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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1846**

Production Stamping, Inc.,
Respondent,

vs.

Wurm Partnership, LLP,
Appellant.

**Filed July 16, 2018
Affirmed
Reilly, Judge**

Wright County District Court
File No. 86-CV-16-5196

Charles K. Maier, Erin Westbrook, Gray, Plant, Mooty, Mooty & Bennett, P.A.,
Minneapolis, Minnesota (for PSI)

Joseph A. Wentzell, James W. Moen, Wentzell Law Office, PLLC, St. Anthony, Minnesota
(for Wurm)

Considered and decided by Bjorkman, Presiding Judge; Larkin, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

Wurm Partnership, LLP (Wurm) challenges the district court's grant of partial summary judgment to PSI Production Stamping, Inc. (PSI) and the district court's award of \$313,426.40 to PSI for Wurm's unjust enrichment. Because there are no genuine issues

of material fact and PSI is entitled to judgment as a matter of law on Wurm's counterclaims for unpaid rent, eviction for unpaid rent, and reformation, and because the district court did not abuse its discretion in granting PSI equitable relief, we affirm.

FACTS

PSI is a Minnesota corporation that produces stamped metal pieces for manufacturing. Lester and Jeannine Wurm¹ own PSI. In 2003, Lester and Jeannine formed Wurm for the purpose of owning land and a building that housed PSI's production facility (the property). The parties entered into a five-year lease with a monthly rent of \$13,500, which they renewed in 2008 with identical terms. In January 2009, PSI began paying Wurm \$25,000 per month in rent instead of \$13,500 per month as required under the lease. Lester stated that he increased PSI's monthly payments to Wurm because he wanted to pay down Wurm's mortgage. PSI tracked the excess payments and internally documented them as a debt owed to PSI by Wurm.

In late 2009 and early 2010, Lester and Jeannine developed an estate plan. The couple has ten children—eight daughters and two sons. Lester and Jeannine decided it would be difficult to divide the businesses equally between their children. So, on September 30, 2009, Lester and Jeannine gave Wurm to their two sons, Darin and Shane. They also gave Darin and Shane each a 20% interest in PSI, leaving a controlling share for themselves. Lester and Jeannine intended for Darin and Shane eventually to buy the

¹ Because the individuals in this case all share the same last name, and because a business entity also shares that name, we refer to the parties by their first names for clarity.

remaining shares in PSI. Lester and Jeannine would then distribute the proceeds from the buyout equally among their eight daughters.

PSI continued to overpay its monthly lease payments to Wurm. The monthly rental payments of \$25,000 continued until June 2010, when PSI decreased the monthly rental payments to \$17,000. Shortly thereafter, in 2010, the parties entered into a new lease for the property. The new lease had the same rent as the old lease: \$13,500 per month. The lease states: “There are no other understandings or agreements outside this Lease.”

In 2013, Darin and Shane bought two trucks and titled them in Wurm’s name, arranging for PSI to pay for the trucks over Lester’s objection.² PSI’s truck payments totaled \$19,836.88. Like the monthly rent overpayment, PSI accounted for the truck payments as a debt owed by Wurm to PSI.

In 2014, Darin and Shane sued Lester, Jeannine, and PSI for minority shareholder oppression and asked the court to order Lester and Jeannine to buy out their sons’ ownership interest in PSI. Wurm was not a party to the litigation. In February 2015, the district court ordered Lester and Jeannine to purchase Darin and Shane’s shares in PSI.

In April 2015, PSI reduced its monthly payments to Wurm from \$17,000 to the \$13,500 monthly rent required by the lease. By letter dated November 18, 2015, PSI demanded Wurm repay the debt it owed to PSI, including excess rent and truck payments totaling \$384,336. Wurm denied any obligation to repay the amounts. PSI sued Wurm for breach of contract, unjust enrichment, money had and received, and promissory estoppel.

² It is unclear from the record how Darin and Shane arranged for PSI to pay for the trucks contrary to Lester’s wishes.

