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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2039**

Dale Heffron,
Respondent,

Heffron Properties, LLC, et al.,
Respondents,

vs.

Burlington Northern and Santa Fe Railway Company,
Appellant,

Herbert Beam,
Defendant.

**Filed August 6, 2012
Affirmed
Kalitowski, Judge**

Kandiyohi County District Court
File No. 34-CV-08-660

Patrick J. Sauter, Mark R. Bradford, Bassford Remele, Minneapolis, Minnesota; and

Troy A. Stark, Stark Legal Consulting, LLC, Edina, Minnesota (for respondents)

Andrea E. Reisbord, Cousineau McGuire Chartered, Minneapolis, Minnesota (for
appellant)

Considered and decided by Schellhas, Presiding Judge; Kalitowski, Judge; and
Chutich, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Burlington Northern and Santa Fe Railway Company challenges the district court's judgment in favor of respondents Dale Heffron and Heffron Properties LLC, on respondents' claim of promissory estoppel. On appeal from the district court's denial of its posttrial motion for amended findings of fact and conclusions of law, appellant argues that: (1) the district court's factual findings as to appellant's clear and definite promise and respondents' reasonable reliance are clearly erroneous; (2) the district court erroneously concluded that enforcement of appellant's promise was necessary to prevent injustice; and (3) the district court abused its discretion in awarding damages. We affirm.

DECISION

In early 2007, respondents began planning to purchase and renovate a building near appellant's Willmar terminal, intending that appellant would enter into a contract with respondents to use the building as a lodging facility for its employees. The Willmar terminal manager projected that the facility would provide cost savings to appellant and assisted respondents in locating a building to purchase. As respondents sought financing for the purchase and renovations, they communicated with appellant's Willmar personnel and appellant's corporate travel department in Fort Worth, Texas, about appellant's room specifications. Appellant provided documentation to assist respondents in securing loans, but did not provide a written commitment to use the facility, stating that it would not promise to lodge its employees at a facility that had not yet been completed.

Respondents purchased the property in October 2007 and completed renovations in late March 2008. When they notified appellant that the facility was completed and ready to be inspected, appellant indicated that it would not inspect the property and would not use the facility to lodge its employees.

Respondents tried their promissory-estoppel claim to the district court over seven days in February and March 2011. The district court issued detailed findings of fact, concluded that respondents proved all elements of promissory estoppel, and awarded reliance and expectation damages to respondents. Appellant moved for amended findings of fact, conclusions of law, or a new trial. The district court denied the motions, but modified the damage award in part, vacating its award of expectation damages.

On review of a court trial, we view the record in the light most favorable to the judgment. *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). The district court's findings of fact are given great deference and are not set aside unless clearly erroneous. *Friend v. Gopher Co.*, 771 N.W.2d 33, 37 (Minn. App. 2009) (citing Minn. R. Civ. P. 52.01). When reviewing findings of fact, we will not reconcile conflicting evidence, and we defer to findings of fact supported by reasonable evidence. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). The district court's conclusions of law are subject to de novo review. *W. Insulation Servs., Inc., v. Cent. Nat'l Ins. Co. of Omaha*, 460 N.W.2d 355, 357 (Minn. App. 1990). Credibility determinations are exclusively the province of the fact-finder and should not be disturbed on appeal. *Kellogg v. Woods*, 720 N.W.2d 845, 852 (Minn. App. 2006).

As an initial matter, appellant implies that the district court's findings of fact and conclusions of law are entitled to less deference because they mirror respondents' proposed findings of fact and conclusions of law. Appellant concedes that wholesale adoption of one party's findings and conclusions is not per se reversible error, but this court has held that it "raises the question of whether the [district] court independently evaluated each party's testimony and evidence." *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992), *review denied* (Minn. Feb. 12, 1993).

