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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A15-1993**

Robert Martin, et al.,  
Appellants,

vs.

A'BULAE, LLC, et al.,  
Respondents.

**Filed July 11, 2016  
Affirmed  
Larkin, Judge**

Ramsey County District Court  
File No. 62-CV-15-1939

Charles E. Keenan, Christoffel & Elliott, P.A., St. Paul, Minnesota (for appellants)

David L. Hashmall, Christopher S. Hayhoe, Felhaber Larson, Minneapolis, Minnesota (for respondents)

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Smith,  
John, Judge.\*

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

## UNPUBLISHED OPINION

**LARKIN**, Judge

Appellants, assignees of the claims of a commercial landlord, challenge the district court's dismissal of their breach-of-contract, equitable-estoppel, promissory-estoppel, and unjust-enrichment claims against respondents, a commercial tenant and its chief manager and president, for failure to state a claim upon which relief can be granted. We affirm.

### FACTS

Appellants Robert Marvin and David Brooks are former members of 9 & 19 LLC (9 & 19) and assignees of its claims.<sup>1</sup> In September 2012, 9 & 19 entered into a ten-year commercial-lease agreement with respondent A'BULAE LLC to lease a portion of a building that 9 & 19 owned in St. Paul (the property) to A'BULAE. Paragraph 36 of the lease states that "Landlord shall deposit \$1,500,000.00 and Tenant shall deposit \$300,000.00 in an escrow account to be used to fund . . . Tenant Improvements." The lease defines "Tenant Improvements" as "all alterations, improvements and additions to the Leased Premises performed by Landlord or its agents, or Tenant, excluding movable equipment and furniture owned by Tenant," as set forth in an attachment to the lease. In accordance with paragraph 36 of the lease, 9 & 19 contributed \$1,500,000, and A'BULAE contributed \$300,000, for tenant-improvement costs.

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<sup>1</sup> The case caption in the district court identifies this appellant as "Robert Martin" and that name is used in the caption on appeal. However, the amended complaint and respondents' brief identify this appellant as "Robert Marvin." The caption on appeal must match the caption used in the district court's decision, *see* Minn. R. Civ. App. P. 143.01, but we use "Robert Marvin" in the body of this opinion.

Paragraph 33(f) of the lease provides that:

All negotiations, considerations, representations, and understandings between Landlord and Tenant are incorporated herein and may be modified or altered only by agreement in writing between Landlord and Tenant, and no act or omission of any employee or agent of Landlord or of Landlord's broker shall alter, change or modify any of the provisions hereof.

In March 2015, appellants sued respondents A'BULAE and Timothy George, its chief manager and president, asserting breach-of-contract, equitable-estoppel, promissory-estoppel, and unjust-enrichment claims. Appellants alleged that as the tenant improvements progressed, respondents requested construction changes that increased the costs of the improvements. Appellants further alleged that 9 & 19 agreed to the changes, 9 & 19 informed respondents that they would be required to pay for those changes, respondents orally agreed to pay for the increased costs, and that respondents failed to pay for increased costs in the amount of \$576,011.54.

Respondents moved to dismiss under Minn. R. Civ. P. 12.02(e), for failure to state a claim upon which relief can be granted. The district court granted respondents' motion to dismiss, and this appeal follows.

## **DECISION**

A pleading must "contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought." Minn. R. Civ. P. 8.01. A pleading may be dismissed under Minn. R. Civ. P. 12.02(e) if it "fail[s] to state a claim upon which relief can be granted." A pleading should be dismissed under rule 12.02(e) "only if it appears to a certainty that no facts, which could be introduced consistent

with the pleading, exist which would support granting the relief demanded.” *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010) (quotation omitted); *see also Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014) (“A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader’s theory, to grant the relief demanded.”).

An appellate court reviews an order to dismiss under Minn. R. Civ. P. 12.02(e) *de novo*. *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn. 2013). We consider “only the facts alleged in the complaint, accepting those facts as true.” *Id.* (quotation omitted). However, we are “not bound by legal conclusions stated in a complaint.” *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008).