Wurm counterclaimed for unpaid rent, unauthorized alterations, failure to allow inspection, reformation, and eviction. PSI moved for summary judgment on Wurm's counterclaims. The district court determined that the lease between the parties included a monthly rent term of \$13,500, that the lease had not been reformed, and that Wurm's counterclaims premised on insufficient rent payments failed as a matter of law. The district court granted partial summary judgment to PSI on Wurm's counterclaims for unpaid rent, reformation, and eviction for unpaid rent.

A jury trial was held on PSI's claims and Wurm's remaining counterclaims. The parties agreed the jury would render a verdict on PSI's breach-of-contract claim and render an advisory verdict regarding the remaining equitable claims. At the close of evidence, the district court granted PSI's motion for a directed verdict on Wurm's remaining counterclaims. That decision is not before us on appeal. The jury determined there was no contract between the parties for repayment of excess lease payments, and found in favor of PSI on its unjust-enrichment claim and the related equitable claim for money had and received. The jury determined Wurm was unjustly enriched in the amount of \$166,800 for excess rent payments and \$19,837 for truck payments.

Upon consideration of the jury's advisory verdict and the parties' posttrial briefing, the district court determined that Wurm knowingly received the benefit of the excess rent and truck payments from PSI, and that allowing Wurm to retain the benefit would be unjust. The district court awarded PSI \$313,426.40 for unjust enrichment and money had and received.

This appeal followed.

DECISION

- I. There are no genuine issues of material fact regarding Wurm’s claims for unpaid rent, reformation, and eviction for unpaid rent, and PSI is entitled to summary judgment as a matter of law on those claims.**

On appeal from summary judgment, this court considers whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). Summary judgment is proper if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show 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. On review, this court reviews the evidence in the light most favorable to the party against whom summary judgment was granted. *STAR Centers, Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). A fact is material if, once resolved, it will affect the result or outcome of the case. *Antonello v. Comm’r of Revenue*, 884 N.W.2d 640, 645 (Minn. 2016). The interpretation of a written contract is a question of law, which this court reviews de novo. *Maday v. Grathwohl*, 805 N.W.2d 285, 287 (Minn. App. 2011).

A. The parol evidence rule bars evidence of an oral agreement that preceded the written lease.

When there is an unambiguous integrated written contract, “[t]he parol evidence rule prohibits the admission of extrinsic evidence of prior or contemporaneous oral agreements, or prior written agreements, to explain the meaning of a contract.” *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 312 (Minn. 2003). However, prior agreements may be considered to prove the existence of surprise, fraud,

accident, or mistake. *Nygard v. Minneapolis St. Ry. Co.*, 147 Minn. 109, 113, 179 N.W. 642, 644 (1920). A mutual mistake occurs where the parties are in agreement as to the content of the document, but through a scrivener's error the document does not reflect the parties' understanding. *Alpha Real Estate Co.*, 664 N.W.2d at 314.³

In September 2010, an attorney sent a draft of the 2010 lease to the parties. Although Wurm and PSI entered into a lease in 2008 that would not expire until 2013, the bank requested a new lease after Lester and Jeannine conveyed Wurm to Darin and Shane. The lease contained a provision requiring PSI to pay Wurm \$13,500 a month for rent. The lease also contained a provision providing that “[t]here are no other understandings or agreements outside of this Lease.” The parties signed the lease.

Wurm contends that a meeting occurred in late 2009 between Lester, Darin, Shane, and the parties' accountant, and that the parties orally “agreed, understood, or intended” that the rent would be \$17,000 per month. This alleged 2009 oral agreement occurred prior to the 2010 lease. Because the 2010 lease is fully integrated and unambiguous, evidence of any prior oral agreement is barred by the parol evidence rule. *Id.* at 312.

