

Appellate Court Case No. A05-1293

STATE OF MINNESOTA
IN COURT OF APPEALS

Hoyt Properties, Inc. and Hoyt/Winnetka, LLC,

Appellants,

v.

Production Resource Group, LLC,
Haas Multiples Environmental Marketing and Design, Inc.
d/b/a Entolo—Minneapolis and Entolo, Inc.

Respondents.

APPELLANTS' REPLY BRIEF

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INTRODUCTION

Despite PRG attempts to cloud the issues, this is a straightforward fraud/rescission case that is grounded in long-standing and well-established Minnesota case law. Both the district court and PRG ignored this case law to justify an erroneous and unfair dismissal of Hoyt's claims on summary judgment.

The facts presented to the district court on summary judgment are as follows. PRG (a New York company) owned, controlled and operated a local subsidiary named Entolo. In late 2001, Entolo signed a ten year lease with appellant Steve Hoyt. About the same time, however, PRG decided that Entolo no longer fit into its long-term plans. Instead of simply spinning off or selling Entolo, PRG began to siphon off Entolo's funds, using those funds to pay off PRG's debt. This process accelerated in the summer of 2002, when PRG began a concerted effort to close down Entolo while collecting Entolo's remaining assets and receivables for PRG's benefit. Because of PRG's behavior, Entolo was unable to pay its creditors, including Mr. Bruce Knight and Hoyt.

In November, 2002, Bruce Knight filed a claim against Entolo and PRG seeking to pierce PRG's corporate veil. About the same time, Hoyt filed a claim against Entolo seeking to evict Entolo from its leased premises because of Entolo's failure to make its lease payments. Hoyt (who did not know about Knight's claims) discussed a limited settlement of his eviction claims with Entolo and PRG

in December 2002. PRG's representatives agreed. Knowing that it would face a \$10 million liability if Steve Hoyt discovered Knight's claims, PRG schemed to get Mr. Hoyt to agree to a release in PRG's favor as a part of this agreement. Mr. Hoyt initially refused, noting that he had not investigated whether there was any basis to pierce PRG's corporate veil. PRG's attorney (Karl Robinson) assured Mr. Hoyt that there were no facts that would support such a claim, and that PRG and Entolo were run as totally separate companies. Steve Hoyt – a former attorney who knew of an attorneys' ethical duty to tell the truth and knew of the high ethical standards in the Minneapolis legal community – trusted and relied upon PRG's representative. Based upon this assurance, Hoyt agreed to add the release to the settlement agreement.

Once Hoyt learned that this representation was false (as the Honorable Judge Michael Davis recently held), he immediately filed suit seeking to rescind the settlement agreement and the accompanying release. PRG now seeks to dismiss Hoyt's claim based largely upon misunderstood and misapplied legal theories.

First, PRG claims that even though Karl Robinson's representation was false, it was a "legal conclusion" that is somehow immunized from a fraud claim. But PRG does not and cannot rebut the decades of Minnesota cases holding actionable statements of "legal conclusions" that imply the existence of facts. Even if the representation that Entolo and PRG are "totally separate" and therefore

there are no facts to support a piercing theory is a “legal conclusion,” it implies a series of facts that support this legal conclusion. It therefore fits squarely within long-standing Minnesota precedent, and the position of the authors of the Restatement, that “legal conclusions” that imply facts are actionable.

Second, PRG claims that Hoyt’s reliance was not reasonable because he did not investigate PRG’s representation. This argument runs directly contrary to the decades of Minnesota cases saying that a party has the right to justifiably and reasonably rely upon another party’s assurances – even if they are delivered by an opposing party to a transaction or to litigation. Other than taking several pages to argue that Hoyt was foolish and negligent to rely upon PRG’s and its agent’s word, PRG does not rebut or address the long line of cases from Minnesota (and again the position of the authors of the Restatement) directly contradicting its argument. Hoyt was not negligent, and even if he was, negligence is no defense to fraudulent conduct.