Appellants rely on several contentions in support of reversal. We address each in turn.<sup>2</sup>

## I.

Appellants contend that “the district court erred as a matter of law when it dismissed [their] equitable estoppel claim.” “Equitable estoppel is a doctrine designed to prevent a party from taking unconscionable advantage of his own actions.” *Bethesda Lutheran Church v. Twin City Constr. Co.*, 356 N.W.2d 344, 349 (Minn. App. 1984), *review denied* (Minn. Feb. 5, 1985). Before a court will examine the conduct of a party sought to be

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<sup>2</sup> Because paragraph 33(f) of the lease expressly provides that the lease may only be modified by an agreement in writing, we focus on that provision and do not discuss the parties’ arguments regarding the possible application of the statute of frauds. *See* Minn. Stat. § 513.05 (2014) (providing that a lease of more than one year’s duration must be in writing); *Alexander v. Holmberg*, 410 N.W.2d 900, 901 (Minn. App. 1987) (noting that any modification of a lease of more than one year’s duration must generally be in writing).

estopped, the party seeking the application of equitable estoppel must show that the party suffered some loss through reasonable reliance on the other party's conduct. *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 292 (Minn. 1980). "An essential element of equitable estoppel is reasonable reliance." *Anderson v. Minn. Ins. Guar. Ass'n*, 534 N.W.2d 706, 709 (Minn. 1995). Equitable estoppel is generally not applicable to routine or typical transactions. *See, e.g., Sacred Heart Farmers Coop. Elevator v. Johnson*, 305 Minn. 324, 327-28, 232 N.W.2d 921, 923 (1975) (declining to apply equitable estoppel to a typical grain transaction between a seller and a grain elevator because doing so would "seriously weaken the force of the statute of frauds").

As to reasonable reliance, appellants argue that "it seems more than obvious that it would be natural and probable for 9 & 19 to act upon Respondents' representation that they would pay for the improvements outside of those agreed to in the Lease" because respondents had already "absolutely committed to, and paid \$300,000." Appellants further argue that "[t]he detrimental reliance by 9 & 19 was reasonable under the circumstances." We are not persuaded.

9 & 19 and A'BULAE appear to be sophisticated commercial parties. They executed a written contract for a ten-year lease, providing for over \$4 million in rent payments and \$1.8 million in tenant-improvement payments. The written contract limited A'BULAE's responsibility for the costs of tenant improvements to \$300,000. The written contract also provided that the terms of the contract could only be modified by a written agreement of the landlord and tenant. Under the circumstances, it was unreasonable, as a matter of law, for 9 & 19 to spend over \$500,000 on additional tenant improvements based

on an alleged oral promise to pay that was unenforceable under the terms of 9 & 19's written contract with A'BULAE.

Because there are no facts that could be introduced consistent with appellants' theory to establish that 9 & 19 reasonably relied on A'BULAE's alleged oral promise to pay an amount greater than \$300,000 for improvements, the district court did not err by granting A'BULAE's motion to dismiss appellants' equitable-estoppel claim.

## II.

Appellants contend that “the district court erred as a matter of law when it dismissed [their] claim for oral modification of the lease.” Paragraph 33(f) of the lease specifically provides that the lease “may be modified or altered only by agreement in writing between Landlord and Tenant.” As support for their oral-modification theory, appellants rely on a May 26, 2014 letter from George to Brooks, in which George allegedly “indicated . . . that ‘[t]hroughout the buildout phase, I orally agreed to \$141,294.00 of additional buildout costs’” and stated “‘I am fully performing on all commitments . . . regarding the additional expenses to which I orally agreed.’”

The letter does not satisfy the contractual requirement for modification “only by agreement in writing between Landlord and Tenant.” First, the letter does not describe an agreement between 9 & 19 and A'BULAE that A'BULAE would pay all costs of additional improvements. Instead, it describes A'BULAE's willingness to pay a fraction of those costs. Second, the letter is a one-way communication from George, in his capacity as A'BULAE's president, to Brooks; it is not a document signed by representatives of both 9

& 19 and A'BULAE acknowledging an agreement. In sum, the letter is not an “agreement in writing” sufficient to modify the lease under its own terms.<sup>3</sup>

Appellants also argue that “a court may consider parol evidence of subsequent conversations which alter the terms of a contract to determine if the parties have orally modified a contract.” *See Nord v. Herreid*, 305 N.W.2d 337, 340 (Minn. 1981) (allowing admission of parol evidence to clarify ambiguous term). But “evidence [of a subsequent oral modification] must be clear and convincing to justify setting aside a written contract and holding it as abandoned or substituted by a subsequent parol contract at variance with its terms.” *Duffy v. Park Terrace Supper Club, Inc.*, 295 Minn. 493, 498-99, 206 N.W.2d 24, 28 (1973). Because the letter is inconsistent with the alleged oral agreement to pay for all increased tenant-improvement costs, the letter is not clear-and-convincing evidence of the alleged agreement.

