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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-601**

University Auto Sales,
Respondent,

vs.

AAMCO & Meggitt Transmission d/b/a AAMCO,
Appellant.

**Filed December 14, 2010
Affirmed in part and reversed in part
Stauber, Judge**

Ramsey County District Court
File Nos. 62CV095404; 62CO084323

University Auto Sales, St. Paul, Minnesota (respondent)

Marcus Jarvis, Jarvis & Associates, L.L.C., Burnsville, Minnesota; and

Keillen Curtis, Curtis Law Firm, Minneapolis, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Kalitowski, Judge; and
Huspeni, Judge.*

UNPUBLISHED OPINION

STAUBER, Judge

On appeal in this case stemming from a failed auto repair, appellant AAMCO &
Meggitt Transmission (AAMCO) challenges the district court's \$90 judgment in favor of

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

respondent University Auto Sales (UAS) and the district court's dismissal of AAMCO's counterclaim for breach of contract and unjust-enrichment. AAMCO asserts that the district court erred by (1) allowing UAS, a limited-liability company, to proceed without counsel in the district court and (2) dismissing AAMCO's counterclaim because the court found insufficient evidence to show an agreement to settle UAS's claim through the provision of another repair. We affirm the district court's dismissal of AAMCO's counterclaim, but reverse the \$90 judgment in favor of UAS.

FACTS

This case arises from a failed transmission repair performed by AAMCO on a vehicle owned by UAS. In January 2008, UAS, a limited-liability company (LLC), brought a 1999 Honda Accord to AAMCO because the car had a transmission problem. AAMCO agreed to perform a diagnostic examination to determine whether the car's transmission needed to be replaced. AAMCO determined that a replacement linear solenoid module (solenoid) would fix the problem and UAS agreed to the repair. When the work was completed, Mohsen Aghamirzai, UAS's sole LLC member, picked up the vehicle and tendered a check in the amount of \$389.47 for the diagnostic work and solenoid replacement. However, after driving away, he discovered that the transmission was still not functioning properly. Aghamirzai returned to the shop and discussed the matter with AAMCO's service manager, Adam Baumgartner. They agreed that AAMCO would take another look at the car to try to determine the problem. The parties discussed what to do with the check that UAS had tendered, and agreed that AAMCO would hold it for the time being and credit UAS for any additional work that might be necessary.

AAMCO discovered that the car's transmission could not be repaired and instead needed to be replaced. UAS decided to replace the transmission itself and picked up the car. UAS was told that its check could not be returned because it had already been deposited. Aghamirzai contacted Baumgartner about getting a refund of the \$389.47, but was told that AAMCO would not refund the entire amount unless UAS returned the solenoid that had been installed on the vehicle. AAMCO's position was that it could refund the cost of the labor—\$90—but needed the solenoid back in order to refund the entire amount. UAS was unable to return the solenoid because the vehicle's old transmission, into which AAMCO had installed the solenoid, had already been recycled.

UAS filed a claim against AAMCO in conciliation court and initially obtained a default judgment. The case was reopened in conciliation court and UAS was again awarded a judgment against AAMCO. AAMCO then removed the action from conciliation court to district court where a trial was held on the matter. At trial, UAS appeared without counsel. UAS was instead represented by Aghamirzai, the sole member of the LLC. AAMCO moved for dismissal on the ground that UAS was required to be represented by legal counsel. The court denied the motion, reasoning that only corporations were required to be represented by counsel, not LLCs. The district court then awarded UAS \$90, the cost of labor for the installation of the solenoid, but not the remaining \$299.47 because UAS was unable to return the new solenoid to AAMCO.