Third, there is no basis for dismissing the complaint either because it allegedly sought to rescind only a part of the settlement agreement or because GMAC was not added as a party to this case. As Magistrate Judge Lebedoff concluded, Hoyt did request a complete rescission of the settlement agreement. PRG’s hypertechnical argument ignores the liberal pleading rules and Hoyt’s clear statement to the contrary. The district court also did not abuse its discretion

in concluding that GMAC was not a necessary party. Hoyt sought no remedy from GMAC, GMAC certainly did not petition to be a part of the case, and adding GMAC would have been a pointless exercise.

In short, Hoyt's garden variety fraud/rescission claim should never have been dismissed. His claim falls right within long-established Minnesota law.

DISCUSSION

I. RESPONDENTS HAVE DISINGENUOUSLY MANIPULATED THE STANDARD OF REVIEW.

Initially, PRG has informed this court that an abuse of discretion standard applies to the district court's dismissal of Hoyt's claim on summary judgment. See PRG Brief at 20. But PRG has manipulated and misrepresented the holdings of these cases, which involve an appellate court's review of a district court's decision to modify a judgment under Rule 60. None of the cases PRG cites support ignoring the well-established *de novo* review of a district court's summary judgment decision.

This Court regularly reviews a district court's order granting summary judgment *de novo*. E.g., Mutual Service Cas. Ins. Co. v. Wochnick, 397 N.W.2d 435, 437 (Minn. App. 1986) (noting that a court reviews a district court's summary judgment order *de novo*, not for clear error); Rathbun v. W.T. Grant Co., 219 N.W.2d 641, 651 (Minn. 1974); Ingram v. Syverson, 674 N.W.2d 233, 235 (Minn.

App. 2004); Steichen v. First Bank Grand, 372 N.W.2d 768 (Minn. App. 1985).

PRG provides no reason to avoid these clear and well established rules of review.

The cases PRG cites to support its argument that the district court's decision should be reviewed for an abuse of discretion have no bearing on this case. Three of the cases PRG cites – Johnson, Meyers, and Gould – all stand for the obvious proposition that a motion under M.R.C.P 60 to vacate a court ordered judgment is reviewed for an abuse of discretion. For example, in Johnson, the district court entered an order approving a settlement, which the plaintiffs sought to vacate.

After a trial on the merits, the Court of Appeals reviewed the district court's refusal to rescind the agreement for an abuse of discretion. See Johnson v. St. Paul Ins. Co., 305 N.W.2d 571, 573 (Minn. 1981) (noting that the case involved an attempt to “relieve a party from a judgment, order, or proceeding.”). And in Schoenfeld, the parties entered a stipulation for dismissal, which was approved by the district court in an order. Three years later, the plaintiff sought to vacate that order under M.R.C.P. 60. Again, the Court of Appeals reviewed the district court's refusal to vacate its order for an abuse of discretion.¹ Schoenfeld v. Buker, 114 N.W.2d 560, 561-62 (Minn. 1962).

¹ See also Gould v. Johnson, 379 N.W.2d 643, 645-46 (noting that the case involved an attempt to vacate a court approved settlement and stipulation for dismissal under M.R.C.P. 60).

The final case PRG cites – Clark v. Allstate – actually directly contradicts PRG’s argument. Clark involved a private settlement of earlier litigation. Plaintiffs in Clark sought to avoid the effects of the release for certain contract claims. The Court of Appeals reversed the district court’s summary judgment dismissal, holding that there were genuine issues of material fact. Thus, Clark stands for exactly the opposite proposition than that for which it is cited.