Here, the district court demonstrated familiarity with the record in its detailed findings accompanying its summary judgment order. And in denying appellant's posttrial motion for amended findings, the district court explained that it made its findings of fact and credibility determinations after "weigh[ing] the evidence, assess[ing] the credibility of a dozen witnesses . . . [and] view[ing] the exhibits." The court did not make findings detailing all evidence submitted throughout the course of the trial, but, in its discretion, elected to include in its findings only "those facts upon which it based its decision." Because the record indicates that the district court independently evaluated each party's evidence and assessed the credibility of the witnesses who testified at trial, we defer to the district court's findings and credibility determinations.

I.

Promissory estoppel is an equitable doctrine intended to provide a remedy in instances of good-faith detrimental reliance. *Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 152 (Minn. 2011). To succeed on a claim for promissory estoppel, a plaintiff must show that: (1) "a clear and definite promise was made"; (2) the promisor

intended to induce reliance on the promise, the promisee in fact relied on the promise, and the reliance was to the promisee's detriment; and (3) "the promise must be enforced to prevent injustice." *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000). The promisee's reliance on the promise must be reasonable. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). The first two elements are questions of fact. *Norwest Bank Minn., N.A. v. Midwestern Mach. Co.*, 481 N.W.2d 875, 880 (Minn. App. 1992), *review denied* (Minn. May 15, 1992).

Appellant argues that the district court's factual findings as to the first two elements—whether a clear and definite promise was made, and whether the promisor intended to induce reliance and the promisee in fact relied to his or her detriment—are clearly erroneous. We set aside findings of fact only if they are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *N. States Power Co. v. Lyon Food Prod., Inc.*, 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

Clear and definite promise

A clear and definite promise is one that "the promisor should reasonably expect to induce action or forbearance on the part of the promisee." *Martens*, 616 N.W.2d at 746. The element is satisfied by an unambiguous statement indicating "a clear and definite commitment." *Faimon v. Winona State Univ.*, 540 N.W.2d 879, 882 (Minn. App. 1995), *review denied* (Minn. Feb. 9, 1996).

The district court found that Joseph Bryant, the manager of appellant's corporate travel department, made a clear and definite promise to respondents that "a signed

lodging contract would be forthcoming” if the building was renovated to meet appellant’s standards. The district court’s finding was based on two e-mails sent in August 2007. On August 2, 2007, Heffron e-mailed Bryant requesting a guarantee that respondents could use to obtain financing. In response, Bryant offered to send a signed copy of appellant’s standard lodging contract template. And on August 15, 2007, Bryant e-mailed respondents stating that appellant’s agent “will draft the contract once [respondents] are close to completion of the project and can identify a start date when the facility will open.” The e-mail explained that, after appellant ensured that the property “me[t] expectations and standards” and insurance documentation was provided, appellant would “be in a position to provide [its] current lodging provider the required 30[-]day notice and establish a start date at [respondents’] facility.”

The district court’s finding of a clear and definite promise was supported by its finding that the parties had agreed on the material terms prior to August 2007, as well as its determination that Heffron was a credible witness and appellant’s witnesses were less credible.

On appeal, appellant’s primary contention is that other communications in the record demonstrate that it made no clear and definite promise and that the parties had not reached an agreement. But it is not the role of this court to reconcile conflicting evidence, and we decline to do so here. *Am. Bank of St. Paul v. City of Minneapolis*, 802 N.W.2d 781, 789 (Minn. App. 2011) (recognizing that “it is the district court’s exclusive responsibility to reconcile conflicting evidence”).

Appellant argues that Bryant's two e-mails did not convey a clear and definite promise when viewed in context of the parties' communications. The record establishes that appellant rejected three contracts proposed by respondents, two with ten-year terms, and one with a five-year term, and that appellant refused to provide a written commitment. But the district court found that appellant's standard policy was to enter into one-year contracts terminable on 30 days' notice, and the record supports this finding. Therefore, appellant's rejection of proposed contracts with five- and ten-year terms need not be construed as a rejection of an agreement with respondents. And as the district court reasoned, if appellant would not commit to using a facility before it was completed, then the fact that appellant refused to provide a written guarantee at the purchase and renovation stages does not preclude a finding of a clear and definite promise.

