STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1682

Scott Barriball, et al.,
Respondents,

vs.

Lawrence J. Langer, d/b/a Allied Equipment Supply,
Appellant.

Filed August 6, 2012
Reversed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CV-09-23934

Timothy R. Maher, Guzior Armbrecht Maher, Minneapolis, Minnesota (for respondents)

Daniel R. Trost, Schreiber & Jarstad, Lake City, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, Judge; and Muehlberg, Judge.*

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

In this business dispute, appellant challenges the district court's award of damages based on promissory estoppel, and respondent argues that the court erred in determining

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

that the parties did not enter into a contract. We agree with the district court that the parties did not establish a contract. But because we conclude that the elements of promissory estoppel are not satisfied, we reverse.

FACTS

Appellant Lawrence J. Langer, d/b/a Allied Equipment Supply, designs, builds, and supplies restaurants with stainless-steel products and equipment. Respondent Scott Barriball owns respondent Envira Properties, LLC, which owns real estate located in Robbinsdale (the property). Langer and Steve Fierro worked together on various restaurant projects during 2008 and 2009.

In September 2008, Fierro approached Langer about developing a restaurant on the property. On April 8, 2009, Envira's existing tenant ceased his restaurant operation and turned possession of the property over to Envira. Demolition of the space occurred from April 18 to April 25. On April 24, even though the parties had not executed a lease, Langer gave Fierro a check for $2,500 payable to Barriball, representing a partial payment of the $7,500 rent demanded by Barriball.

On May 6, Langer, Barriball, and Fierro executed a document entitled "Business Details and Contract for Restaurant at 4154 W. Broadway, Robbinsdale, MN." The document provides: (1) Fierro would sign a lease with Evira; (2) Barriball would be paid $5,000 for the next two months' rent; (3) Langer would pay for "immediate electric and flooring issues," and those amounts would be credited to a "prepaid lease fund"; and (4) Langer would supply all equipment "free and clear of any and all holdings, including by Envira Properties; and is exclusively his." Also on May 6, Barriball and Fierro

executed a lease for the property. On May 12, Langer refused to sign the lease or make further payments to Barriball. Langer informed Fierro that he would no longer participate in the restaurant project.

Barriball and Fierro continued the project and opened Talula's Cafe in July 2009. Langer did not pay any of the remodeling expenses or supply equipment. Envira paid $4,013.04 for new flooring, $7,978.69 for electrical work, and $22,688.71 for equipment.

Barriball initiated this action against Langer, alleging breach of contract, fraud in the inducement, and promissory estoppel and seeking declaratory relief. Langer denied the allegations, and the case proceeded to a court trial. Barriball testified that Fierro and Langer approached him in September 2008 about leasing and remodeling the property to open a restaurant. Barriball understood that Fierro would run the restaurant and that Langer would provide equipment and start-up money. Fierro testified that he was responsible for operating the restaurant, and Langer said that he would take care of the financial end of the restaurant. In regard to clause three of the May 6 document, Fierro testified that "of course [Langer] wanted to have the electric and flooring issues; and . . . [Langer] had picked out his contractors already from Red Wing."

In the beginning of April, Barriball signed a letter of intent with Langer and terminated the current lease. The letter of intent stated that Langer/Fierro and a company to be named later would lease the property for a term of six years. The letter also stated that the monthly rent would be $2,500 for the first six months and then increase to $3,000 per month. Shortly thereafter, demolition occurred as Fierro and Langer requested.

According to Barriball, he and Langer spoke 6 to 12 more times prior to the May 6 meeting.

When asked, "Did [Langer] ever tell you that [the May 6] agreement was dependent on reaching an agreement with [Fierro]," Barriball responded, "Never, nor did Mr. Fierro." Barriball testified that he did not schedule the electrical and flooring work; he believes that Langer scheduled the two contractors. The invoices were addressed to "Talula's Café."

With respect to his promissory-estoppel claim, Barriball testified that Langer made two promises. First, at a meeting prior to May 6, Langer shook Barriball's hand and said, "I'm a man of my word and I'm going to do this project." Second, at a different meeting Langer stated, "Don't worry, this is a good project, we're going to do this." Barriball testified that the project Langer referenced was "[t]he same deal we were talking about from day one: [t]hat [he] and [Fierro] would put this restaurant together, that [Langer] was the financial backer, that [Fierro] was going to run this restaurant, and . . . [Langer] provided this equipment that he was involved with."

At the conclusion of the trial, the district court determined that the May 6 document is not a legally enforceable contract. The court reasoned that clause four of the document is "vague and virtually unintelligible"; it "defies . . . precise interpretation"; and it fails to articulate what equipment will be supplied, when it will be delivered, and at what cost. The district court further reasoned that these elements are material and fundamental to the formation of a valid contract. On the promissory-estoppel claim, the district court found that Langer made a clear and definite promise to pay for the flooring

and electrical work on which Barriball relied to its detriment and awarded $11,991.73 in related costs. This appeal follows.

D E C I S I O N

I. The parties did not establish an enforceable contract.

Barriball argues that the district court erred in concluding that the May 6 document is not a valid contract. The elements of a contract are (1) offer, (2) acceptance, and (3) an exchange of consideration. *S.O. Designs USA, Inc. v. Rollerblade, Inc.*, 620 N.W.2d 48, 53 (Minn. App. 2000), *review denied* (Minn. Feb. 21, 2001). To create an enforceable contract, it is not necessary for the parties to agree to every term; rather, the law requires that the parties' intent as to the fundamental terms be determined with reasonable certainty. *Hill v. Okay Constr. Co.*, 312 Minn. 324, 332, 252 N.W.2d 107, 114 (1977).