It should be obvious that this case does not arise on Hoyt’s motion under Rule 60 to vacate a district court’s judgment. Hoyt did not seek below to reopen the eviction proceeding during which PRG’s fraud occurred. Instead, he simply requested that the district court rescind a private contract between himself, PRG, and Entolo, which was induced by fraud. Not surprisingly, in similar situations Minnesota courts review a district court’s summary judgment dismissal of a claim to rescind an agreement settling litigation under the traditional and well settled *de novo* standard. E.g., Bogatzki v. Hoffman, 430 N.W.2d 841 (Minn. App. 1988); Olchfski v. St. Paul Pioneer Press, 1993 WL 302116 (Minn. App. 1993).²

² Indeed, even in situations where Minnesota courts do apply the abuse of discretion standard, it is also well settled that it will review questions of law (such as the questions the district court decided here) *de novo*. Frost-Benco Elec. Ass’n v. Minnesota Pub. Utils Comm’n, 358 N.W.2d 639, 642 (Minn. 1984).

II. MR. ROBINSON MADE ACTIONABLE REPRESENTATIONS TO MR. HOYT.

As PRG admits, Robinson made two separate and distinct statements in response to Hoyt's question about whether he could raise a piercing claim against PRG.³ First, Robinson stated that there were no "issues" that would support a piercing claim. Second, Robinson stated that PRG and Entolo were "totally separate" companies. Both of these misrepresentations can support a fraudulent rescission claim.

A. Robinson's Statement That There Were No "Issues" That Would Support A Piercing Claim Against PRG And Entolo Is An Actionable Statement.

Regarding the first statement, PRG does not seriously argue that Robinson's statement was true. Nor can it, given the significant evidence supporting the piercing claim and Judge Davis' Order in the related *Knight* case. See Hoyt's Opening Brief at 9-14, Addendum. Instead, they seek to immunize this statement as a statement of "legal opinion" shared between lawyers in an "adversarial setting." See Respondent's Brief at 23-24. But PRG does not seriously address

³ Although PRG admits that they do not and cannot dispute Mr. Hoyt's responses for the purposes of this appeal or the motion before the district court, they then proceed to do so surreptitiously. They claim that Hoyt's recollection of the statements has changed over time. See PRG brief at n. 6, n.4. But an examination of the record demonstrates that Hoyt has consistently provided the exact same description of events from the beginning of this case to the present. Hoyt has not provided any "inconsistent submissions."

the decades of settled law holding that these exact types of statements are actionable.

As discussed in Hoyt's opening brief, Minnesota cases (along with the authors of the Restatement) have long since concluded that statements of "legal opinion" are actionable when they imply a knowledge of facts that support the ultimate legal conclusion. E.g., Hoyt Opening Brief at 23-25 (citing to the Miller, Simonson, Nodak, and Nelson cases, as well as the Restatement (Second) of Torts § 545, 539(a)). See also e.g., Hughes v. Consol-Pennsylvania Coal Co., 945 F.2d 594, 614 (3rd Cir. 1992); Travis v. Knappenburger, 204 F.R.D. 652, 660 (D. Or. 2001).

Robinson's statement that there were no facts to support a piercing claim falls directly into this rule. After all, whether PRG could be sued under a piercing the corporate veil theory is necessarily dependent on a series of facts. Under Minnesota law, a parent corporation can be held liable for a subsidiary's debts and obligations under a piercing the corporate veil theory where the subsidiary is a "mere instrumentality" of the parent. A plaintiff demonstrates this by showing factors such as insufficient capitalization of the subsidiary, failure to observe corporate formalities, nonpayment of dividends, insolvency of the subsidiary, absence of corporate records, and non-functioning of the subsidiary's officers and

directors. E.g., Victoria Elevator v. Meriden Grain Co., 283 N.W.2d 509, 512 (Minn. 1979).

