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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-2069**

Anand Kannan,
Appellant,

vs.

Praveen Prabhakaran,
Respondent,

Vadivazhagi Kannan,
Defendant.

**Filed July 9, 2018
Reversed and remanded
Johnson, Judge**

Hennepin County District Court
File No. 27-CV-15-16516

Mark R. Bradford, Bassford Remele, P.A., Minneapolis, Minnesota (for appellant)

Mark K. Thompson, MKT Law, PLC, Minneapolis, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Reyes, Judge; and Smith,
Judge.

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

JOHNSON, Judge

The plaintiff in this case gifted \$55,000 to his sister and her then-husband. The plaintiff later lent the couple an additional amount of money (which he claims was \$40,000) in exchange for their promise to pay him \$95,000. After that amount was not paid, the

plaintiff sued his sister and her then-former husband. The district court granted summary judgment to the plaintiff's former brother-in-law on the ground that the \$55,000 gift could not be recharacterized as a loan and that there was no consideration for the promise to pay \$95,000. We conclude that the former brother-in-law is not relieved of his obligation to pay \$95,000 to the plaintiff. Therefore, we reverse and remand.

FACTS

In 2007, Praveen Prabhakaran and Vadivazhagi Kannan purchased a home in the city of Plymouth. In October 2007, they asked Anand Kannan (Vadivazhagi's brother) for a \$10,000 loan so that they could make a down payment. Anand transferred \$10,000 to Praveen and Vadivazhagi for that purpose. In November 2007, Praveen requested an additional loan of \$45,000 so that he and Vadivazhagi could pay ten percent of the purchase price in cash. Anand transferred \$45,000 to Praveen and Vadivazhagi for that purpose.

Praveen and Vadivazhagi's lender later requested confirmation that the two transfers were gifts that the couple was not obligated to repay. In November 2007, Anand executed two affidavits stating that each transfer was a "bona fide gift with no repayment expected or implied." Each affidavit contained language stating, "Section 1010 of Title 18, U.S.C. provides [that a person who] makes, passes, utters, or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years or both."

In April 2008, Anand transferred an additional amount of money to Praveen and Vadivazhagi to assist them in paying down the mortgage loan on their prior residence, which they had not yet sold. Praveen and Vadivazhagi signed a written agreement that

refers to a loan of \$40,000. But the amount actually transferred pursuant to that loan agreement is disputed; Anand contends that he transferred \$40,000; Praveen contends that Anand transferred only \$30,000. Shortly after the agreement was signed, Praveen made a \$40,000 payment on the mortgage on his and Vadivazhagi's previous home.

In July 2008, Anand transferred \$175,000 to Praveen and Vadivazhagi so that they could pay off the mortgage on their previous home. Praveen and Vadivazhagi signed an agreement that states:

We Praveen Prabhakaran and [Vadivazhagi] Kannan hereby agree to repay the borrowed total sum of \$95,000 . . . taken at different times @ 4.99% per annum from Anand Kannan. Oct 2007 => \$10,000 . . . Nov 2007 => \$45,000 . . . April 2008 => \$40,000 . . . Additional \$175,000 borrowed in July 2008 will be repaid either by title transfer to Anand Kannan or when the townhome (5050 #4) gets sold. The interest will be calculated monthly @ 4.99% per annum on the outstanding effective balance (Unpaid Principle and interest) from Oct 2007. We agree to completely pay off before [Praveen and Vadivazhagi's son] graduates from High School.

(Emphasis added.) Praveen and Vadivazhagi did not pay to Anand the entire \$95,000 that is referenced in the first sentence of the July 2008 agreement. The record is silent as to when Praveen and Vadivazhagi's son graduated from high school, but we assume that he has done so. The July 2008 transfer of \$175,000 is not at issue on appeal because Praveen and Vadivazhagi deeded their previous home to Anand in December 2010.

In July 2014, Praveen petitioned for the dissolution of his marriage to Vadivazhagi, and the marriage was dissolved in November 2016. *See Prabhakaran v. Kannan*, No. A17-0482, 2018 WL 577558, at *1 (Minn. App. Jan. 29, 2018). In August 2015, while the dissolution action was pending, Anand commenced this action against Praveen and

Vadivazhagi, alleging a breach of contract. Vadivazhagi signed a confession of judgment in the amount of \$122,780.49. Praveen responded by denying Anand's claims; alleging counterclaims against Anand for fraud, unjust enrichment, conversion, and civil conspiracy; and alleging cross-claims against Vadivazhagi for fraud, indemnification and contribution, unjust enrichment, conversion, and civil conspiracy.

In April 2016, Anand and Praveen filed cross-motions for summary judgment. In July 2016, the district court granted Praveen's motion and denied Anand's motion. With regard to the 2007 transfers totaling \$55,000, the district court reasoned that the transfers must be deemed to be gifts because Anand executed affidavits saying so, with knowledge that a false statement to that effect would be a violation of federal law. With regard to the April 2008 loan, the district court determined that Anand made a loan to Praveen and Vadivazhagi in the amount of \$30,000 and further determined that Praveen and Vadivazhagi had repaid the loan in full.

