

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2008).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-314**

R. J. Ruppert,
Respondent,

vs.

Theresa Hawk,
Appellant.

**Filed November 23, 2010
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CV-08-12252

Sarah L. Krans, Marvin A. Liszt, Bernick, Lifson, Greenstein, Greene & Liszt, P.A.,
Minneapolis, Minnesota (for respondent)

Timothy R. Maher, Guzior Armbrrecht Maher, Minneapolis, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and
Stoneburner, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant Theresa Hawk challenges the district court's grant of summary judgment to respondent R. J. Ruppert. Because the district court did not err, we affirm.

FACTS

Hawk and Ruppert entered into two purchase agreements and two contracts for deed for the sale of commercial real estate owned by Ruppert. When Hawk was unable to make the payments on the first contract for deed, Ruppert cancelled it. But the parties subsequently entered into a second contract for deed for the same property at a higher purchase price and a lower interest rate. The second contract was also cancelled after Hawk was unable to make payments.

Ruppert eventually evicted Hawk from the premises and sued her for civil theft and unjust enrichment based on a security clause in the second contract for deed and sought a declaratory judgment that certain personal property belonged to him. Hawk answered and counterclaimed, asserting three causes of action: (1) fraud, (2) a “constitutional lien,” and (3) unjust enrichment. Hawk’s counterclaims were based on alleged misrepresentations that Ruppert made about the property before the parties entered into the first purchase agreement and the extensive improvements that Hawk claimed she had made to the property before the parties entered into the second purchase agreement.

Ruppert moved for summary judgment on Hawk’s counterclaims. At the summary-judgment hearing, the district court ruled from the bench in favor of Ruppert. An order memorializing the district court’s decision was issued on March 5, 2009. In August 2009, Ruppert moved to dismiss his claims against Hawk, and the district court granted Ruppert’s motion. After an initial attempt to appeal the March 5, 2009 order was

dismissed by this court for lack of jurisdiction, judgment on the March 2009 order was entered in December 2009. This appeal follows.

D E C I S I O N

I.

Hawk argues that the district court erred by prematurely granting summary judgment to Ruppert on her counterclaims, contending that the district court should have granted her a continuance to complete discovery. The rules of civil procedure permit a party to move for summary judgment “at any time after the expiration of 20 days from the service of the summons.” Minn. R. Civ. P. 56.01. Minn. R. Civ. P. 56.06 allows a party to move for a continuance from summary judgment “to permit affidavits to be obtained or depositions to be taken or discovery to be had.” “A district court’s decision to deny a motion for a continuance to conduct discovery is reviewed under an abuse-of-discretion standard.” *Lewis v. St. Cloud State Univ.*, 693 N.W.2d 466, 473 (Minn. App. 2005), *review denied* (Minn. June 14, 2005).

In deciding a motion for a continuance to allow for more discovery, a district court considers whether the moving party has shown (1) diligence in seeking discovery before the summary-judgment motion was made and (2) a good-faith belief that the discovery sought will uncover material facts. *Rice v. Perl*, 320 N.W.2d 407, 412 (Minn. 1982). Generally, continuances to permit a party to conduct and complete discovery before considering summary judgment are liberally granted. *Id.*

But Hawk did not move for a continuance under rule 56.06 and did not file an affidavit under that rule. In her memorandum in opposition to Ruppert’s motion, Hawk

stated that Ruppert’s “motion should be denied so that discovery can be completed.” While we do not reach the question of whether this request was tantamount to a motion for a continuance, we note that Hawk’s failure to submit a supporting affidavit in support of her request was enough to justify the district court’s decision. *See Molde v. CitiMortgage, Inc.*, 781 N.W.2d 36, 45 (Minn. App. 2010) (“[The] failure to submit such an affidavit, by itself, justifies the district court’s decision to rule on the motion without granting relief under rule 56.06.”). Therefore, we conclude that the district court acted within its discretion by denying Hawk’s request for additional time.

II.

