent*, 238 Minn. 540, 545, 57 N.W.2d 681, 684 (1953). We conclude that the district court did not abuse its discretion in denying appellants' proposed amendment to add a breach-of-partnership claim.

Appellants also claim that the district court erred in finding futile their November 2008 amended claim for breach of employment agreement. In their amended complaint, appellants alleged that they were promised continued employment at AIMS until their right to acquire shares vested. The district court rejected this contention in light of (1) appellants' deposition testimony that they were at-will employees with no guaranteed term of employment; (2) the Allianz Life employee handbook that provided that they were at-will employees; and (3) appellants' admission that their employment agreement did not contain any specific duration. In addition, the record is replete with evidence of the at-will nature of appellants' employment.

Furthermore, appellants' allegations that the parties had agreed to a term of employment lasting until "AIMS became a profitable stand-alone company" are insufficient as a matter of law to support a claim for breach of employment contract, because they do not show the employer's clear intent. *See Aberman v. Malden Mills Indus., Inc.*, 414 N.W.2d 769, 771 (Minn. App. 1987) (finding that to establish an employment contract an employee must establish that an employer clearly intended to create a contract).

Appellants contend that even though there was no definite employment term, their claim for breach of employment contract can withstand summary judgment, citing

*Bussard v. College of St. Thomas, Inc.*, 200 N.W.2d 155, 163 (Minn. 1972). But in *Bussard*, the plaintiff testified that he had been promised permanent employment. Here, appellants fail to cite any evidence of such promises, and the district court cites several depositions providing that appellants were never promised permanent employment.

Finally, appellants contend that the district court treated their claims unfairly or inconsistently, asserting that the court dismissed appellants' employment claim under the statute of frauds but subsequently found that the claim cannot withstand summary judgment because it contains no definite term. But the court's disparate treatment of appellants' claims merely highlights appellants' inconsistent pleadings. The court reviewed appellants' claims under the proper standards of review at each stage, according to appellants' pleadings. We conclude the district court did not err by treating appellants' claims "inconsistently."

**Unjust Enrichment**

Appellants argue that the district court erred in its September 2008 order by dismissing their claim for unjust enrichment. We disagree.

A party is unjustly enriched when he knowingly receives something of value to which he is not entitled under circumstances that make it unjust for him to retain the benefit. *ServiceMaster of St. Cloud v. GAB Business Services, Inc.*, 544 N.W.2d 302, 306 (Minn. 1996). "[U]njust 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." *Id.* (quoting *First Nat'l Bank v. Ramier*, 311 N.W.2d 502, 504 (Minn. 1981)).

The district court determined that appellants failed to properly plead a cause of action for unjust enrichment by failing to allege that respondents acted illegally or unlawfully. Appellants claim the district court erred, arguing that unjust-enrichment claims can arise when it would simply be morally wrong for one party to enrich himself at the expense of the other. We disagree. *Ramier* is good law, and has been cited for the proposition relied on by the district court. *See, e.g.*, *ServiceMaster*, 544 N.W.2d at 306; *Holman v. CPT Corp*., 457 N.W.2d 740, 745 (Minn. App. 1990).

Moreover, appellants failed to properly assert an uncompensated benefit, a prerequisite to a finding of unjust enrichment. Appellants never proved that they were legal and/or equitable owners of AIMS. And the record indicates that they were fully paid for their time and effort as salaried employees. Because unjust enrichment requires a showing of why it is unjust for respondents to profit from appellants' efforts, the district court did not err in concluding that appellants did not properly allege a factual basis for an unjust-enrichment claim.

Appellants also claim that the district court erred by concluding that their November 2008 amended unjust-enrichment claim was futile. But again, appellants failed to allege what benefit they conferred upon respondents, or how respondents unjustly retained it. And the record contains undisputed evidence that respondents lost money in the AIMS venture. We conclude, therefore, that the district court did not err in concluding that this claim was futile because it could not withstand summary judgment.

**Breach of Fiduciary Duty**

Appellants argue that the district court erred in its September 2008 order by dismissing their claim for breach of fiduciary duty. The parties agree that this claim is governed by the Minnesota Business Corporation Act, Minn. Stat. §§ 302A.011-302A.92 (2008) (the Act). Appellants claim that they were "beneficial shareholders" of AIMS, because they had an "ownership expectancy," and are thus entitled to the protections of the Act. We disagree.

The district court did not err by concluding that appellants failed to allege facts sufficient to make a claim under the Act. Appellants acknowledge that they were never issued stock in AIMS, as is required to be a shareholder under the Act. *See* Minn. Stat. § 302A.011, subd. 29 (defining "shareholder"). Appellants never claimed to have had the power to vote the shares, as is required to be a "beneficial owner" under the Act. *See* Minn. Stat. § 302A.011, subd. 41(a) (defining "beneficial owner"). And appellants did not allege facts sufficient to establish the right to purchase shares, as required for "beneficial ownership" under the Act. *See* Minn. Stat. § 302A.011, subd. 41(b) (defining "beneficial ownership").