Furthermore, the district court did not view the August 2 and August 15 e-mails in isolation. The district court explained that its finding of a clear and definite promise was confirmed "by the fact that [appellant's] management . . . outwardly and consistently acted in furtherance of the promise." The court referenced a letter written by Herbert Beam, the Willmar terminal manager, on September 13, 2007, stating that local management was "continuing to move toward a contractual relationship with [respondents]," the attendance and show of support at respondents' meeting with the Willmar Economic Development Commission (EDC), a potential lender, by Bill Fry, appellant's Willmar superintendent of operations, and Beam's participation in walk-throughs of the property throughout the stages of renovation. The court also cited an

October 11, 2007 letter from Fry stating that he was supporting appellant's "commitment to inspect the property approximately 30 days prior to completion to make sure it meets expectations and standards at that time." The district court's finding that appellant acted in furtherance of a promise is supported by the record.

Appellant argues that the parties never agreed to all material contract terms, such as the number of rooms and the room rate, and therefore there was not an enforceable promise. We disagree. The district court found that the parties had reached an agreement as to the material terms, and there is evidence in the record that the parties had agreed to the clauses in the standard lodging agreement, the number of rooms, and the room rate. Moreover, an enforceable promise may be found even when all material terms are not agreed upon by the parties. *See Dallum v. Farmers Union Cent. Exchange, Inc.*, 462 N.W.2d 608, 612 (Minn. App. 1990) (stating that it was "unclear whether [the promisor] was specifically informed a five-year truck lease was going to be entered into," but the jury could infer that the promisor "would provide enough shipping business to allow [the promisee] to at least cover his truck lease payments and other reasonable expenses"), *review denied* (Minn. Jan. 14, 1991).

Appellant also challenges the district court's characterization of its purported promise, arguing that Bryant only promised to consider using the facility, and respondents were aware that any agreement would be conditioned on appellant's inspection of the completed facility. But the district court did not find that appellant's promise was unconditional. Instead, the court found that appellant promised that "a signed lodging contract would be forthcoming" if the building was renovated to meet

appellant's standards, and that respondents remodeled the building to meet appellant's standards and to accommodate its requests. Because appellant indicated that it would not commit to using respondents' facility until after it was built to appellant's specifications, the implication was that appellant would use the facility if all specifications were met. Appellant never inspected the property upon completion, and therefore there is no evidence in the record to support a finding that the facility did not meet appellant's specifications in April 2008.

Appellant also challenges the district court's finding that Heffron was a credible witness, and argues that respondents could not have believed that Bryant's e-mails secured a clear and definite commitment, because Heffron continued to ask for a written guarantee after receiving the e-mails. But credibility determinations are exclusively the province of the fact-finder and will not be disturbed on appeal. *Kellogg*, 720 N.W.2d at 852. The district court's finding that Heffron was a credible witness is supported by evidence tending to demonstrate that Heffron was forthcoming throughout litigation. Because the district court's factual finding that a clear and definite promise was made is supported by the record and by its credibility determinations, we conclude that the finding is not clearly erroneous.

Reasonable reliance

The second element of promissory estoppel is satisfied when the promisor should reasonably have expected to induce the promisee's reliance, and the promisee reasonably relies to its detriment. *Faimon*, 540 N.W.2d at 882 n.1 (observing that caselaw requiring the promisor's "intent" to induce reliance appears "to be synonymous with the

requirement . . . that the promise be one that the promisor should reasonably have expected to induce the promisee's reliance" (quotation and citation omitted)).

