**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A10-440**

Lee McCoy,
Appellant,

vs.

Tousley Ford,
Respondent

**Filed February 8, 2011**
**Affirmed**
**Stauber, Judge**

Ramsey County District Court
File Nos. 62CV0812014; 62CO082703

Lee McCoy, Inver Grove Heights, Minnesota (pro se appellant)

William J. Fleming, Law Office of Michael C. Fleming, White Bear Lake, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Wright, Judge; and Stauber, Judge.

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

**STAUBER**, Judge

On appeal from a district court judgment in favor of respondent-car-dealer arising out of respondent's failure to obtain financing for appellant to purchase his leased vehicle following expiration of the lease, pro se appellant claims that (1) the evidence does not support the district court's findings of fact and (2) the district court's findings of fact do

not support its conclusions of law and judgment. Because the district court's findings of fact and conclusions of law were precise and supported by the record, we affirm.

## FACTS

In July 2001, appellant Lee McCoy entered into an agreement with respondent Tousley Ford and Ford Motor Credit Company (FMCC) to lease a 2002 Ford Explorer for 36 months. Under the terms of the lease agreement, appellant had the option to purchase the vehicle at the end of the lease by paying respondent $16,716.45. At the end of the lease, appellant was required to pay 20 cents per mile for each mile driven in excess of 36,038. However, respondent would waive any excess mileage costs if appellant purchased the vehicle.

When the lease term expired on November 10, 2004, appellant owed $15,103.20 for excess mileage and wear. Accordingly, appellant preferred to purchase the vehicle for $16,716.45, rather than return the truck and pay the excess mileage cost. Appellant requested respondent's help in securing financing to purchase the vehicle. Respondent's finance manager discovered that appellant's credit score had dropped from 587 when he initially leased the vehicle, to 423 on December 1, 2004. According to respondent, appellant would not qualify for financing from FMCC because his credit score was far below FMCC's "cut-off score" of 600. Respondent thus applied for credit on appellant's behalf with at least five subprime lenders. All of the lenders declined to provide appellant with financing. At the insistence of appellant, respondent also submitted an application for credit to FMCC, which also declined financing.

Appellant alleged that respondent's application delays and multiple credit inquiries eroded his credit score. Respondent's finance manager testified that the drop in credit score was due to a combination of at least 17 late payments during the term of the lease agreement and appellant's other outstanding debt.

Appellant signed a vehicle inspection report when he returned the vehicle. The report indicates that appellant drove 65,516 excess miles, at a cost of $13,103.20, and also incurred $3,725.00 in wear and use charges. Subsequently, Calvary Portfolio Services—which purchased the account from FMCC—sued appellant for $18,422.46, plus interest.[1] Appellant in turn sued respondent for $18,422.26, plus ongoing interest.

Following a court trial, the district court found in favor of respondent on appellant's claims. Although appellant did not clearly specify a legal theory upon which he sought relief, the district court construed appellant's claim as one for promissory estoppel.[2] While the court found that appellant relied on respondent to obtain financing, it also found that respondent never promised to obtain financing. The court found that respondent merely promised to *help* appellant obtain financing, "but due to [appellant's] low credit score, overage of miles and the diminution in value of the vehicle, [respondent] was unable to find a lender willing to finance the purchase." The court

[1] The vehicle condition report shows that the respondent charged appellant for the following: $13,103.20 for excess mileage; $3,725.00 for wear and use; $1,177.97 for tax on the excess charges; and $661.13 for late charges. This totaled $18,667.30. It is unclear from the record why Calvary Portfolio Services sued appellant for the lesser sum of $18,422.46.

[2] We commend the district court for its willingness to define the issues presented and for its detailed factual findings.

further found that appellant did not prove that his reliance on respondent's alleged promise was reasonable. This appeal followed.

## D E C I S I O N

### I. Does the evidence support the district court's findings of fact?

"On appeal from a judgment where there has been no motion for a new trial, appellate review is limited to 'whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and the judgment.'" *Rainforest Cafe, Inc. v. Wisconsin*, 677 N.W.2d 443, 450 (Minn. App. 2004) (quoting *Gruenhagen v. Larson*, 310 Minn. 454, 458, 246 N.W.2d 565, 569 (Minn. 1976)). "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. "If there is reasonable evidence to support the [district] court's findings of fact, a reviewing court should not disturb those findings." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

While appellant does not explicitly identify any appealable issues, he appears to argue that the evidence does not support the district court's findings. Appellant first claims that respondent discriminated against him and delayed obtaining financing. Appellant claims that this "recklessness and disregard" caused him personal injury. Appellant also claims that respondent was "dishonest about the vehicle inspection report" and that he trusted respondent's lease manager, "not knowing the consequences."

We conclude that appellant's claims are without merit. The district court made careful, detailed findings of fact that that are supported in the record. The district court

found that appellant entered into the lease, drove the vehicle far in excess of the mileage allowance, and could either pay $16,716.45 to purchase the vehicle, or return the vehicle and pay $15,103.20 in excess mileage fees plus additional costs. These facts are undisputed.

The district court further found that appellant "requested that Tousley assist in obtaining financing for the desired purchase." This finding is supported by the fact that appellant filled out an application for financing on December 4, 2004. However, the evidence indicates that respondent never explicitly promised to obtain financing for appellant. Respondent's finance manager testified that appellant "wished to receive financing," but that respondent never promised to obtain financing. Respondent's leasing manager testified similarly. We therefore conclude that the evidence supports the district court's finding that although appellant requested assistance in securing financing to purchase the vehicle, respondent made no clear and definite promise to obtain financing for appellant. Respondent helped appellant evaluate his options and submitted appellant's credit application to various subprime lenders.

## II. Do the district court's findings of fact support its conclusions of law and judgment?

While the district court's findings of fact are subject to a clearly erroneous standard of review, "conclusions of law are not binding on this court and are reviewed de novo." *Id.*

As indicated above, the district court construed appellant's claim as one for promissory estoppel. "[P]romissory estoppel is a creature of equity." *Olson v.*

*Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 152 (Minn. 2001). It "implies a contract in law where no contract exists in fact." *Deli v. Univ. of Minn.*, 578 N.W.2d 779, 781 (Minn. App. 1998), *review denied* (Minn. May 19, 1998). The elements of a promissory estoppel claim include (1) a clear and definite promise; (2) the promisor intended to induce reliance, and the promisee relied to his or her detriment; and (3) the promise must be enforced to prevent injustice. *Cohen v. Cowles Media Co.*, 479 N.W.2d 387, 391 (Minn. 1992).

Appellant claims that the district court's conclusions were "one-sided." We disagree. The findings of fact support the district court's conclusion that respondent did not promise to obtain financing for appellant. The district court stated that "at best [respondent] promised to help [appellant] obtain financing, but . . . was unable to find a lender willing to finance the purchase for [appellant]." Consistent with this finding, the record lacks any evidence that respondent explicitly promised to obtain financing. Where a "clear and definite promise" is lacking, a claim of promissory estoppel fails as a matter of law. *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W. 2d 732, 746-47 (Minn. 2000).

The district court's findings of fact also support its conclusion that appellant's reliance on respondent's alleged promise was not reasonable. The district court reasoned that, "[U]nder no circumstances could any dealer 'guarantee' that it would find a lender that would agree to finance [a] purchase." We agree that appellant's reliance on the alleged promise was not reasonable.

Because appellant has failed to establish the first two elements of a promissory estoppel claim, he is not entitled to relief on appeal.

**Affirmed.**