Robinson's first representation – the so-called “legal conclusion” – stated that there were no “issues” that supported a piercing claim against PRG. By representing that there were no “issues,” he necessarily represented that there were no facts to support the ultimate legal conclusion. Or – as the district court itself recognized – Robinson was affirming that PRG and Entolo “maintained separate boundaries and formalities.” See App. at 41. This statement clearly represents the existence of facts. Facts about the degree of control PRG exercised over Entolo, facts about Entolo's capitalization, PRG's and Entolo's corporate formalities, and the functioning of Entolo's officers and directors. As Magistrate Judge Lebedoff recognized when he rejected these same arguments, Hoyt's rescission claim therefore fits right within clearly established fraud and misrepresentation law.

PRG's attempt to avoid this conclusion rests on little more than simplistic misstatements of Minnesota law. They allege that Robinson's statement was a statement of “legal opinion.” Even if this is true, it misses the point entirely. As discussed in Hoyt's opening brief, statements of “legal opinion” are actionable if it “implies that the facts known to the maker are not incompatible with his opinion.” See Hoyt Brief at 25, n. 18 (see also Restatement (Second) of Torts at § 545(2), §

539(a), Miller, 191 N.W. at 919). Even if Robinson's first statement is considered a "legal opinion," legal opinions are actionable in Minnesota. Hoyt Brief at 25-26.

This is demonstrated by the various cases cited in Hoyt's opening brief. For example, in Miller, the defendant represented that the insurance company in question had the right to issue insurance in Minnesota. This turned out not to be true, and the Plaintiff sued. The defendant, like PRG claimed, that this representation was non-actionable because it was a "legal opinion." But as the Minnesota Supreme Court noted, the ultimate legal conclusion expressed was dependent on a series of facts. Although those facts were not specifically stated by the defendant, they were implied by the stated legal conclusion. The Miller court held that this "legal opinion" was therefore actionable. See also e.g., Hughes v. Consol-Pennsylvania Coal Co., 945 F.2d 594, 614 (3rd Cir. 1992) (representation by opposing party's attorney that a transaction would be tax free was an actionable statement, even if it was a legal opinion); Travis v. Knappenburger, 204 F.R.D. 652, 660 (D. Or. 2001) (representation by opposing party's attorneys that employees were independent contractors was an actionable statement, even if it was a "legal opinion.").

Other than simply attempting to label Robinson's statement as a "legal opinion" which is automatically non-actionable, PRG only argues that Hoyt did not specifically ask about the various facts that underlay Robinson's expressed

conclusion. But this argument against completely misunderstands the nature of Minnesota law. The rule expressed in cases such as Miller, Hughes, Simonson, as well as the Restatement, is that a legal opinion is actionable if it implies facts. The speaker need not ask for the “specific factual information” that supports the legal conclusion. See PRG Brief at 25. To so hold would be to completely eviscerate the rule expressed in the cases above. But the rule expressed in these cases and authorities listed above directly contradicts PRG’s argument.

It is interesting that PRG fails to cite a single case or authority that dismissed a claim because the statement was a “legal conclusion.” They have not found any authority that supports their claims. Instead, they have tried to shoehorn their case into a doctrine that has no application to this case. Without any support for their argument, PRG’s argument (and the district court’s conclusion) must be rejected.

B. Robinson’s Statement That Entolo And PRG Were “Totally Separate” Is An Actionable Factual Statement.

PRG does not argue that Robinson’s second statement was a “legal opinion.” Instead, they admit that it was a direct factual statement, but argue that it must be interpreted to mean only that PRG and Entolo were legally distinct entities.

This is a specious argument. Given the context of the conversation – Hoyt’s concerns about a piercing claim and Robinson’s assurance that there were not any piercing “issues, -- a reasonable fact finder could reasonably conclude that the

phrase “totally separate” referred to how PRG and Entolo were run, not just PRG’s and Entolo’s formal legal status.

Indeed, PRG’s interpretation of Robinson’s statement makes no sense.

Given that Hoyt and Robinson both clearly knew that PRG and Entolo were legally distinct entities, why would Robinson assert something that both men knew to be obviously true?