### III.

Appellants contend that “respondents and 9 & 19 entered into a separate and distinct oral agreement . . . outside the terms of the lease.” Appellants argue that “[t]here is no dispute among the parties that all of the conditions, including payment, relating to the

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<sup>3</sup> Respondents argue that George’s letter is a statement made in compromise negotiations and therefore inadmissible under Minn. R. Evid. 408. *See* Minn. R. Evid. 408 (“Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.”). Because the letter does not satisfy the written modification requirement, we do not determine whether rule 408 precludes consideration of the letter.

tenant improvements described in Paragraph 36 of the Lease were satisfied” and that “the parties entered into a new oral contract for additional tenant improvements and payment thereof not contemplated by Paragraph 36 of the Lease.”

Appellants’ argument that 9 & 19 and respondents entered into a separate oral contract is inconsistent with the factual allegations in the amended complaint, which describe the additional improvements as “*changes* to the construction plan, which *increased* the costs of the Tenant Improvements far and above the \$1,800,000 contemplated by [appellants].” (Emphasis added). The amended complaint describes the alleged oral agreement as arising from respondents’ requests for those changes and notes that respondents have “failed or refused to pay for the *increased* costs” of tenant improvements. (Emphasis added). Although appellants’ amended complaint also refers to a “separate oral contract between 9 & 19 and [respondents],” this statement is a legal conclusion, which is not binding on this court. *See Hebert*, 744 N.W.2d at 235 (noting that reviewing courts “are not bound by legal conclusions stated in a complaint”). Because evidence that could support the claim that 9 & 19 and respondents entered into a separate and distinct oral contract would be inconsistent with the factual allegations in the pleading, the district court did not err by dismissing that claim. *See Bahr*, 788 N.W.2d at 80 (“[A] pleading will be dismissed . . . if it appears to a certainty that no facts, which could be introduced *consistent with the pleading*, exist which would support granting the relief demanded.” (emphasis added) (quotation omitted)).

#### IV.

Appellants contend that “the district court erred by not applying the doctrine of part performance.” Because appellants did not raise this argument in district court, it is not properly before this court, and we do not consider it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (“A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” (quotation omitted)).

## V.

Appellants contend that “the district court erred as a matter of law when it dismissed [their] promissory estoppel claim.” “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) (quotation omitted). “[A]n express contract covering the same subject matter will preclude the application of promissory estoppel.” *Greuling v. Wells Fargo Home Mortg., Inc.*, 690 N.W.2d 757, 761 (Minn. App. 2005). Because there is an express contract covering A’BULAE’s financial responsibility for the costs of tenant improvements, appellants are not entitled to relief under the doctrine of promissory estoppel. *See id.*; *see also U.S. Fire Ins. Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn. 1981) (“[E]quitable relief cannot be granted where the rights of the parties are governed by a valid contract.”).

Moreover, no facts exist that could establish that the alleged oral promise must be enforced to prevent injustice. “To state a claim for promissory estoppel, the plaintiff must show that (1) there was a clear and definite promise, (2) the promisor intended to induce reliance and such reliance occurred, and (3) the promise must be enforced to prevent

injustice.” *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 834 (Minn. 2011). For purposes of rule 12.02(e), whether facts alleged in a complaint rise to the level of promissory estoppel presents a question of law. *Martens*, 616 N.W.2d at 746. Whether a promise must be enforced to prevent an injustice is “a legal question for the court, as it involves a policy decision.” *Cohen v. Cowles Media Co.*, 479 N.W.2d 387, 391 (Minn. 1992).