The district court found that appellant should have reasonably anticipated that its promise would induce reliance, because respondents "made it abundantly clear that [they] intended to rely on [appellant's] promise in order to obtain financing, purchase the subject property, and ultimately renovate the subject property for use as a [Burlington Northern] lodging facility." Because appellant's promise was to enter into a lodging contract after the property was renovated to its standards, the court determined that appellant should have anticipated that respondents would renovate the property to meet appellant's standards. The court found that respondents' reliance was reasonable because the promise was made by Bryant, who had authority to make lodging decisions for appellant, and because Beam and Fry acted in furtherance of an agreement.

The record amply supports the district court's finding that appellant should have reasonably expected its promise to induce action. In response to respondents' requests for written assurances they could submit to lenders to obtain financing, Bryant and Carol Devine, the head of appellant's corporate travel department, provided written communications. Fry attended an EDC meeting to assist respondents in obtaining financing. Moreover, respondents communicated with appellant throughout the stages of purchase and renovations, and respondents determined the number of rooms to be constructed, room specifications, and soundproofing materials to be used, based on appellant's requests. The record also suggests that appellant intended that respondents rely on its statements. For example, on July 20, 2007, Bryant explained to Fry that he

was going to tell Heffron, “if he builds it, we will come, but [we will] not make any type of long-term commitment.”

Appellant argues that it could not have reasonably anticipated that respondents would spend approximately \$1.4 million in reliance on its promise. Appellant cites no authority for the contention that the precise extent of the promisee’s reliance must be foreseeable. *Cf. Dallum*, 462 N.W.2d at 612 (noting that it was unclear whether the promisor was aware that the promisee was obtaining a five-year truck lease based on the promisor’s assurances). The district court’s finding that appellant’s promise was sufficiently clear and definite to induce reliance is not clearly erroneous. Because the record establishes that appellant was aware that respondents were purchasing the building and undertaking substantial renovations, we conclude that appellant should have known that the extent of respondents’ detrimental reliance was significant.

Appellant also challenges the district court’s finding that respondents’ reliance was reasonable, arguing that the standard lodging agreement was one year in length and terminable on 30 days’ notice. Thus, appellant contends, even if it promised to execute the standard lodging agreement, respondent was not guaranteed a long-term contract. But the district court considered the terms of the standard lodging agreement when evaluating whether respondents’ reliance was reasonable, and we do not reconcile conflicting evidence on appeal. *Am. Bank of St. Paul*, 802 N.W.2d at 789.

Finally, appellant argues that respondents’ reliance was unreasonable because the location of the facility did not comply with Federal Railroad Administration (FRA) regulations, and therefore appellant would have been precluded by law from using

respondents' lodging facility. But appellant did not establish at trial that FRA regulations were applicable or that the location of respondents' facility violated such regulations. Because the question of legal impossibility under the FRA regulations was not presented and decided by the district court, the record is not fully developed and the issue is not properly before us on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an appellate court will not consider an issue that was not decided by the district court). We conclude that the district court's factual findings as to reasonable reliance, which are supported by its credibility determinations, are not clearly erroneous.

II.

Appellant argues that the district court erred in concluding that appellant's promise must be enforced to prevent injustice. Promissory estoppel is actionable when "enforcement is required to prevent an injustice." *Cohen v. Cowles Media Co.*, 479 N.W.2d 387, 391 (Minn. 1992). Numerous considerations enter into a judicial determination of injustice, including

the reasonableness of the promisee's reliance, . . . its definite and substantial character in relation to the remedy sought, . . . the formality with which the promise is made, . . . the extent to which the evidentiary, cautionary, deterrent and channeling functions of form are met by the commercial setting or otherwise, and . . . the extent to which such other policies as the enforcement of bargains and the prevention of unjust enrichment are relevant.

Faimon, 540 N.W.2d at 883 & n.3 (quoting the Restatement (Second) of Contracts § 90 cmt. b (1981)). Because the determination involves a policy decision, it is a question of law that we review de novo. *Id.* at 883.