Given the context, a reasonable fact finder could reasonably conclude that Robinson’s assertion that PRG and Entolo were “totally separate” meant that PRG and Entolo had separate officers, had separate bank accounts, had separate corporate formalities, separate receivables, and separate identities. PRG does not argue, and cannot argue, that this representation was true. Therefore, this representation is a straightforward false factual representation that (as discussed below) induced Hoyt into agreeing to the settlement agreement. The district court wrongly dismissed his claims with the blunt instrument of summary judgment.

III. RESPONDENTS CANNOT CONTEST THAT HOYT ACTUALLY RELIED UPON ROBINSON’S STATEMENTS AND THAT SUCH RELIANCE WAS REASONABLE.

PRG argues that Hoyt did not justifiably rely upon Robinson’s statements because Hoyt was a sophisticated businessman who had “no conceivable justification” for relying upon a representation made by opposing counsel “in

contested and adversarial” proceedings.⁴ But apart from simply repeating the litany of Mr. Hoyt’s accomplishments, they provide no reason to disregard the decades of Minnesota case law stating that a party can justifiably and reasonably rely upon the statements of an opposing party – even opposing counsel – in an adversarial setting without engaging in an independent investigation.

As discussed in Hoyt’s opening brief, Minnesota courts (in the Placke, Speiss, Nave, First Nat’l Bank, and Erickson cases, among others) have long since concluded that a party reasonably and justifiably relies upon a representation unless its falsity is known or obvious to him or her. See Hoyt’s Opening Brief at 33. This rule applies with equal force where the representation is delivered by a opposing party. Id. See also Restatement (Second) of Torts at § 541A, comment a, (noting that a recipient of a representation from an opposing party is entitled to rely upon that representation “unless its falsity is obvious to his senses.”). This rule is based upon the common sense notion that the law should protect a party’s right to rely upon others representations without requiring costly investigations,

⁴ PRG’s argument that Hoyt did not actually rely upon Robinson’s statement can be quickly disposed of. Steve Hoyt testified that he actually relied upon Robinson’s statement when he agreed to add the release for PRG, which is more than sufficient to survive summary judgment. See Hoyt Opening Brief at 32; Berryman v. Riegert, 175 N.W.2d 438 (1970). Cf. City of Burnsville v. Westwood Co., 189 N.W.2d 392 (Minn. 1971). Although PRG has argued that Hoyt did not add this representation to the settlement agreement, a variety of cases in Minnesota have held that this is not required to show actual reliance. See Hoyt Brief at 37-38.

and also the notion that a defendant should not be allowed to avoid the consequences of fraud simply because the deceived party did not investigate the statements at issue. Hoyt Opening Brief at 33.

This rule applies directly to the facts of this case. Steve Hoyt was engaged in settlement negotiations with PRG and its counsel and agents. PRG approached Hoyt and asked for a release. Hoyt initially refused to give PRG a release because he had not investigated whether he might have a valid piercing claim against PRG. PRG, through its agent, told Hoyt that there was no valid claim against PRG, and that PRG and Entolo were distinct and separate corporations both in fact and law. Hoyt, a former practicing attorney himself, recognized the ethical duty to tell the truth that applies to all attorneys, and also relied upon the ethical nature of the Minneapolis legal community. He told Robinson, “well, you would know,” and agreed to add the release for PRG based upon Robinson’s representation. It later turned out that Robinson’s statement was untrue. This is a paradigm fraud claim.

PRG raises a series of half-hearted arguments to rebut this clear conclusion. These arguments are all directly contradicted by controlling precedent from the Minnesota Supreme Court.