Anand later moved for reconsideration of the district court's ruling. The district court granted the motion for reconsideration. In May 2017, the district court issued an amended order in which it again granted Praveen's motion and denied Anand's motion but for different reasons. With regard to the April 2008 loan, the district court reasoned that there is a genuine issue of material fact concerning the amount of the loan. But the district court reasoned that Praveen and Vadivazhagi were not obligated to repay any unpaid amount of the April 2008 loan on the ground that there is a lack of consideration. The district court found a lack of consideration because the affidavits Anand signed in November 2007 do not allow a gift to be converted to a loan, any subsequent conversion

of the gifts to loans would be fraudulent, and recognizing a conversion of the gifts to loans would be contrary to public policy. Anand appeals.

DECISION

Anand argues that the district court erred by granting Praveen's motion for summary judgment. A district court must grant a motion for summary judgment "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. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the non-moving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court applies a *de novo* standard of review to a district court's legal conclusions on summary judgment and "view[s] the evidence in the light most favorable to the party against whom" the motion was granted. *Commerce Bank v. West Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

Anand argues that the district court erred in two ways. First, Anand argues that the district court erred by reasoning that the parties could not enter into an agreement that obligates Praveen to pay Anand an amount that accounts for the 2007 gifts totaling \$55,000. Second, Anand argues, in the alternative, that even if Praveen is not obligated to pay him an amount that accounts for the 2007 gifts of \$55,000, Praveen remains obligated to repay the April 2008 loan (the amount of which is disputed but which Anand claims is \$40,000).

Anand does not challenge the premise that, at the time of the 2007 transfers, they were intended to be gifts. He acknowledges that if the parties had not entered into any subsequent agreements, he would have no right to demand repayment of the \$55,000. His acknowledgement is consistent with Minnesota caselaw. See *Oehler v. Falstrom*, 281 Minn. 561, 563, 160 N.W.2d 403, 405 (1968); *Oehler v. Falstrom*, 273 Minn. 453, 454-57, 142 N.W.2d 581, 583-85 (1966). Anand's theory is that, even though the 2007 transfers were intended to be gifts when they were made, the parties' subsequent agreements "converted" them to loans that must be repaid. Anand contends, in effect, that the parties entered into an independent agreement that is supported by consideration because "Mr. Prabhakaran and Ms. Kannan promised to do something they were not already obligated to do (repay the \$55,000 gift)" and that, "in exchange, Mr. Kannan promised to do something he was not already obligated to do (lend an additional \$40,000)."

A valid contract exists if "two or more parties exchange bargained-for promises, manifest mutual assent to the exchange, and support their promises with consideration." *Medical Staff of Avera Marshall Reg'l Med. Ctr. v. Avera Marshall*, 857 N.W.2d 695, 701 (Minn. 2014). "Consideration requires that one party to a transaction voluntarily assume an obligation on the condition of an act or forbearance by the other party." *Id.* (quoting *U.S. Sprint Commc'ns Co., Ltd. v. Commissioner of Revenue*, 578 N.W.2d 752, 754 (Minn. 1998)). "A valuable consideration may consist of some benefit accruing to one party or some detriment suffered by the other, and the tendency is to emphasize the detriment to the promisee." *Estrada v. Hanson*, 215 Minn. 353, 355, 10 N.W.2d 223, 225 (1943).

It is undisputed that, in the July 2008 agreement, Anand agreed to lend Praveen and Vadivazhagi either \$30,000 or \$40,000, and Praveen and Vadivazhagi agreed to pay Anand \$95,000, an amount of money that accounts for the 2007 gifts totaling \$55,000. In essence, “one party to [the] transaction voluntarily assume[d] an obligation,” namely, an obligation to pay \$95,000, “on the condition of an act . . . by the other party,” namely, the act of lending \$30,000 or \$40,000. *See Medical Staff of Avera Marshall Reg’l Med. Ctr.*, 857 N.W.2d at 701. Because Anand was not previously obligated to lend Praveen and Vadivazhagi \$30,000 or \$40,000, Anand suffered a legal detriment, and Praveen and Vadivazhagi received a legal benefit. *See Estrada*, 215 Minn. at 355, 10 N.W.2d at 225. Thus, consideration was present.