Wurm's contention that the 2010 lease contains a mutual mistake is contradicted by the record, which indicates there were no genuine issues of material fact as to whether the parties were mistaken about the rent. First and foremost, the parties signed the written

³ A mistake may also be unilateral if accompanied by fraud or inequitable conduct by the other party. *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 865 (Minn. 2011). Wurm does not allege a unilateral mistake and does not allege any behavior by PSI that is fraudulent or inequitable. Our review of the record does not reveal any evidence that PSI behaved fraudulently or inequitably.

lease providing for a monthly rent of \$13,500 on its front page. Second, Lester's affidavit shows he was not mistaken as to the amount of rent. He writes that he "understood PSI's monthly rent obligation would be \$13,500, which is what the lease says on its very first page." Third, the drafting attorney sent an email to Darin and Shane regarding the 2010 lease and stated the rent would be \$13,500 per month. Wurm does not argue that it was unaware of the proposed rent amount during the negotiation of the 2010 lease.

Wurm cites the 2009 oral agreement and PSI's subsequent behavior as evidence of a mistake. During the time of the excess rent payments, PSI documented its overpayments to Wurm as a loan subject to repayment. Each year, the overpayments were added to the accumulating total of Wurm's indebtedness. However, in 2011, even though PSI overpaid its rent owed, it documented a decrease in the indebtedness owed by Wurm. And in 2012, when PSI overpaid its rent again, it did not increase the amount of indebtedness on its internal ledgers. But, the next year, it continued adding to the indebtedness in accordance with the overpayments and continued to do so until 2015. Wurm cites this change in behavior as evidence of a mutual mistake between the parties about the agreed-upon rent.

The change in behavior does not create a genuine issue of material fact as to whether the parties were mistaken about the rent. The continuing documentation of indebtedness shows PSI intended the rent overpayments to be repaid, and the odd documentation of the ongoing changes to the indebtedness does not suggest that PSI was mistaken as to the amount of the rent. The documentation does not correspond directly to either rent value, \$13,500 versus \$17,000, and Wurm offers no coherent explanation to show what the change in documentation means. Wurm cites only the change itself as a justification for

its argument that the parties were mistaken about the rent. “[The] party resisting summary judgment must do more than rest on mere averments” to survive summary judgment. *DLH*, 566 N.W.2d at 71. Wurm provides nothing more to show the true intent of the parties. Construing the evidence in Wurm’s favor, there is not a genuine issue of material fact that there was a mistake between the parties about the lease. Accordingly, the alleged 2009 oral agreement is excluded from the interpretation of the meaning of the 2010 lease. See *Alpha Real Estate Co.*, 664 N.W.2d at 312.

B. The statute of frauds bars subsequent implied or oral modification of the lease.

Generally, a lease of real property for more than one year is only valid if it is reduced to writing and it may not be orally modified. Minn. Stat. § 513.05 (2016) (commonly referred to as the statute of frauds). Likewise, any subsequent change to the lease must also be in writing. *Alexander v. Holmberg*, 410 N.W.2d 900, 901 (Minn. App. 1987). However, an oral modification to a written lease subject to the statute of frauds may be valid if the parties’ subsequent conduct shows that the written agreement no longer remained in force. *Id.*

Wurm argues that PSI’s change in accounting practices constitutes subsequent conduct showing the written agreement was no longer in effect and the statute of frauds does not apply. We do not agree. Each written lease contained the same monthly rent of \$13,500. PSI overpaid its rent to Wurm before Darin and Shane became its owners and continued to do so afterwards. That PSI continued overpaying its rent after ownership of Wurm was transferred to Darin and Shane does not indicate that PSI intended the monthly

rent to increase; PSI did not change its behavior. Though PSI altered how much of the overpayment it attributed to Wurm's accumulating indebtedness, there is nothing in the record to show that PSI believed the written lease was no longer in effect.⁴

Wurm relies on *Starlite Ltd. P'ship v. Landry's Restaurants, Inc.*, 780 N.W.2d 396, 399-400 (Minn. 2010), for the proposition that PSI's performance shows that the statute of frauds should not apply to the lease. *Starlite* is inapposite. There, the parties did not properly execute a lease, but performed under its terms for nine years. *Id.* at 398. The court determined the lease was outside the statute of frauds because the parties' nine-year performance of the contract showed it had legal force. *Id.* at 400. This case does not involve the question of whether a written contract was properly formed and executed. Instead, Wurm is trying to modify the lease's clear terms by showing subsequent performance. None of PSI's subsequent conduct supports a conclusion that it believed the rent to be \$17,000 or that the prior written lease did not have legal effect.