AAMCO also brought a counterclaim against UAS. It alleged that after the incident with the 1999 Honda Accord transmission, UAS brought in another vehicle, a 2000 Mazda, for repair and AAMCO repaired the Mazda at no charge in order to settle

the disagreement. The counterclaim sought \$800 on theories of breach of an oral contract and unjust enrichment. Richard Meggitt of AAMCO testified that AAMCO repaired the Mazda at no cost, intending to settle the dispute over the solenoid. UAS introduced evidence and testimony that the Mazda was not owned by UAS, but had been sold to a customer along with a warranty. The warranty contract was between the customer and an entity called Wynn's Plus. Aghamirzai testified that UAS was not a party to the transaction between the car owner and AAMCO, but merely brought the vehicle in because the customer did not speak English. He testified that AAMCO should have billed Wynn's Plus for the warranty work, that there was no agreement regarding settlement of the solenoid dispute, and that UAS was not unjustly enriched by the work that was done. Following the trial, the district court dismissed the counterclaim, finding that AAMCO did not present sufficient evidence to show that an oral contract was formed or that UAS had been unjustly enriched. This appeal followed.

D E C I S I O N

I.

AAMCO argues that the district court erred by allowing UAS to proceed to trial without an attorney. Whether an LLC must be represented by an attorney in legal proceedings is a question of law, reviewed de novo. *See Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984) (stating that appellate courts review legal issues de novo).

We note at the outset that AAMCO incorrectly frames this issue in terms of whether the district court had jurisdiction to proceed when UAS was not represented by

an attorney. The issue is not one of jurisdiction. This court has stated that “[b]ecause the common law rule requiring that a corporation be represented by counsel in legal proceedings does not describe the classes of cases or persons within the district court’s adjudicatory authority, the rule is not ‘jurisdictional.’” *Save Our Creeks v. City of Brooklyn Park*, 682 N.W.2d 639, 643 (Minn. App. 2004), *aff’d*, 699 N.W.2d 307 (Minn. 2005).

AAMCO argues that an LLC, like a corporation, must be represented by an attorney in legal proceedings. We agree. The common-law rule that a corporation must be represented by an attorney in legal proceedings is well established in Minnesota. *Save Our Creeks v. City of Brooklyn Park*, 699 N.W.2d 307, 309 (Minn. 2005). This rule is grounded by “ethical and professional considerations”:

A non-attorney agent of a corporation is not subject to the ethical standards of the bar and is not subject to court supervision or discipline. The agent knows but one master, the corporation, and owes no duty to the courts. In addition, a corporation is an artificial entity which can only act through agents. To permit a lay individual to appear on behalf of a corporation would be to permit that individual to practice law without a license.

Id. (quoting *Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753, 754 (Minn. 1992)).

In *Nicollet Restoration*, the Minnesota Supreme Court held that a corporation must be represented by a licensed attorney when appearing in district court, notwithstanding the fact that the action originated in conciliation court. 486 N.W.2d at 753. AAMCO is correct that this common-law rule also extends to LLCs, as this court recently held. *301 Clifton Place LLC v. 301 Clifton Place Condominium Ass’n*, 783 N.W.2d 551, 556

(Minn. App. 2010) (“[LLCs] are required to be represented by counsel in pleadings and practice in Minnesota courts.”). Therefore, the district court erred by allowing UAS to appear at trial with its nonattorney LLC member Aghamirzai as its representative.

Next, we address the proper remedy for this nonattorney representation violation. In *Save Our Creeks*, the Minnesota Supreme Court addressed the consequences for a violation of this rule in the context of a complaint filed on behalf of a corporation but signed by a nonattorney. 699 N.W.2d at 309–310. The supreme court held that dismissal of the action was not warranted; rather, the court concluded that the defective complaint was curable if certain elements were met. *Id.* at 310–11. These elements require that: (1) the corporation acts without knowledge that its action was improper; (2) upon notice, the corporation diligently corrects its mistake by obtaining counsel, but in no event may it appear in court without an attorney; (3) the nonattorney’s participation in the action is minimal; and (4) the nonattorney’s participation results in no prejudice to the opposing party. *Id.*

This case, unlike the Supreme Court’s decision in *Save Our Creeks*, does not present a curable defect. Aghamirzai’s participation in the case, in which he represented the LLC at trial, cannot be considered minimal. Further, UAS did not attempt to remedy the mistake, and indeed still has not obtained counsel. The second element of the *Save Our Creeks* test makes clear that a corporation may not appear in court without an attorney under any circumstances. The supreme court also noted that the test itself is “narrowly crafted so as to ensure that corporations always appear in court represented by an attorney.” *Id.* at 311. Because UAS’s appearance at trial with a nonattorney

representative was a defect that was not cured, the district court should have dismissed the action rather than proceeded with trial. Accordingly, we reverse the judgment for \$90 in favor of UAS.