> It is a fundamental rule of law than an alleged contract which is so vague, indefinite, and uncertain as to place the meaning and intent of the parties in the realm of speculation is void and unenforceable. Consequently, where substantial and necessary terms are specifically left open for future negotiation, the purported contract is fatally defective. On the other hand, the law does not favor the destruction of contracts because of indefiniteness, and if the terms can be reasonably ascertained in a manner prescribed in the writing, the contract will be enforced.

King v. Dalton Motors, Inc., 260 Minn. 124, 126, 109 N.W.2d 51, 52-53 (1961). "[T]he existence and terms of a contract are questions for the fact finder," *Morrisette v. Harrison Int'l Co.*, 486 N.W.2d 424, 427 (Minn. 1992), but we review a district court's application

of the law de novo, *Art Goebel, Inc. v. N. Suburban Agencies*, 567 N.W.2d 511, 515 (Minn. 1997).

Barriball argues that the May 6 document is a valid contract and obligates Langer to pay for the electrical and flooring work performed at the property and to supply equipment. We consider each of the relevant clauses in turn.

Clause three provides: "Larry Langer will pay for the immediate electric and flooring issues and will be credited as a prepaid lease fund when the work has been completed. This will have a maximum repayment of $11,500 over term of lease." It is unclear what the term "immediate" means and if any electrical issues were known before the project began. Further, clause three references a credit to a prepaid lease fund, but this term is not explained and is ambiguous. It is not clear who is receiving a credit or for what purpose the lease fund will be utilized. When asked if he understood clause three, Barriball testified, "I'm actually still confused about what he was getting at there. And that somehow this maximum amount of $11,500 would be repaid over the term of the lease. No, I actually don't know what that means."

Clause four states that "Larry Langer will supply all equipment and this equipment is free and clear of any and all holdings, including by Envira Properties; and is exclusively his." This clause does not specify what type and amount of equipment is to be provided, and key terms including price and delivery schedule are missing.

Barriball argues that the lack of specificity and missing terms are not fatal because the type of equipment needed to operate a restaurant can be determined with reasonable certainty. We are not persuaded. There are many types of restaurants, and not all

restaurants utilize the same equipment. Barriball also argues that the price of the equipment is not a material term because the parties were familiar with the space, knew the purpose of the project, and the cost of the equipment could be ascertained with reasonable certainty. We disagree. Clause four only states that Langer would supply the equipment; it does not say whether Langer would be selling, leasing, or donating this equipment.

Not only does the document fail to establish contractual terms with reasonable certainty, but it lacks consideration. Langer is not identified as a party to the referenced lease, and the document does not state that he will receive any remuneration or other consideration in exchange for complying with clauses three and four. Thus, the essential contractual element of consideration is wholly lacking. *See Deli v. Hasselmo*, 542 N.W.2d 649, 656 (Minn. App. 1996) ("A contract must be supported by consideration."), *review denied* (Minn. Apr. 16, 1996).

On this record, we conclude, as did the district court, that the May 6 document is not a valid contract.

II. The evidence was not sufficient to establish that Langer made a clear and definite promise to Barriball to sustain a promissory-estoppel claim.

Langer argues that the district court abused its discretion when it awarded Barriball $11,991.73 on a theory of promissory estoppel. Langer argues that promissory estoppel does not apply because he did not make a clear and definite promise on which he intended Barriball to rely and because Barriball did not rely on such a promise to his detriment.

"Promissory estoppel implies a contract in law where no contract exists in fact." *Deli v. Univ. of Minn.*, 578 N.W.2d 779, 781 (Minn. App. 1998), *review denied* (Minn. July 16, 1998). The elements of a promissory-estoppel claim are (1) a clear and definite promise; (2) the promisor intended to induce reliance by the promise, and the promisee relied to the promisee's detriment; and (3) the promise must be enforced to prevent injustice. *Cohen v. Cowles Media Co.*, 479 N.W.2d 387, 391 (Minn. 1992). Judicial determination of injustice involves a number of considerations, "including the reasonableness of a promisee's reliance." *Faimon v. Winona State Univ.*, 540 N.W.2d 879, 883 (Minn. App. 1995), *review denied* (Minn. Feb. 9, 1996). "Granting equitable relief is within the sound discretion of the [district] court. Only a clear abuse of that discretion will result in reversal." *Nadeau v. Cnty. of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979).

The district court based its promissory-estoppel determination on the May 6 document and unspecified "other conversations made before the writing." The district court also stated that "[i]t is also reasonable to infer that [Barriball] may not have allowed the demolition of the property without a promise that the renovations would be funded, at least partially and to the specific areas of flooring and electrical, by [Langer]." Langer argues that the evidence does not support a promissory-estoppel claim. We agree.

The record reveals that decisions took place between the parties before the May 6 meeting during which the document was signed, but there is no evidence that Langer made a clear and definite promise to pay for electrical and flooring work on which Barriball relied. Barriball's testimony regarding a promise consists of two general

statements by Langer that he was "going to do this project" and Barriball's understanding that Langer was responsible for financing the project. Barriball cites no other evidence of any promises made by Langer. Because the evidence does not establish that Langer made any clear or definite promises with respect to electrical and flooring work, Barriball's promissory-estoppel claim fails as a matter of law. Moreover, the May 6 document cannot establish the reliance element because Barriball terminated the prior tenancy and authorized the demolition work prior to May 6.

In sum, the record is void of evidence supporting application of promissory estoppel. Accordingly, we conclude that the district court abused its discretion by awarding Barriball $11,991.73 based on promissory estoppel.

Reversed.