First, PRG claims that Hoyt was unreasonable in failing to complete any “due diligence” to confirm Robinson’s statement. But they do not distinguish, discuss, or even cite to the legion of Minnesota cases stating that the recipient of a

fraudulent misrepresentation need not engage in any independent investigation to confirm the statement. E.g., Speiss v. Brand, 41 N.W.2d 561, 566 (Minn. 1950) (“[I]t is the well-established rule that the recipient of a fraudulent misrepresentation . . .it justified in relying upon its truth, although he might have ascertained its falsity had he made an investigation.”). See also Hoyt’s Opening Brief at 32-33 (listing cases and authorities supporting this proposition). PRG has not cited a single relevant authority to support its proposition that Hoyt had any duty to confirm or investigate Robinson’s statement.⁵

Second, PRG claims that Hoyt was unjustified in relying upon Robinson’s statement because Robinson was an attorney representing an opposing party. See PRG Brief at 32-33. But PRG does not distinguish or discuss the cases cited in Hoyt’s opening brief, such as the L & H Airco, Hoppe, McDonald, Hugher, and Matsuura cases all stating that a party can justifiably rely upon the statements of an opposing attorney. See Hoyt Brief at 34. See also e.g., Hughes v. Consol-Pennsylvania Coal Co., 945 F.2d 594, 614 (3rd Cir. 1992) (noting that a party to a transaction can justifiably rely upon the statement of an opposing attorney to a transaction); Restatement (Second) of Torts at § 541A.

⁵ PRG cites to the Boubelik opinion to support their argument. See PRG Brief at 32. It is not clear why. The page in question deals with whether a party has an affirmative duty to disclose certain facts to an opposing party in a transaction. Boubelik, 553 N.W.2d at 400. Boubelik does not even remotely apply to a case involving allegations of fraudulent

Third, PRG claims that Hoyt was unjustified in relying upon Robinson's statement because Hoyt did not reduce Robinson's representations to writing. But, again, PRG ignores the decades of Minnesota cases, including the Ganley Brothers, Clements, Martin, Financial Timing, Gopher Oil, and Peggy Rose Revocable Trust cases, all of which hold that a party can reasonably and justifiably rely upon an oral representation by an opposing party – even if that representation is not included in the final written contract. See Hoyt Brief at 37-38.

Fourth, PRG claims that Hoyt was unjustified in relying upon Robinson's statement because he was an experienced businessman, although they do not discuss the cases cited in Hoyt's opening brief such as Placke, Kempf, Kraus, and Old Colony Life Ins. Co holding that experienced business persons do justifiably rely on the statements of opposing counsel.

In fact, PRG's entire argument boils down to an allegation that Hoyt was negligent – that he should have known better than rely upon the word of an opposing attorney (who had an ethical duty to tell the truth, no less, see Minn. R. Prof. Cond. 4.1), that Hoyt should have instructed his attorney to include the representation in the agreement, and that Hoyt should have (somehow) confirmed Robinson's statement. But again, as noted in Hoyt's opening brief, even if Hoyt

statements. It is not surprising, therefore, that PRG did not attempt to explain the relevance of this case with a parenthetical.

was negligent in relying on Robinson's fraud, that is not a defense to a fraud claim. E.g., Florenzano v. Olson, 387 N.W.2d 168, 175-176 (Minn. 1986). Wilder v. DeCou, 18 Minn. 470 (1871).⁶

PRG raises one final, and rather strange, argument to support the district court's dismissal. It argues that it was unreasonable for Hoyt to rely upon Robinson's statement because Robinson did not have the authority to settle PRG's case without PRG's consent and approval. See PRG Brief at 34. This is not an argument that was presented to (or decided by) the district court, and PRG should not be able to rely on it now. E.g., Chatfield v. Sherwin-Williams Co., 266 N.W.2d 171, 176 (Minn. 1978); Morton v. Board of Commissioners of Ramsey County, 223 N.W.2d 764, 771 (1974); Woody v. Krueger 374 N.W.2d 822 (Minn.App.,1985). Just as importantly, this argument makes no sense. PRG has never denied that Robinson was its agent. And PRG cannot and does not dispute that it is responsible for its agent's representations. See Opatz v. Kinnard & Co., 454 N.W.2d 471 (Minn. Ct. App. 1990); National Equip. Corp. v. Volden, 252 N.W. 444 (Minn. 1934). Obviously, Robinson could not settle the case without