The district court found that during the time that respondents purchased and renovated the property, appellant's Willmar personnel encouraged the project, toured the facility, and indicated that they were satisfied. And the record indicates that months before April 2008, appellant's personnel commented internally that respondents should be told to "stop" renovations, but respondents were not advised of this internal debate. The district court found that respondents are unable to lease the entire building to other tenants in order to mitigate their losses and expended approximately \$1.4 million on the project. Based on these findings, the court concluded that enforcement was necessary to prevent injustice because public policy supports the enforcement of bargains, and appellant is a sophisticated party "that should have known that its unfulfilled promise would have significant consequences."

Appellant argues that the district court's conclusion as to the injustice element is erroneous, because its promise was not formal, clear, or definite. But as discussed above, the district court's findings that appellant made a clear and definite promise and that respondents' reliance was reasonable are not clearly erroneous. We conclude that these findings support the district court's conclusion that the promise must be enforced to prevent injustice.

Appellant also argues that it was not unjustly enriched. But unjust enrichment is only one of many factors the district court, in its discretion, could consider. *See Nadeau v. Cnty. of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979) ("Granting equitable relief is within the sound discretion of the [district] court.").

Finally, appellant argues that respondents had unclean hands, primarily due to misrepresentations Heffron made in connection with respondents' applications for financing from Home State Bank. But the record establishes that Heffron's false statements about his personal finances were immaterial to Home State Bank's decision to extend a commercial loan to respondents, and therefore did not affect the extent of respondents' detrimental reliance. We conclude that the district court's conclusion that the promise must be enforced to prevent injustice is not erroneous.

III.

Appellant argues that the district court abused its discretion in awarding reliance damages of \$726,910.46 to Heffron Properties and \$91,618.60 to Heffron. A district court's award of damages is discretionary and we reverse only when the court abuses its discretion. *Gabler v. Fedoruk*, 756 N.W.2d 725, 734 (Minn. App. 2008). Likewise, a district court has broad discretion when fashioning an equitable remedy. *Nadeau*, 277 N.W.2d at 524.

When a promise is enforced on promissory-estoppel grounds, "the remedy granted for breach may be limited as justice requires." Relief may be limited to damages measured by the promisee's reliance." *Grouse v. Grp. Health Plan, Inc.*, 306 N.W.2d 114, 116 (Minn. 1981) (quoting Restatement of Contracts (Second) § 90). The measure of damages in promissory estoppel is the amount that a person to whom the promise has been made has been induced to expend on the faith of the promise and "may be limited to the party's out-of-pocket expenses made in reliance on the promise." *Dallum*, 462 N.W.2d at 612-13.

Here, the district court calculated the damage award by subtracting the value of the building upon completion, \$580,000, from respondents' actual expenses incurred in purchasing and renovating the building, \$1,398,529.06, noting that "the retrospective fair market value of the subject property without the [Burlington Northern] lease was \$580,000." We conclude that the district court's damage award, based on respondents' out-of-pocket expenditures, is an appropriate exercise of its discretion. *See Dallum*, 462 N.W.2d at 612-13; *see also Walser v. Toyota Motor Sales, U.S.A., Inc.*, 43 F.3d 396, 403 (8th Cir. 1994) (applying Minnesota law and concluding that "the difference between the actual value and the amount paid for the property" reflects the extent of the promisee's detrimental reliance).

Appellant argues that respondents' "poor project management" caused their renovation expenses to be higher than they otherwise would have been. Appellant offers no foundation for this argument and cites no authority for the proposition that out-of-pocket expenditures must be analyzed for reasonableness by the district court.

Appellant also argues that expert testimony at trial established that even with a long-term Burlington Northern lease, the property would not have been worth more than \$910,000. But promissory estoppel is an equitable doctrine, and respondents are entitled to damages in the amount they were "induced to expend on the faith of the promise." *Dallum*, 462 N.W.2d at 612. We conclude that the district court did not abuse its broad discretion in awarding reliance damages of \$726,910.46 to Heffron Properties and \$91,618.60 to Heffron.

Affirmed.