Hawk asserts that the district court erred in granting Ruppert summary judgment on her counterclaim for unjust enrichment. A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, show that there is no genuine issue of material fact and that either party is entitled to judgment as a matter of law. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (citing Minn. R. Civ. P. 56.03). No genuine issue for trial exists “when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.” *Id.* at 71. “On appeal from summary judgment, we review de novo whether a genuine issue of material fact exists, and whether the district court erred in its application of the law.” *Peterka v. Dennis*, 764 N.W.2d 829, 832 (Minn. 2009) (quotation omitted). When deciding a motion for summary judgment,

“[t]he evidence must be viewed in the light most favorable to the non-moving party.” *Admiral Merchs. Motor Freight, Inc. v. O’Connor & Hannan*, 494 N.W.2d 261, 265 (Minn. 1992).

To prevail on an unjust-enrichment claim, a party must establish that another person knowingly received or obtained something of value for which the person “in equity and good conscience should pay.” *ServiceMaster of St. Cloud v. GAB Business Servs., Inc.*, 544 N.W.2d 302, 306 (Minn. 1996) (quotation omitted). An unjust-enrichment claim requires proof that a party “was unjustly enriched in the sense that the term ‘unjustly’ could mean illegally or unlawfully.” *First Nat’l Bank of St. Paul v. Ramier*, 311 N.W.2d 502, 504 (Minn. 1981).

We agree with the district court’s conclusion that Hawk failed to sufficiently support her allegation that Ruppert received anything of value. Hawk claims that Ruppert received the benefit of increased property value due to improvements that Hawk made to the property. To support this allegation, Hawk attached an affidavit to her memorandum in opposition to Ruppert’s summary-judgment motion in which she claimed that Ruppert had recently relisted the property for \$880,000. But on appeal, Hawk focuses on the difference in price between the two contracts for deed, rather than on the alleged \$880,000 sale listing. She states that “[w]hile [her] estimation of the value of the Property as \$880,000 may have been incompetent, the actual prices on the Contracts for Deed were not.” The parties do not dispute that there was a \$100,100 difference in the purchase prices on the two contracts for deed. Hawk argues that this is

sufficient evidence of the value of improvements that she made to the property to create a genuine issue of material fact. We disagree.

Hawk never alleged what she spent to make the renovations, other than “enormous sums of money.” Nor did Hawk supply any evidence of the increased value of the property, other than the two contracts for deed. As the district court noted, “[t]he record before the Court was void of any receipts, invoices, or other documents to demonstrate the sum of [Hawk]’s improvements, or the manner and extent to which the improvements increased the Property’s value, if any.” We conclude that Hawk’s unsupported allegation about the increased property value, even viewed in a light most favorable to her, was insufficient to create a genuine issue of material fact. *See Metge v. Cent. Neighborhood Improvement Ass’n*, 649 N.W.2d 488, 495 (Minn. App. 2002) (“The nonmoving party may not rely on . . . unsupported allegations, but must come forward with specific facts to satisfy its burden of production.”). Accordingly, the district court did not err by awarding summary judgment to Ruppert.

III.

Hawk also claims that the district court erred by granting summary judgment to Ruppert on her claim for a “constitutional lien.” We review constitutional questions *de novo*. *Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 148 (Minn. 2001).

Section 12 of article I of the Minnesota Constitution provides:

A reasonable amount of property shall be exempt from seizure or sale for the payment of any debt or liability. The amount of such exemption shall be determined by law. Provided, however, that all property so exempted shall be liable to seizure and sale for any debts incurred to any person

for work done or materials furnished in the construction, repair or improvement of the same, and provided further, that such liability to seizure and sale shall also extend to all real property for any debt to any laborer or servant for labor or service performed.

According to this section, real property is subject to seizure and sale for debts for labor or service performed. The parties do not agree as to whether this liability can attach to non-exempt property, such as commercial real estate, or whether the last clause refers to exempt property only, such as a homestead.

Without resolving this question, we conclude that this section does not create an independent cause of action. Regardless of whether commercial property may be seized under this constitutional provision, there can be no seizure or sale of any property until a debt or liability has been established. *Nickerson v. Crawford*, 74 Minn. 366, 369, 77 N.W. 292, 293 (1898) (stating, “[This constitutional provision] does not make the specified debts a lien on the property but merely provides that the otherwise exempt property shall be subject to seizure and sale for such debts.”). Hawk has failed to establish that she is owed anything from Ruppert. Because Hawk’s claim for unjust enrichment fails, her attempt to attach a lien pursuant to this section necessarily fails as well.

Affirmed.