There is no genuine issue of material fact on this question. The statute of frauds bars any oral modification of the lease as a matter of law.

C. The parties did not reform the lease as a matter of law.

It is a heavy burden to establish that a contract has been reformed. *Theisen's, Inc. v. Red Owl Stores, Inc.*, 309 Minn. 60, 65, 243 N.W.2d 145, 148 (1976). A contract may be reformed if: (1) there was a valid agreement between the parties expressing their real

⁴ The district court noted that the change in accounting was due to an accountant's belief that a portion of the excess payment was actually rent due, as well as the inclusion of the unauthorized truck payments.

intention; (2) the written agreement did not express the real intentions of the parties; and (3) the failure was due to a mutual mistake of the parties or a unilateral mistake accompanied by fraud or inequitable conduct of the other party. *Id.* at 65-66, 243 N.W.2d at 148. A party arguing for reformation must show the agreement has been reformed through “clear and convincing evidence.” *Id.*

Wurm argues that there is a genuine issue of material fact whether rent payments greater than \$13,500 show reformation of the lease. The district court concluded that there was no clear and convincing evidence that the parties reformed the lease. We agree that PSI continuing to overpay on the lease in varying amounts is not “clear and convincing evidence” that the parties agreed to reform the lease. PSI overpaid its rent payments under both the 2008 and 2010 leases. That PSI continued to overpay on the same lease, albeit in different amounts, is not clear and convincing evidence that the parties intended to reform the lease terms.

Wurm also argues the district court erred by granting partial summary judgment to PSI because it relied on factual errors to reach its judgment. Specifically, Wurm cites the district court’s statement that PSI’s “accounting and documentation practices did not change after the 2009 meeting.” Contrary to the district court’s finding, the record shows that PSI did change its conduct with respect to its internal documentation of the excess payments and Wurm’s indebtedness. However, PSI’s change in documentation is not clear and convincing evidence that the parties intended for the lease to be reformed. The intention behind PSI’s change in documentation is unclear, as discussed above, and the ambiguity of PSI’s intent is fatal to a claim for reformation. Ultimately, Wurm must prove

by clear and convincing evidence that the parties intended for the lease to be reformed, and PSI's unexplained change in behavior is insufficient as a matter of law. That the district court may have misstated facts in its order for summary judgment does not require reversal, because even if we "disagree with the district court's analysis of some issues, summary judgment will be affirmed if it can be sustained on any grounds." *Allianz Ins. Co. v. PM Servs. of Eden Prairie, Inc.*, 691 N.W.2d 79, 82-83 (Minn. App. 2005). We conclude that although PSI changed its conduct with respect to its internal documentation of the excess payments, its change in behavior does not rise to the level of clear and convincing evidence that the parties intended to reform the lease.

Accordingly, PSI is entitled to judgment as a matter of law on Wurm's counterclaim for reformation.⁵

II. The district court did not abuse its discretion by granting PSI equitable relief.

This court reviews equitable determinations, such as unjust enrichment and money had and received, for an abuse of discretion. *See Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 819 (Minn. 2016) (stating the general rule is that equitable relief is reviewed for an abuse of discretion). A district court abuses its discretion if its ruling is "based on an erroneous view of the law" or is "against the facts in the record." *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011). We defer to the district court in equitable matters

⁵ Wurm's counterclaims for unpaid rent and eviction for unpaid rent rely on its assertion that the parties reformed the lease to increase the rent from \$13,500 a month to \$17,000 a month. Because Wurm's counterclaim for reformation fails as a matter of law, its counterclaims for unpaid rent and eviction for unpaid rent also fail.

in part because it “is in the best position to analyze the facts and balance the relevant factors.” *Melrose Gates*, 875 N.W.2d at 819.