Appellants rely on their claim that they had an "ownership expectancy," analogizing their case to *Warthan v. Midwest Consol. Ins. Agencies, Inc.*, 450 N.W.2d 145 (Minn. App. 1990). In *Warthan*, this court reversed the district court's refusal to grant equitable relief under Minn. Stat. § 302A.751 (1988) to a nonshareholder, because the parties intended 50/50 ownership of the company. *Id.* at 146, 149. As the district court noted, *Warthan* is inapplicable here. In *Warthan*, no stocks had been issued,

whereas here, stocks have been issued to other parties but not to appellants. *See id*. at 146. Moreover, appellants have made no showing that they had a right to purchase shares under Minn. Stat. § 302A.011, subd. 41(b). Appellants merely allege that "the parties had a perfected agreement as to shared ownership of the AIMS opportunity." Because appellants failed to allege facts showing that they were shareholders, beneficial owners, or privy to beneficial ownership, they failed to state a cause of action for breach of fiduciary duty under the Act.

Appellants also claim that the district court erred by concluding that their November 2008 amended claim of breach of fiduciary duty was futile. In their proposed amended complaint, appellants predicated the breach-of-fiduciary-duty claim on "their status and rights as partners in AIMS." But even if the parties were partners under the Act, as discussed above, appellants failed to explain how respondents breached a fiduciary duty by terminating appellants' at-will employment. We conclude, therefore, that the district court did not abuse its discretion by denying appellants' motion to amend their breach-of-fiduciary-duty claim.

**Tortious Interference**

Appellants argue that the district court erred in its September 2008 order by dismissing their claims for tortious interference with contract. We disagree. The tortious-interference claim fails because, as discussed above, there were no enforceable contracts. On appeal, appellants cite the tortuous-interference-with-contract standards, but fail to acknowledge that the district court concluded that only a claim for tortious interference with prospective economic advantage could lie where there were no written

contracts, and where the alleged oral contracts were unenforceable under the statute of frauds.

Appellants' claim for tortious interference with prospective advantage requires a showing that (1) the defendant intentionally and improperly interfered with the prospective contractual relation, (2) causing "pecuniary harm resulting from loss of the benefits of the relation," and (3) the interference either (a) induced or otherwise caused a third person not to enter into or continue the prospective relation or (b) prevented the continuance of the prospective relation. *United Wild Rice, Inc. v. Nelson*, 313 N.W.2d 628, 633 (Minn. 1982). "For purposes of this tort, improper means are those that are independently wrongful such as threats, violence, trespass, defamation, misrepresentation of fact, restraint of trade or any other wrongful act recognized by statute or the common law." *Harman v. Heartland Food Co.*, 614 N.W.2d 236, 241 (Minn. App. 2000) (quotation omitted).

The district court properly concluded that appellants failed to plead facts showing that respondents' action with respect to appellants' prospective relations with AIMS was independently wrongful under this standard. Because an independently wrongful act is a prerequisite for a claim of tortious interference with prospective advantage, this conclusion alone is enough to support the district court's dismissal of appellants' tortious-interference claims.

Appellants also argue that the district court erred by concluding that their November 2008 amended claim for tortious interference was futile. Appellants again cite the standards for tortious interference with contract, the wrong standard, given the

absence of any evidence of a contract. Further, the record shows that respondents terminated AIMS not in order to interfere with appellants' economic relationships, but for legitimate business reasons: AIMS was unprofitable. We conclude that the district court did not abuse its discretion by denying appellants' motion to amend their tortious-interference claims.

**Promissory Estoppel**

Appellants argue that the district court erred by concluding that their November 2008 amended claim for promissory estoppel was futile. We disagree.

In order to survive a motion for summary judgment, a claim for promissory estoppel must be supported by alleging: (1) a clear and definite promise, (2) promisor's intent to induce the reliance on the promise, (3) the promisee's detrimental reliance, and (4) the need to enforce the promise to prevent an injustice. *Cohen v. Cowles Media Co.*, 479 N.W.2d 387, 391 (Minn. 1992). The district court found that appellants did not allege detrimental reliance.