II.

AAMCO also argues that the district court erred by dismissing its counterclaim. Addressing the counterclaim, the district court concluded that “there is not sufficient evidence that a contract was ever formed, or that plaintiff was unjustly enriched.” AAMCO does not argue that the district court’s judgment should be reversed on the ground that UAS was not represented by an attorney and makes no claim that it was prejudiced in litigating its counterclaim by UAS’s appearance without counsel. Therefore we address the merits of AAMCO’s counterclaim.

AAMCO argues that a contract was formed between UAS and AAMCO concerning repair work performed on the Mazda. AAMCO’s counterclaim alleged that the vehicle was repaired at no charge in exchange for UAS’s agreement to settle the dispute over the solenoid. The counterclaim sought \$800, the cost of the work performed on the Mazda, and was based on theories of breach of contract and unjust enrichment.

“[O]n appeal from a judgment where there has been no motion for a new trial[,] the only questions for review are whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and the judgment.” *Gruenhagen v. Larson*, 310 Minn. 454, 458, 246 N.W.2d 565, 569 (1976). In reviewing the decision of a district court sitting without a jury, due deference must be given to the district court’s credibility determinations, and factual findings will be set aside only if clearly erroneous.

Patterson v. Stover, 400 N.W.2d 398, 400 (Minn. App. 1987) (citing Minn. R. Civ. P. 52.01). “Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted).

A. Breach of Contract

To establish that a contract existed, a plaintiff must prove a valid offer, acceptance, and consideration. *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). A contract requires the parties to “agree with reasonable certainty about the same thing and on the same terms.” *Peters v. Mut. Benefit Life Ins. Co.*, 420 N.W.2d 908, 914 (Minn. App. 1988). There must be a “meeting of the minds concerning [the alleged agreement’s] essential elements.” *Minneapolis Cablesystems v. City of Minneapolis*, 299 N.W.2d 121, 122 (Minn. 1980).

The evidence in the record substantially sustains the district court’s finding that no contract was formed. Meggitt testified that AAMCO discussed not charging for the work done on the Mazda in exchange for settling the dispute over the solenoid. However, Meggitt’s testimony did not indicate that any offer to settle the dispute was actually presented to UAS, or that anyone from UAS ever accepted the offer. Meggitt only testified that he believed the matter was settled. Therefore, we conclude that the district court did not err in determining that no contract was formed.

B. Unjust Enrichment

AAMCO also argues that it should have prevailed on its counterclaim based on the theory of unjust enrichment. Unjust enrichment is established when a party knowingly receives something of value to which he was not entitled, and the circumstances are such that it would be unjust to retain the benefit. *ServiceMaster of St. Cloud v. GAB Bus. Servs., 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 evidence in the record substantially sustains the district court’s finding that UAS was not unjustly enriched. UAS presented evidence that the vehicle had been sold to a customer and was no longer owned by UAS. Aghamairzai testified that UAS was not responsible for any repairs the vehicle needed and had not authorized the repairs. He stated that UAS would ordinarily be responsible for repairs to vehicles it sold only if UAS had issued a dealer warranty to the customer. In this case there was no dealer warranty issued; rather, the warranty was between UAS’s customer and Wynn’s Plus. There was no evidence to show that UAS had received something of value by AAMCO repairing the vehicle at no cost. Thus, we conclude that the evidence supports the district court’s finding that UAS was not unjustly enriched. We therefore affirm the district court’s dismissal of AAMCO’s counterclaim.

Affirmed in part and reversed in part.