A party may establish an unjust-enrichment claim by showing that another party “knowingly received something of value to which [the party] was not entitled, and that the circumstances are such that it would be unjust for that [party] to retain the benefit.” *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. App. 2001). Retaining the benefit is unjust if doing so would be illegal, unlawful, fraudulent, or morally wrong. *Id.* Relief based on unjust enrichment is unavailable when a valid contract exists. *U.S. Fire Ins. Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn. 1981). Here, the jury found there was no agreement between the parties with regard to overpaid rent or truck payments, so the remedy of unjust enrichment is available.

A. Excess Rent Payments

The record supports the district court’s finding that Lester and Jeannine intended that the excess rent payments be used to pay down Wurm’s mortgage. The excess payments were documented as a debt between Wurm and PSI and were intended to be repaid, as evidenced by Wurm recording the amounts as an indebtedness on its tax returns. PSI also treated the payments as a loan from PSI to Wurm by documenting the indebtedness on its tax returns and financial statements. The excess payments continued after Lester and Jeannine conveyed Wurm to Darin and Shane to allow Wurm to pay off its mortgage more quickly. PSI’s recording of the indebtedness continued during this time. Furthermore, when they conveyed Wurm to their sons, the sons agreed to “assume all obligations

associated with the Partnership Interest,” which included the obligation created by the excess payments.

Wurm argues the district court abused its discretion in dispensing equitable relief because Wurm’s conduct does not rise to the level of moral turpitude required to recover for unjust enrichment. We disagree. Lester and Jeannine communicated to their sons that the transfer of Wurm to Darin and Shane was part of their estate plan. Lester and Jeannine hoped their sons would continue to pay down the mortgage, accumulate equity in Wurm, and ultimately purchase their parents’ ownership shares of PSI. Wurm’s own documentation reflects its understanding of its indebtedness. That Wurm would withhold repayment of money clearly intended to be repaid and documented as such rises to the level of moral wrongness required to succeed on an unjust-enrichment claim. And the same facts support a claim for money had and received. *See Cady v. Bush*, 283 Minn. 105, 110, 166 N.W.2d 358, 361-62 (1969) (construing the two claims as substantially similar).

Wurm cites *Galante v. Oz, Inc.* for the proposition that a benefit must be conferred unwillingly or unknowingly to support an unjust-enrichment claim. 379 N.W.2d 723, 726 (Minn. App. 1986). But *Galante* is distinguishable. There, the proposed buyer of a nightclub performed management work at the nightclub in order to learn the nightclub business in anticipation of the sale of the business. *Id.* at 725. When the deal failed, he sought compensation for his management work. *Id.* The court determined that he performed work to benefit himself as a future nightclub owner, not to benefit the seller. *Id.* at 726. The court noted that both parties “believed the sale of the nightclub would succeed” and that the buyer chose to render services for his own benefit. *Id.* Here, PSI knowingly

made excess payments to Wurm with the understanding that the excess payments would be repaid. Though the transfer of the excess payments was knowing, PSI did not intend to give Wurm the money outright. The overpayments were only intentional to the extent PSI transferred money—PSI did not intend that Wurm would retain those overpayments without repayment.

Wurm argues that PSI failed to show that it conveyed a benefit to Wurm because the rent was never proven to be at a fair market rate. To support its argument, Wurm cites only *Archway Mktg. Servs. v. Cty. of Hennepin*, 882 N.W.2d 890, 894 (Minn. 2016), a tax case that addresses the proper procedure to determine market value. *Archway* is inapposite. Here, the parties agreed to a rental rate that was satisfactory to both parties, as reflected in the lease. Whether the rent represented the “true value” of the property is not at issue. PSI conferred benefit to Wurm under the lease because it paid more than was required by the lease.

Evidence in the record supports the district court’s conclusion that Wurm received the benefit of the excess rent payments and was not entitled to keep the excess rent payments, and that Wurm’s retention of the benefit would be unjust. The district court did not abuse its discretion when it determined that Wurm was unjustly enriched and that PSI is entitled to relief.