⁶ Even if negligence was a defense to a fraud claim, all of PRG's arguments about Hoyt's failure to follow his common practice (e.g., failure to reduce Robinson's statements to written terms, reliance on the trustworthiness of an attorney) are simply an impermissible attempt to argue facts. After all, comparable negligence is a fact issue that should not be decided on a summary judgment motion. E.g., Florenzao v. Olson, 387 N.W.2d 168, 175-76 (Minn. 1986).

PRG's consent, but Robinson could induce Hoyt into a contract based upon fraud.

That is exactly what has been alleged here.

IV. HOYT PROPERLY SOUGHT TO RESCIND THE ENTIRE SETTLEMENT AGREEMENT.

PRG's remaining arguments are not serious arguments. They incorrectly allege that Hoyt only sought rescission of "part" of the Settlement Agreement. They also raised this argument with Federal Magistrate Judge Lebedoff in their motion to dismiss. At that time, Hoyt clearly replied by noting that it was seeking rescission of the entire settlement agreement. Judge Lebedoff agreed with Hoyt, noting that the Complaint did seek to rescind the entire settlement agreement, not merely ¶ 7. Indeed, Hoyt's complaint even agreed to provide PRG with all of the consideration Hoyt received in connection with the settlement agreement – even though that consideration was not listed in ¶ 7. *Id.* Given the liberal interpretation which a Court must give a complaint, Hoyt's offer to return all of the consideration it received from the entire agreement (not merely ¶ 7) and, Hoyt's clear, repeated, and unambiguous statement that it sought to rescind the entire settlement agreement, there is no serious dispute that the Magistrate Judge correctly ruled that Hoyt's complaint sought to rescind the entire settlement agreement.

PRG also claims that Hoyt's failure to join GMAC to this lawsuit means that the Complaint must be dismissed because GMAC is a party to the lawsuit. PRG raised this argument below, when it moved the district court to require Hoyt to join

GMAC as an indispensable party. The district court's denial of this motion is reviewed for an abuse of discretion. Port Authority of City of St. Paul v. Harstad, 531 N.W.2d 496 (Minn. App. 1995). The district court did not err in refusing to require Hoyt to add GMAC. Hoyt sought no relief from GMAC, and GMAC surely did not seek to be added as a party. Hoyt did not even receive any consideration from GMAC that would have to be tendered back. Minnesota courts have affirmed a district court's decision to deny similar motions. Winthrop Resources Corp. v. Cambridge Research Associates, Inc., 2003 WL 22846113 (Minn.App.,2003) (affirming a district court's denial of a motion to require joinder as an indispensable party because, although the party was a part of the contract at issue, the plaintiff sought no relief from that party).⁷

V. THE DISTRICT COURT ERRONEOUSLY DISMISSED HOYT'S REMAINING CLAIMS.

The district court's dismissal of Hoyt's remaining claims with prejudice was error.

⁷ It is surprising that PRG has raised these arguments in this appeal. Hoyt requested the opportunity to amend any pleading deficiencies the district court identified as a part of PRG's motion to dismiss. Given the liberal standards for amending pleadings, Hoyt's request would surely have been granted, and would surely be granted again if PRG's arguments are now adopted. Given that Hoyt offered to return all consideration it received in the settlement agreement to PRG, and Hoyt's clear statement that it sought to rescind the entire settlement agreement (which would serve as a binding judicial admission), PRG's argument violates the clear, liberal rules of interpreting a complaint envisioned by the Minnesota Rules of Civil Procedure.