Appellants contend that they detrimentally relied on respondents' promises because they gave up long-term, secure employment to work at AIMS. But this contention is not supported by the evidence. Urban, Wesenberg, and Amann were all at-will employees at Allianz Life, and Auth was an at-will employee at Ameriprise. In *Spanier v. TCF Bank Sav.*, 495 N.W.2d 18, 21 (Minn. App. 1993), *review denied* (Minn. Mar. 22, 1993), this court concluded that an appellant failed to allege detrimental reliance when he left an at-will job to work for TCF, and worked there for a year. Similarly, here, appellants left at-will work and worked at AIMS for over a year. We conclude that the

district court did not err by concluding that appellants' promissory-estoppel claim could not withstand summary judgment because they failed to properly allege detrimental reliance on any clear and definite promise.

Appellants also challenge the district court's August 2009 grant of summary judgment to respondents on their promissory-estoppel claim. On appeal from a summary judgment decision, we examine whether there are genuine issues of material fact that preclude summary judgment and whether the lower court properly applied the law. *Kratzer v. Welsh Cos., LLC*, 771 N.W.2d 14, 18 (Minn. 2009).

The district court concluded that appellants "abandoned" their initial promissory-estoppel claim when they submitted their November 2008 amended complaint. The undisputed evidence supports this conclusion. But the district court, under Minn. R. Civ. P. 15.02, allowed amendment of the pleadings to conform to the evidence presented, noting that it was essentially revisiting an issue that it had addressed in an earlier order denying appellants' motion to amend their complaint.

Appellants claim that the district court erred by concluding that they failed to allege clear and definite promises relating to "ownership, shared value, and employment." Appellants argue that the district court "never considered whether the promises conveyed between [AIM's chief executive officer (CEO)] and [appellants] were sufficiently clear and definite to them or the length of time over which these promises were conveyed to [appellants]." But the district court concluded that appellant's "new" allegation of the CEO's promise of shared value was too abstract to constitute a clear and definite promise. Throughout 2006 and 2007, the concept of "sharing value" was the

subject of various proposals, but the record indicates that the parties never agreed on a final plan. Appellants provide no evidence or argument as to how the promises made by respondents or their employees were clear and definite. Because the failure to allege a clear and definite promise is enough to support granting a motion for summary judgment on a promissory-estoppel claim, we conclude that the district court did not err by granting respondents' motion for summary judgment. *See Ruud v. Great Plains Supply, Inc.*, 526 N.W.2d 369, 372 (Minn. 1995) (providing that failure to sufficiently allege a clear and definite promise is enough to grant summary judgment).

**II.**

Appellants contend that the district court erred in its September 26, 2008 order by dismissing Allianz SE for lack of personal jurisdiction. We disagree.

Whether personal jurisdiction exists is a question of law subject to de novo review. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004). Minn. Stat. § 543.19 (2008) permits courts to assert personal jurisdiction to the extent permitted by the constitutional requirements of due process. *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 410 (Minn. 1992).

**General Personal Jurisdiction**

General personal jurisdiction exists when a nonresident defendant's contacts with the forum state are "continuous and systematic." *Domtar, Inc. v. Niagara Fire Ins. Co.*, 533 N.W.2d 25, 30 (Minn. 1995) (quotation omitted). A court may only assert general jurisdiction when a defendant's contacts in a state "are so substantial and are of such a nature" as to justify suit for claims unrelated to those activities. *Id.*

We conclude that the district court did not err in determining that it did not have general personal jurisdiction over respondent Allianz SE. Allianz SE is a German corporation with its principal place of business in Germany. Allianz SE is not licensed to do business, solicits no business or investments, maintains no property, office or personnel, and has no bank accounts or phone listings in Minnesota. Further, Allianz SE (1) has never been involved in the day-to-day operations of its subsidiaries; (2) has a different corporate headquarters than its subsidiaries in Minnesota; (3) keeps separate corporate records and holds separate corporate meetings than its subsidiaries in Minnesota; (4) maintains distinct and adequately capitalized financial units among its subsidiaries; and (5) does not pay salaries, expenses, or incur losses from any subsidiaries that do business in Minnesota. In arguing that Allianz SE had sufficient contacts, appellants cite Allianz SE's visits to Minnesota, and e-mails and phone calls to and from AIMS. But the record indicates that most of these contacts were made by officers acting on behalf of Allianz SE's subsidiaries. *See U.S. v. Bestfoods*, 542 U.S. 51, 69, 118 S. Ct. 1876, 1888 (1998) (providing that officers and directors with roles at both parent and subsidiary represent the subsidiary separately when acting on behalf of subsidiary). We conclude the district court properly determined that the nature and quality of these contacts are not so substantial as to subject Allianz SE to general jurisdiction here.

**Specific Jurisdiction**

In contrast to general personal jurisdiction, "[s]pecific [personal] jurisdiction can arise from a single contact with a forum if the cause of action arose out of that contact." *Marshall v. Inn on Madeline Island*, 610 N.W.2d 670, 674 (Minn. App. 2000). Specific

jurisdiction exists only if a plaintiff's claim directly "arises out of or relates to the defendant's contacts with the forum." *Domtar*, 533 N.W.2d at 30.