B. Truck Payments

When Darin and Shane arranged for PSI to pay for Wurm’s trucks over Lester’s objection, PSI recorded the payments as part of the indebtedness between the parties. The district court determined these payments were benefits given by PSI to Wurm that Wurm

was not entitled to receive. The uncontroverted evidence in the record is that Lester did *not* consent to the payments being made, that Darin and Shane knew Lester did not consent to the payments, and that Wurm retained the benefit of the payments anyway. Accordingly, the district court did not abuse its discretion in finding that Wurm was unjustly enriched by PSI's truck payments.

Wurm argues that the district court abused its discretion because it did not find that Wurm made promises to PSI to induce it to make the truck payments. Wurm does not cite any relevant caselaw to support this assertion or describe how lack of inducement defeats PSI's claim for unjust enrichment.

Wurm also contends that because PSI paid for personal expenses of Darin and Shane in the past, the truck payments are essentially the same. Wurm further claims that it is in privity with Darin and Shane, so it directly benefited from any payments made to benefit Darin and Shane. Wurm does not cite to caselaw describing how its alleged privity with Darin and Shane might defeat a claim of unjust enrichment. Whether PSI paid for personal expenses for Darin or Shane in the past has no bearing on whether PSI consented to make the truck payments on behalf of Wurm.

Finally, Wurm argues that PSI cannot obtain equitable relief because it failed to properly document the alleged indebtedness, citing *Galante* to support this assertion. 379 N.W.2d at 726. *Galante* states that a party cannot succeed on an unjust-enrichment claim simply because they entered into a "bad bargain." *Id.* Wurm neither adequately explains how *Galante* applies to this case, nor cites to relevant caselaw holding that a party is

precluded from recovering for unjust enrichment if it fails to adequately document an informal loan. Wurm's argument fails; it is unsupported by authority.

Evidence in the record supports the conclusion that Wurm received the benefit of the truck payments and was not entitled to receive that money. Wurm's retention of the benefit without repayment is unjust. The district court did not abuse its discretion by determining that Wurm was unjustly enriched, and PSI is entitled to relief.

III. The district court did not err by rejecting Wurm's defense of collateral estoppel.

Wurm claims that the prior action for shareholder oppression addressed the issue of the truck payments and that the equitable claims related to those payments are barred under the doctrine of collateral estoppel. We evaluate a district court's decision regarding collateral estoppel for an abuse of discretion. *Colonial Ins. Co. of Calif. v. Anderson*, 588 N.W.2d 531, 533 (Minn. App. 1999). The district court did not specifically rule on Wurm's collateral estoppel defense, but it discussed Wurm's request to amend its complaint to include a defense of res judicata, which is related to collateral estoppel. *See Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004). Whether collateral estoppel precludes litigation of an issue is a mixed question of law and fact subject to de novo review. *Id.* Collateral estoppel bars the relitigation of an issue when: (1) the issue is identical to one in a prior adjudication; (2) the adjudication was final on the merits; (3) the estopped party must have been a party to or in privity with a party in the prior adjudication; and (4) the estopped party must have had a full and fair opportunity to be heard on the issue. *Id.*

The district court determined that Wurm's defense fails because the prior adjudication for shareholder oppression did not address the truck payments. In the prior litigation, PSI sought to recover for unjust enrichment for personal expenses paid by PSI to Darin and Shane as individuals. However, PSI did not list truck payments as an expense it sought to recover, perhaps because Wurm (the legal owner of the vehicles and the entity on whose behalf the payments were made) was not a party to the prior action. The district court in the prior action did not reference truck payments in its order or rule that Darin and Shane were unjustly enriched by receiving those payments. The issue wasn't litigated in the prior adjudication, and Wurm's collateral estoppel defense fails on the first prong of the test.

Wurm also argues that the district court failed to determine whether Darin and Shane were in privity with Wurm, a finding which would satisfy the third prong of the test for collateral estoppel. The court was free to dispense with Wurm's collateral estoppel defense on the first prong without addressing privity. *See Heine v. Simon*, 702 N.W.2d 752, 761 (Minn. 2005) ("All four prongs of the [collateral estoppel] test must be met . . ."). Thus, the district court did not err in failing to address the issue of privity.

Affirmed.