The common law of Minnesota generally respects the freedom to contract. *Lyon Financial Servs., Inc. v. Illinois Paper & Copier Co.*, 848 N.W.2d 539, 545 (Minn. 2014); *Employers Mut. Liab. Ins. Co. v. Eagles Lodge*, 282 Minn. 477, 479, 165 N.W.2d 554, 556 (1969); *Persigehl v. Ridgebrook Invs. Ltd. P’ship*, 858 N.W.2d 824, 832 (Minn. App. 2015). The freedom to contract includes the freedom to enter into agreements that may not be the “best deal” for one or more of the parties involved. *See Estrada*, 215 Minn. at 355-56, 10 N.W.2d at 225. But in analyzing whether an agreement is supported by consideration, courts do not attempt to determine the adequacy of consideration. *Estrada*, 215 Minn. at 356, 10 N.W.2d at 225; *C & D Investments v. Beaudoin*, 364 N.W.2d 850, 853 (Minn. App. 1985), *review denied* (Minn. June 14, 1985). Here, Vadivazhagi and Praveen entered into a contract to borrow \$30,000 or \$40,000 and to pay \$95,000. Regardless whether the July 2008 agreement is deemed to be a “conversion” of the prior

gifts to loans, a recharacterization of the nature of the transfers, or simply a new, independent agreement, Vadivazhagi and Praveen's promise to pay \$95,000 is supported by consideration.

Notwithstanding the foregoing, the freedom to contract is limited by the principle that an unlawful contract may be unenforceable. *Persigehl*, 858 N.W.2d at 832. If an otherwise valid contract is unlawful, a court may, in some circumstances, invalidate the contract as being contrary to public policy. *See, e.g., Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 725 N.W.2d 90, 92-93 (Minn. 2006); *Dick Weatherston's Associated Mech. Servs., Inc. v. Minnesota Mut. Life Ins. Co.*, 257 Minn. 184, 191, 100 N.W.2d 819, 824 (1960); *In re Peterson's Estate*, 230 Minn. 478, 483, 42 N.W.2d 59, 63 (1950); *see also Woischke v. Stursberg & Fine, Inc.*, 906 N.W.2d 586, 588-94 (Minn. App. 2018), *review granted* (Minn. Mar. 28, 2018).

Anand contends that the district court erred for three reasons when it determined that the July 2008 loan agreement is contrary to public policy. First, he contends that, as a matter of law, a false statement on the gift affidavits would be unlawful only if the affidavits were submitted to the Federal Housing Administration in conjunction with a mortgage loan insured by that agency. Anand further contends that, as a matter of fact, Praveen and Vadivazhagi were not applying for an FHA mortgage but, rather, were applying for a conventional mortgage. Anand's contention is consistent with the federal statute cited in the affidavits. *See* 18 U.S.C. § 1010 (2012). Anand's contention also is consistent with the summary-judgment record, which includes a settlement statement indicating that the loan was not a FHA-insured loan but was a conventional uninsured loan.

Second, Anand contends that, even if he were subject to the federal statute cited in the affidavits, the district court erred by making a finding of fact that he made false statements when he signed the gift affidavits. Anand apparently refers to the district court's statements that converting the gifts to loans "calls into question whether [Anand] actually intended the funds to be a bona fide gift" and that Anand "thereby falsified the FHA gift letter." Anand also may be referring to the district court's statement that "if the Court considers [whether] the donative intent of the parties was always to treat the funds as a loan . . . , then [Anand] was . . . engaging in fraud, which is illegal and nullifies the gift letter, [and] therefore vitiates the consideration for the subsequent loan." In connection with the summary-judgment motion, Anand executed an affidavit that states, "Initially, I intended both transfers to be loans" but later "I agreed that Mr. Prabhakaran and Ms. Kannan could keep the \$55,000.00 . . . gifts, with no repayment obligation." Praveen did not submit any evidence that contradicts that part of Anand's affidavit. Accordingly, we agree with Anand that the district court did not view the evidence in the light most favorable to the party against whom the motion was granted. *See Commerce Bank*, 870 N.W.2d at 773. We also note that the district court's order does not account for the possibility that the gift affidavits were not false because they were truthful when made but that Anand later changed his intent with regard to the 2007 transfers. *See Vandeputte v. Soderholm*, 298 Minn. 505, 508, 216 N.W.2d 144, 147 (1974); *Sprague, Warner & Co. v. Kempe*, 74 Minn. 465, 469, 77 N.W. 412, 413 (1898).

Third, Anand contends that, even if he were subject to the federal statute cited in the affidavits, and even if the factfinder ultimately were to determine that he made false

statements, the July 2008 loan agreement should not be voided on public-policy grounds. We need not resolve Anand's third contention because his first and second contentions are valid and sufficient. The district court erred by relying on the federal statute cited in the gift affidavits and further erred by essentially finding that Anand made false statements in the gift affidavits. In light of those two errors, there is no factual basis for a conclusion that the July 2008 loan agreement is contrary to public policy. Accordingly, the July 2008 loan agreement, in which Praveen agreed to pay \$95,000, is a valid and enforceable contract. As a consequence, we need not consider Anand's alternative argument that Praveen's promise to repay the money lent in April 2008 is independent of Praveen's promise concerning the money transferred in 2007.

In sum, the district court erred by granting Praveen's motion for summary judgment. Therefore, we reverse the district court's ruling and remand the matter to the district court for further proceedings.

Reversed and remanded.