The district court did not err in concluding that it did not have specific jurisdiction over Allianz SE on the facts alleged. Appellants' pleadings contain minimal allegations of misconduct by Allianz SE, and the district court properly found that the allegations of misconduct were belied by evidence submitted by appellants. Furthermore, Allianz SE's approval of the creation of the AIMS initiative is not sufficient to confer specific jurisdiction over appellants' claims, because no claim of misconduct arose out of Allianz SE's approval of the project.

**III.**

Appellants claim that the district court abused its discretion by failing to sanction respondents for multiple discovery violations, which resulted in prejudice to appellants and an incomplete record. We disagree.

We review a district court's decision regarding sanctions for failure to comply with discovery for an abuse of discretion. *Przymus v. Comm'r of Pub. Safety*, 488 N.W.2d 829, 832 (Minn. App. 1992), *review denied* (Minn. Sept. 15, 1992). A district court abuses its discretion when it makes rulings against logic and unsupported by the record, *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984), or when it acts arbitrarily or capriciously, or misapplies the law. *Montgomery Ward & Co. v. Cnty. of Hennepin*, 450 N.W.2d 299, 306 (Minn. 1990).

Appellants assert that respondents' failure to timely produce discovery materials denied appellants the opportunity to view certain documents, which could have affected the district court's orders. We disagree.

Appellants identified 3 of the 55,000 documents that respondents produced as being "essential." These documents were: (1) an e-mail announcing plans to form AIMS (2) a March 16, 2007 set of notes from an Allianz Life meeting about AIMS; and (3) an August 6, 2007 e-mail to Allianz SE's CEO reporting the decision to terminate AIMS. The record shows that at least one of these documents was available to appellants before oral argument on the motion to amend. And importantly, none of these documents would have helped appellants overcome respondents' motion to dismiss because the documents do not prove Allianz SE's systematic contacts with Minnesota or show promises respondents made to appellants. Thus, we conclude that the district court did not abuse its discretion by not sanctioning respondents for discovery violations. *See State v. Scanlon*, 719 N.W.2d 674, 685 (Minn. 2006) (stating that in determining remedies for discovery violations, the district court considers the reason why the disclosure was not made, and the extent of the prejudice to the opposing party, among other factors).

Appellants claim that the district court treated them unfairly and ignored their request for reconsideration. But the record shows that the court allowed appellants to file untimely briefs, late motions and amended complaints. Further, the court noted that appellants had "indirectly challenged the [court's] prior Orders," but found that the requests for reconsideration were procedurally improper and declined to consider them.

Minn. Gen. Pract. 115.11 provides that "[m]otions to reconsider . . . will be granted only upon a showing of compelling circumstances . . . [and] shall be made only by letter to the court of no more than two pages in length[.]" Appellants submitted a seven-page letter asking about a motion for reconsideration, made an oral reference to the issue of reconsideration, and submitted a letter asking the district court to deem their earlier letter a request for reconsideration. Under these facts and Minn. R. Gen. Pract. 115.11, the district court did not abuse its discretion by denying appellants' procedurally improper requests for reconsideration.

Appellants also claim that the district court treated them unfairly when it "failed to acknowledge" their rule 56.06 affidavit requesting additional discovery. But the record shows that the court considered and rejected appellants' request because it was procedurally improper. "A rule 56.06 affidavit must be specific about the evidence expected, the source of the discovery necessary to obtain the evidence, and the reason for the failure to complete the discovery to date." *Alliance for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 919 (Minn. App. 2003). Appellants' affidavit fails to meet these requirements.

Finally, appellants claim that the district court ignored their request for a rule 16 conference pursuant to Minn. R. Civ. P. 16. But the district court addressed the request at oral argument, indicating that it would address the conference request after it issued its order. And the rule 16 conference request became moot after the district court granted summary judgment dismissing appellants' remaining claim for promissory estoppel. We

conclude that the district court did not abuse its discretion by deferring the ruling on the rule 16 request, and then ruling on the summary-judgment motion.

**IV.**

Respondents moved this court to strike appellants' reply brief. Because we conclude that appellants' reply brief does not raise new issues, we deny this motion. *See* Minn. R. Civ. App. P. 128.02, subd. 4 (confining reply brief to new matters raised in respondent's brief). In addition, respondents moved this court for sanctions against appellants and their counsel, under Minn. Stat. § 549.211, and appellants have requested that this court require respondents to pay their costs in responding to the motion for sanctions. After considering arguments of counsel and the record of this contentious litigation, we deny the motions of both parties.

**Affirmed; motions denied.**