STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0831

Kathleen B. Murphy,
Appellant,

vs.

South Central Minnesota Multi-County Housing & Redevelopment Authority,
Respondent.

Filed December 23, 2013
Affirmed
Peterson, Judge

Watonwan County District Court
File No. 83-CV-12-177

William Starr, Wayzata, Minnesota; and

Charles A. Beckjord, St. Paul, Minnesota (for appellant)

Brock P. Alton, Gislason & Hunter, Minneapolis, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Connolly, Judge.

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

PETERSON, Judge

In this appeal from a summary judgment, appellant, who operated a mobile-home park owned by respondent, argues that (1) the district court erred in ruling that equitable relief was unavailable due to the existence of a contract between the parties, and (2) fact

questions existed regarding appellant's claims for promissory estoppel and unjust enrichment. We affirm.

FACTS

This lawsuit arose out of appellant Kathleen B. Murphy's operation of the Madelia Manufactured Home Park (the park), which is located on property owned by respondent South Central Minnesota Multi-County Housing and Redevelopment Authority. When respondent bought the property, respondent entered into a deferred-loan-repayment agreement and mortgage (the loan agreement) with the Minnesota Housing Finance Agency (the MHFA). The loan agreement was made under the MHFA's publicly owned neighborhood land trust program pursuant to Minn. Stat. §§ 462A.202, subd. 6. .30, .31 (1994).

The loan agreement permitted respondent to lease the park by way of a primary ground lease to either a nonprofit organization or to low- to moderate-income families or individuals. Respondent entered into a 99-year ground lease with the Minnesota Affordable and Accessible Housing Corporation (the MAAH), a nonprofit entity that owned the mobile homes located in the park. The lease required the MAAH to provide utilities services; maintain the park's streets, common areas, and lots; and pay operating expenses.

In 2001, the property-management firm that the MAAH had hired to manage the park resigned. After the management firm resigned, Steven Pierce, who served on the boards of directors for both the MAAH and respondent, visited the park and found it in a state of disrepair. On March 13, 2001, the MAAH invoked the lease's six-month

termination provision and stated that it would stop operating the park effective September 15, 2001.

In September 2001, David Hunter, who is experienced in the construction industry, began managing the park for the MAAH, and the MAAH rescinded its notice of termination. Hunter, who worked with appellant buying and refurbishing residential and business properties for resale, began negotiating with Pierce for appellant to take over the MAAH's lease. On January 16, 2002, appellant entered into a contract with the MAAH to buy the mobile homes in the park for $125,000. The contract between the MAAH and appellant states that appellant "shall assume the balance of the 99-year lease of the real property on which the [park] is situated, along with all of the responsibilities and conditions connected with said lease."

On January 30, 2002, respondent passed a resolution authorizing the assignment of the lease to appellant. Respondent's attorney drafted an assignment that included signature blocks for the MAAH, appellant, and respondent and for approval by the MHFA. Appellant, Pierce on behalf of the MAAH, and Keith Luebke on behalf of respondent, signed the draft agreement but did not obtain approval from the MHFA. Appellant and Hunter took over operating the park.

In 2005, appellant entered into a purchase agreement with Northcountry Cooperative Development Foundation for Northcountry to buy appellant's interests in the park. Northcountry wrote to the MHFA asking whether the transfer of the lease to appellant was a valid transfer. The MHFA responded that approval by the MHFA and

the finance commissioner were required for the transfer but had not been obtained, and Northcountry withdrew from the purchase agreement.

The MHFA notified respondent that it was in default on the loan agreement for allowing the transfer of the lease to appellant. The MHFA stated that, if the default was not cured, the balance of the loan would become immediately due and payable. In 2008, respondent terminated the lease to appellant and sold the property to Northcountry.

Appellant brought this action against respondent alleging claims for breach of contract, promissory estoppel, and unjust enrichment. The district court granted summary judgment for respondent on all of appellant's claims. This appeal followed.

D E C I S I O N

Summary judgment is appropriate when the record shows "that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. We review the district court's grant of summary judgment de novo, to determine whether there are genuine issues of material fact and whether the district court erred in applying the law. *Mattson Ridge, LLC v. Clear Rock Title, LLP*, 824 N.W.2d 622, 627 (Minn. 2012). A party opposing summary judgment may not rest on "mere averments or denials . . . but must present specific facts showing that there is a genuine issue for trial." Minn. R. Civ. P. 56.05. "We view the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

I.

Appellant does not challenge the summary judgment on her breach-of-contract claim. But, in challenging the summary judgment on her equitable claims, she argues that the district court's determination that the parties entered into a contract led to incorrect decisions on the equitable claims. Although appellant opposed summary judgment on the breach-of-contract claim in the district court, on appeal she claims that there was no contract and, therefore, the district court erred in denying equitable relief based on the principle that equitable relief is not available when there is a legal remedy available. *See Southtown Plumbing, Inc. v. Har-Ned Lumber Co.*, 493 N.W.2d 137, 140 (Minn. App. 1992) ("It is well settled in Minnesota that one may not seek a remedy in equity when there is an adequate remedy at law."); *see also U.S. Fire Ins. Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn. 1981) (stating that equitable relief cannot be granted when parties' rights are governed by valid contract).

