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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0075**

Tony's Construction,
Appellant,

vs.

Kraus-Anderson Construction Company,
Defendant,

St. Louis County Schools - ISD #2142,
Respondent.

**Filed July 5, 2016
Affirmed
Kirk, Judge**

St. Louis County District Court
File No. 69VI-CV-14-740

Gordon C. Pineo, Deal & Pineo, P.A., Virginia, Minnesota (for appellant)

John M. Colosimo, Bonnie A. Thayer, Colosimo, Patchin & Kearney, Ltd., Virginia,
Minnesota (for respondent)

Considered and decided by Kirk, Presiding Judge; Stauber, Judge; and Bjorkman,
Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant-subcontractor challenges the district court's grant of summary judgment
to respondent-owner, a school district, on appellant's claims of quantum meruit, unjust

enrichment, quasi or implied contract, and promissory estoppel. Appellant argues that genuine issues of material fact preclude summary judgment and that the district court erred by failing to address whether the general contractor served as respondent's agent. We affirm because appellant's release of the general contractor from liability released respondent from liability as well.

FACTS

This appeal centers on the alleged nonpayment of a subcontractor who worked on the Cherry School renovation project. The relationship between the parties is as follows: in August 2010, respondent St. Louis County Schools - ISD #2142 (ISD) hired Johnson Controls, Inc. (JCI) to act as the program manager for the renovation project. JCI hired defendant Kraus-Anderson Construction Company to serve as the construction manager of the project. Other contracts described Kraus-Anderson as a "subconsultant" to the renovation project. Hammerlund Construction, a general contractor, accepted appellant Tony's Construction's bid to perform subcontracting work including excavation, backfill footings, and installation of erosion control and storm ponds.

In December 2014, Tony's filed a complaint against Kraus-Anderson and ISD under the theory of quantum meruit, alleging that it had not been paid for change-order work performed under the direction of Kraus-Anderson and with Hammerlund's knowledge. Tony's later amended its complaint to include claims of unjust enrichment, quasi or implied contract, and promissory estoppel.

In a deposition, Anthony Lastovich, owner of Tony's, testified that he and three of his employees worked at the Cherry School renovation site. During the renovation, Tony's

executed several change orders. A change order was a new or different task that Tony's was asked to perform. Before Tony's would begin work on a change order, Lastovich would determine the cost of labor and materials to complete the task and provide Hammerlund with this information. Hammerlund would then authorize Tony's to perform the task, and Tony's would complete the change order. The contractual agreement between Hammerlund and Tony's stated that Tony's agreed to secure Hammerlund's consent and written authorization before performing any change-order work.

During the early stages of the renovation, Hammerlund and Tony's followed the change-order process as outlined in their contractual agreement. But as the workers faced a looming project deadline, Lastovich and his employees began taking directions on change orders from Kraus-Anderson's onsite project manager despite the fact that Tony's did not have a direct contractual relationship with Kraus-Anderson. Zachary Preble, Hammerlund's project manager for the renovation, testified in a deposition that the project was plagued with problems and did not run smoothly. Lastovich testified that Kraus-Anderson's project manager ordered that any problems "be dealt with almost immediately." He also told Lastovich to keep track of his work and hours and that Kraus-Anderson would pay for the change-order work at the end of the project. Lastovich expected that payment for the completed change-order work would be funneled from Kraus-Anderson to Hammerlund, who would then pay Tony's.

At the end of the project, Lastovich submitted 19 invoices for unpaid change orders totaling \$76,579.62. Prior to initiating this action, Lastovich settled his dispute with

Hammerlund through a Pierringer release for \$15,366.29. In 2015, Tony's dismissed its claim against Kraus-Anderson with prejudice.

Tony's sued ISD under the theory of quantum meruit, quasi or implied contract, and unjust enrichment, arguing that ISD was unjustly enriched by its work on the renovation project, citing unusual circumstances including a poorly run renovation project, the large number of change orders, and the fact that the parties did not always follow the prescribed change-order process as outlined in the contract. Tony's also asserted a promissory-estoppel claim, arguing that Tony's had detrimentally relied on Kraus-Anderson's promise that Tony's would be paid for the change-order work.