Contemporaneously with PRG's summary judgment motion, Hoyt filed a motion to amend its complaint. When it granted PRG's motion for summary judgment, the district court also granted Hoyt's motion to amend. Although Hoyt never actually filed the amended complaint, to clear up any confusion, Hoyt indicated to the district court its intent to dismiss these new, unfilled claims. The district court subsequently dismissed these claims with prejudice.

This was error. Under Minn. R. Civ. P. 41(a), a party can dismiss its own claims on its own volition at any time prior to the filing of an answer by the other side. Such a dismissal is without prejudice. See Minn. R. Civ. P. 41(a) (noting that a party may dismiss its own claims "at any time before service by the adverse party of an answer" and that such dismissal "is without prejudice."). Hoyt filed its notice of dismissal prior to PRG answered Hoyt's amended complaint – indeed, even before Hoyt actually filed its amended complaint. Thus, Hoyt's dismissal of claims was without prejudice under Minn. R. Civ. P. 41(a).⁸

VI. THE DISTRICT COURT ERRONEOUSLY DISMISSED HOYT'S CLAIMS AGAINST ENTOLO.

Finally, PRG offers nothing to rebut Hoyt's argument that dismissing Hoyt's claims against Entolo was error. As noted in Hoyt's opening brief, Hoyt raised

⁸ PRG points to no authority supporting their argument that Hoyt had an obligation to file a motion under Rule 60 for relief from the Judgment. Nothing in Rule 60 required Hoyt to file such a motion.

breach of contract claims against Entolo, along with piercing the corporate veil claims against PRG. The district court dismissed Hoyt's breach of contract claims against Entolo even though the release on which this dismissal was based specifically reserved Hoyt's claims against Entolo and even though PRG did not ask the district court to enter summary judgment on Hoyt's claim against Entolo.

Instead of responding to these arguments, PRG instead claims that Hoyt's breach of contract claim is intertwined with the piercing claim such that the dismissal of the claims against PRG should result in the dismissal of claims against Entolo. But below, even PRG recognized that it was not entitled to dismissal of Hoyt's claims against Entolo. Even if Hoyt's claims against PRG are the "heart" of the case, this does not make its claims against Entolo somehow void or ineffectual. Hoyt clearly has valid claims against Entolo for breach of the lease agreement. The district court's dismissal of these claims was error.

Hoyt finally notes that even if this Court were to adopt PRG's argument, even they do not dispute that if the district court's resolution of the rescission and piercing claim is reversed, then Hoyt's claims against Entolo must also be reversed.

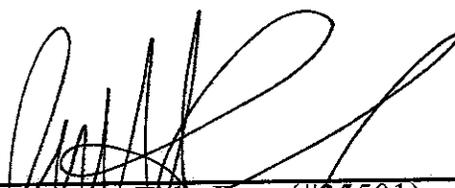
CONCLUSION

Hoyt therefore respectfully requests that this Court reverse the district court's grant of summary judgment on all counts.

Dated: November 7, 2005

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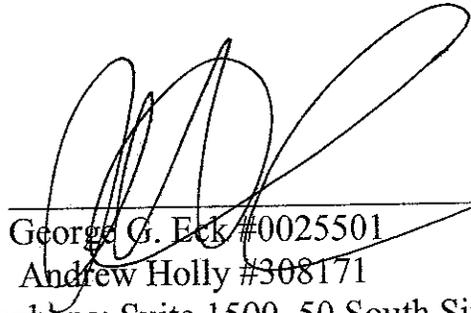
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Certificate of Compliance with Minn. R. Civ. App. P. 132.01 Subd. 3(b)(1)

The undersigned hereby certifies, pursuant to Minnesota Rule of Civil Appellate Procedure 132.01, Subd. 3(b)(1), that this brief, exclusive of the title page, the table of contents, the table of citations, any addendum, and any certificates of counsel) contains 5099 words, as ascertained using the word count feature of the Microsoft Word 2000 (9.0-3821 SR-1) word processing software used to prepare the brief.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).