Because appellant did not present this argument to the district court, it is not properly before this court. An appellate court generally must consider only those issues that the record shows were presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). A party may not obtain review by presenting the same general issue presented to the district court under a new theory. *Id.*

But, even if we assume that there was no contract, it does not change our analysis of the equitable claims because appellant is not correct that the district court's decisions regarding those claims were based on the principle that equitable relief is not available when an adequate legal remedy exists. The district court stated that principle in its

memorandum, but its decisions on appellant's equitable claims were based on other grounds. The district court granted summary judgment on the promissory estoppel claim because appellant failed to raise "an issue of material fact over the existence of a clear and definite promise" and on the unjust-enrichment claim because "[t]he record contains no facts suggesting that [respondent] benefited lawfully or unlawfully from [appellant's] actions" or "knowingly took advantage of her." Even if there were no contract, appellant's failure to present specific facts showing a genuine issue for trial on elements essential to her equitable claims is a valid basis for granting summary judgment.

II.

"To state a claim for promissory estoppel the plaintiff must show that (1) there was a clear and definite promise, (2) the promisor intended to induce reliance and such reliance occurred, and (3) the promise must be enforced to prevent injustice." *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 834 (Minn. 2011).

Appellant argues:

> A definite promise was given to [appellant] and Mr. Hunter by both MAAH and [respondent]. Mr. Pierce, a board member of both [respondent] and MAAH, stated it succinctly that Mr. Hunter and [appellant] were taking over the Park so that once fixed up "[they] had the ability to turn around and sell the Park as an ongoing entity with good revenue."

Appellant's principal brief does not contain a citation to the record supporting this assertion. Her reply brief cites pages 90 and 93 of the appendix to respondent's brief. Those pages contain excerpts from appellant's deposition that address the property's condition when appellant and Hunter became involved with it and how appellant and

Hunter worked together, but they do not identify a promise to either appellant or Hunter made by Pierce or any representative of respondent. During appellant's deposition, when asked "what promises and inducements [respondent] made to you concerning the level of compensation and profit you could earn operating the park," she replied, "I don't know. . . . I cannot give you specific promises."

At oral argument, appellant's attorney argued that Pierce's deposition presented evidence of a clear and definite promise to appellant. Counsel cited page 134 of the deposition, but that page does not provide evidence of a promise. It provides evidence that the parties thought that appellant would be able to sell her interests in the park after she and Hunter made improvements, but it does not indicate that any representative of respondent promised that she would be able to do so. In other words, the parties acted based on the mistaken premise that appellant would be able to sell her interests in the park, not on a promise that she would be able to do so.

Because the record contains no evidence of a clear and definite promise, the district court properly granted summary judgment for respondent on appellant's promissory estoppel claim even if there was no contract between the parties.

III.

To establish a claim for unjust enrichment, the plaintiff must show that the defendant "knowingly received or obtained something of value for which the defendant in equity and good conscience should pay." *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 306 (Minn. 1996) (quotation omitted). The plaintiff must do more than establish that the defendant benefited from another's efforts or obligations.

First Nat'l Bank of St. Paul v. Ramier, 311 N.W.2d 502, 504 (Minn. 1981). Instead, the plaintiff must show that the defendant "was unjustly enriched in the sense that the term 'unjustly' could mean illegally or unlawfully." *Id.* The plaintiff can also establish unjust enrichment by demonstrating that the defendant's conduct in retaining the benefit is morally wrong. *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. App. 2001).

Appellant argues that she and Hunter made substantial investments of time and money in the park and that respondent encouraged those investments and retained all of their benefits when it sold the park. But appellant needed to show more than that respondent benefited from her and Hunter's efforts; she needed to show that respondent wrongfully benefited. The evidence shows that the parties failed to effect a valid assignment of the lease, and that, as a result, appellant had nothing to sell after she improved the park. Although respondent may have benefited from the parties' failure to effect a valid assignment, there is no evidence that respondent acted with knowledge that the attempted assignment would not be successful. Because the record contains no evidence that respondent acted wrongfully, the district court properly granted summary judgment for respondent on appellant's unjust-enrichment claim even if there was no contract. *See Hesselgrave v. Harrison*, 435 N.W.2d 861, 864 (Minn. App. 1989) (reversing judgment for plaintiff on unjust-enrichment claim when there was no evidence that defendant acted illegally or committed improprieties in order to benefit from plaintiff's $25,000 tax payment), *review denied* (Minn. Apr. 24, 1989).

Affirmed.