ISD moved for summary judgment on the ground that Tony's did not have a contract with ISD and that ISD did not know, direct, or communicate with Lastovich or any of his employees about Tony's change-order work. After a hearing, the district court granted summary judgment in favor of ISD. It dismissed Tony's quantum meruit, quasi contract, and unjust-enrichment claims, concluding that Tony's failed to demonstrate that ISD benefitted from its work through illegal, unlawful, or unjust means. Citing *Lundstrom Constr. Co. v. Dygert*, it recognized that Tony's could potentially recover if unusual circumstances were present, such as direct contact between Tony's and ISD, but there was no evidence in the record that ISD knew about the change orders as they happened. 254 Minn. 224, 232, 94 N.W.2d 527, 533 (1959). It also denied Tony's promissory-estoppel claim, as there was no evidence of a promise between the parties. It pointed to Tony's admission that ISD never directed a change order or promised to pay for a change order.

Tony's appeals.

DECISION

“On appeal from summary judgment, we review whether there are any genuine issues of material fact and whether the district court erred in its application of the law.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002). “We view the evidence in the light most favorable to the party against whom summary judgment was granted . . . [and] review de novo whether a genuine issue of material fact exists.” *Id.* at 76-77. “We also review de novo whether the district court erred in its application of the law.” *Id.* at 77. “Once the moving party has made a prima facie case that entitles it to summary judgment, the burden shifts to the nonmoving party to produce specific facts that raise a genuine issue for trial.” *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001).

“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). A party who prevails on an unjust-enrichment action is in essence entitled to an award in quantum meruit. *See Sharp v. Laubersheimer*, 347 N.W.2d 268, 271 (Minn. 1984); *see also Hommerding v. Peterson*, 376 N.W.2d 456, 459 (Minn. App. 1985) (stating that an action for unjust enrichment “is a quasi-contractual agreement implied by law”). “A party may recover under quantum meruit where he or she has conferred a benefit to another and has not received reasonable compensation for this act.” *Busch v. Model Corp.*, 708 N.W.2d 546, 552 (Minn. App. 2006).

“Unjust enrichment requires that: (1) a benefit be conferred by the plaintiff on the defendant; (2) the defendant accept the benefit; and (3) the defendant retain the benefit although retaining it without payment is inequitable.” *Zinter v. Univ. of Minn.*, 799 N.W.2d 243, 247 (Minn. App. 2011). Here, the parties agree that Tony’s conferred a benefit, and ISD received a benefit from the change orders allegedly performed by Tony’s. In determining Tony’s unjust-enrichment claim, we are asked to determine whether ISD was unjustly enriched “in the sense that the term ‘unjustly’ could mean illegally or unlawfully.” *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. App. 2001) (quotation omitted).

“Promissory and equitable estoppel imply the existence of a contract based on promises or conduct.” *Cityscapes Dev., LLC v. Scheffler*, 866 N.W.2d 66, 72 (Minn. App. 2015). “A promissory estoppel claim requires: (1) a clear and definite promise; (2) that the promisor intended to induce the promisee’s reliance; (3) that the promisee relied on the promise to his or her detriment; and (4) that enforcement of the promise is necessary to prevent injustice.” *Zinter*, 799 N.W.2d at 246.