9 & 19 and A’BULAE expressly agreed that the provisions of the lease may only be modified “by [an] agreement in writing” between 9 & 19 and A’BULAE. Application of promissory estoppel to enforce A’BULAE’s alleged oral promise to pay more than \$300,000 for tenant improvements would require a conclusion that, despite an express provision in the lease requiring all modifications to be in writing, the alleged oral promise must be enforced to prevent injustice.

We do not discern an injustice justifying application of promissory estoppel. As discussed above, appellants could not, as a matter of law, reasonably rely on A’BULAE’s alleged oral promise to pay more than A’BULAE was required to under the written contract between 9 & 19 and A’BULAE where that contract requires that an agreement to modify the contract must be in writing. Because A’BULAE’s financial responsibility for the costs of tenant improvements is limited to \$300,000 under the written contract between 9 & 19 and A’BULAE and because no facts exist that could establish that the alleged oral agreement must be enforced to prevent injustice, the district court did not err by granting A’BULAE’s motion to dismiss appellants’ promissory-estoppel claim. *See Walsh*, 851 N.W.2d at 603.

## VI.

Appellants contend that “the district court erred as a matter of law when it dismissed [their] unjust enrichment claim.” “Unjust enrichment is an equitable doctrine that allows a plaintiff to recover a benefit conferred upon a defendant when retention of the benefit is not legally justifiable.” *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 838 (Minn. 2012). Unjust enrichment “does not apply when there is an enforceable contract that is applicable.” *Id.* “Thus, to prevail on a claim of unjust enrichment, a claimant must establish an implied-in-law or quasi-contract in which the defendant received a benefit of value that unjustly enriched the defendant in a manner that is illegal or unlawful.” *Id.*

Appellants’ unjust-enrichment claim fails as a matter of law because the commercial lease governs A’BULAE’s financial responsibility for the costs of tenant improvements. *See Colangelo v. Norwest Mortg.*, 598 N.W.2d 14, 19 (Minn. App. 1999) (“Where the rights of the parties are governed by a valid contract, a claim for unjust enrichment must fail . . .”), *review denied* (Minn. Oct. 21, 1999).

Moreover, “unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others . . . .” *First Nat’l Bank of St. Paul v. Ramier*, 311 N.W.2d 502, 504 (Minn. 1981). And there are no facts that could be introduced to establish that A’BULAE was enriched in a manner that was illegal or unlawful.

For these reasons, the district court did not err by granting A’BULAE’s motion to dismiss appellants’ unjust-enrichment claim.

## VII.

Appellants contend that “[a]t minimum, any claim for breach of contract relating to George for the additional tenant improvements should survive Rule 12.02(e).” Appellants argue that “[they] allege that George directly, along with A’Bulae, agreed to pay for the increased costs to the tenant improvements separate and apart from those described in paragraph 36 of the Lease.” Respondents argue that because “[t]he amended complaint makes no allegation that George did anything other than act as A’BULAE’s chief manager and president,” all claims against him are meritless.

The amended complaint states that “Abulae and George orally accepted financial responsibility for the increased costs of the changes to the Tenant Improvements” and that “Abulae and George have acknowledged that they orally agreed to pay for all increased costs to the Tenant Improvements.” However, the amended complaint does not identify a legal theory supporting a claim of personal liability against George. For example, the complaint does not indicate whether George is liable for the costs of additional improvements because he separately entered into an oral agreement to pay for such costs or because he personally guaranteed A’BULAE’s performance of the alleged oral agreement. The only allegation regarding George in the amended complaint is the description of George’s letter to Brooks. But George signed the letter in his capacity as president of A’BULAE. The letter therefore does not provide support for appellants’ claim that George is individually liable. *See* Minn. Stat. § 322B.303, subd. 1 (2014) (“[A] member, governor, manager, or other agent of a limited liability company is not, merely

on account of this status, personally liable for the acts, debts, liabilities, or obligations of the limited liability company.”).

Because appellants’ legal theory regarding George’s personal liability is unclear from the amended complaint and the letter described in the amended complaint does not suggest personal liability, the district court did not err by dismissing the claims against George. *See* Minn. R. Civ. P. 8.01 (requiring a “plain statement of the claim showing that the pleader is entitled to relief”).

**Affirmed.**