Minnesota law establishes that, other than the statutory right to a mechanic’s lien¹ or other special statutory remedies, subcontractors generally have no right to a personal judgment against the owner where there is no contractual relationship between them. *See Johnson & Peterson, Inc. v. Toohey*, 285 Minn. 181, 183-84, 172 N.W.2d 326, 328 (1969); *Duluth Lumber and Plywood Co. v. Delta Dev., Inc.*, 281 N.W.2d 377, 384 (Minn. 1979);

¹ Property owned by a school district is exempt from mechanics’ liens under the common-law public policy exemption to the mechanic’s lien statute. *GME Consultants, Inc. v. Oak Grove Dev. Inc.*, 515 N.W.2d 74, 75 (Minn. App. 1994).

see also Lundstrom Constr. Co., 254 Minn. at 232, 94 N.W.2d at 533 (suggesting that subcontractors might be allowed to recover against homeowners when unusual circumstances are present); *Skjod v. Hofstede*, 402 N.W.2d 839, 840-41 (Minn. App. 1987) (holding that, absent unusual circumstances such as direct contact or communication between the owner and subcontractor, a subcontractor does not have an equitable remedy against a homeowner for work or materials furnished if there was no contract between the parties). But a subcontractor may be entitled to recovery if an owner is unjustly enriched by the subcontractor's work or under the theory of promissory estoppel.

Caselaw describing the liability of homeowners to subcontractors contemplates simple, well-defined contractual relationships between three parties: a homeowner who contracts with a general contractor to complete work, and the contractor who subcontracts all or part of the work to a subcontractor. In contrast, the case at bar presents a complex series of relationships between five parties who have each entered into contracts with one or more parties: an owner-school district, a program manager, a construction manager, a general contractor, and a subcontractor. Tony's asserts that within these contractual relationships there is a genuine issue of material fact as to whether Kraus-Anderson acted as the agent of ISD during the renovation project. There is a "long-standing common-law notion that a principal is liable for the act of an agent committed in the course and within the scope of agency." *Bedow v. Watkins*, 552 N.W.2d 543, 547 (Minn. 1996). "Vicarious liability may be imposed when a master-servant or principal-agent relationship exists between the tortfeasor and a third party." *Urban ex rel. Urban v. American Legion Post 184*, 695 N.W.2d 153, 160 (Minn. App. 2005), *aff'd*, 723 N.W.2d 1 (Minn. 2006).

Viewing the evidence in the light most favorable to the nonmoving party, the deposition testimony establishes that Tony's was placed under considerable pressure to complete numerous change orders during the project. As the project deadline became closer, Kraus-Anderson and Tony's adopted a practice of going around the contractual provision requiring Hammerlund's written authorization prior to Tony's performing change-order work. Lastovich acted under the belief that he would be paid for the change-order work at the end of the project but did not receive payment.

Provisions within the contractual agreement between ISD and JCI also support Tony's argument that Kraus-Anderson acted as the agent of ISD, the principal. Sections 2.1.4 and 4.1.1 of the contract state that Kraus-Anderson is a subconsultant for the renovation project and that "[t]he term JCI means Johnson Controls, Inc., or its [s]ubconsultants." Further, section 4.2.1 of the contract provides that JCI will act as ISD's representative during construction and that "JCI will have authority to act on behalf of [ISD] only to the extent provided in the [c]ontract." In essence, the contract language establishes that Kraus-Anderson, as subconsultant, was also JCI, and it had the authority to act on behalf of ISD.

But despite this record evidence, we conclude that, as a matter of law, Tony's is unable to pursue any claim against ISD because it dismissed with prejudice all claims against Kraus-Anderson. By releasing Kraus-Anderson, the agent, Tony's also effectively released the principal, ISD, from *any* liability including unjust enrichment and promissory estoppel. *See Booth v. Gades*, 788 N.W.2d 701, 708 (Minn. 2010) (noting that the court has "long recognized" the common-law rule that the release of the agent releases the

principal); *Reedon of Faribault, Inc. v. Fid. & Guar. Ins. Underwriters*, 418 N.W.2d 488, 491 (Minn. 1988) (holding that the release of the insurer’s agent also released the principal from vicarious liability); *Serr v. Biwabik Concrete Aggregate Co.*, 202 Minn. 165, 177, 278 N.W.2d 355, 362 (1938) (stating that it is “well settled that a valid release . . . of the servant releases the master”).

We conclude that the district court properly granted ISD summary judgment on Tony’s claims.

Affirmed.