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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0471**

Crow Wing Cooperative Power and Light Company,
Appellant,

vs.

Great River Energy, et al.,
Respondents.

**Filed January 7, 2019
Affirmed in part, reversed in part, and remanded
Bratvold, Judge**

Crow Wing County District Court
File No. 18-CV-17-1291

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Considered and decided by Jesson, Presiding Judge; Bratvold, Judge; and Smith,
John, Judge.*

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

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant Crow Wing Cooperative Power and Light Company (Crow Wing) challenges the district court's decision to dismiss its amended complaint against respondent Great River Energy (individually, GRE) and certain individuals¹ (collectively, respondents), with prejudice under Minn. R. Civ. P. 12.02(e). Crow Wing asserts that the district court erred by: (1) interpreting the parties' contract as a matter of law and determining that GRE's 2009 rate formula is a valid amendment to the contract; (2) determining that the statute of limitations bars Crow Wing's breach-of-contract and declaratory-judgment claims with regard to the 2009 rate formula, including claims arising from GRE's closing of the Stanton facility in 2016 as stated in count IV; (3) dismissing Crow Wing's equitable claims for estoppel and unjust enrichment; and (4) dismissing Crow Wing's claims against the individual respondents for breach of fiduciary duty.

We agree with the district court that, consistent with the plain language of the parties' contract, the 2009 rate formula is a valid amendment; that the existence of a contract precludes Crow Wing's equitable claims against GRE; and that Minnesota law does not recognize that the individual respondents owed Crow Wing a fiduciary duty. Thus, we affirm the district court's decision to dismiss counts I, II, III, V, and VI for declaratory judgment, breach of contract, equitable estoppel, and breach of fiduciary duty. But, because

¹ The individual respondents include GRE's president and chief executive officer, David J. Saggau, and five board members, specifically: Reuben Kokesch, Bradley Leiding, Donald M. Holl, Peggy Kuettel, and Clay A. Van De Bogart.

we conclude that the amended complaint states a claim for breach of contract based on the 2016 closing of the Stanton facility and that this claim is not barred by the six-year statute of limitations, we reverse the district court’s decision to dismiss count IV and remand for further proceedings consistent with this opinion.²

FACTS

GRE is a nonprofit generation-and-transmission electric cooperative organized under the Minnesota Cooperative Law, Minn. Stat. §§ 308A.001-.985 (2018). GRE owns 12 power plants, which are referred to as “resources” in its contract with Crow Wing; GRE’s plants can collectively produce more than 2,800 megawatts of electricity. GRE provides wholesale electrical service to 28 member distribution cooperatives (members) in Minnesota and Wisconsin. Crow Wing is one of GRE’s members. Crow Wing is a nonprofit electric-distribution cooperative, which provides electricity to approximately 37,000 members.

A. The August 2004 contract

In August 2004, GRE and Crow Wing entered a long-term Amended and Restated Power Purchase Contract (the contract) with an end date of December 31, 2045. It appears that each of GRE’s 28 members have substantially similar power purchase contracts with GRE that oblige members to “purchase and receive” electric power and energy from GRE.

² The district court, in the alternative, determined that the statute of limitations barred counts I, II, and III with regard to the 2009 rate formula. Since we determine that the 2009 rate formula is a valid amendment of Appendix B, we do not reach the statute of limitations issue on counts I, II, or III.

Similarly, GRE is obligated to “sell and deliver” electric power and energy to each member.

Under the contract, there are two types of members: (1) “all requirements” (requirements) members and (2) “fixed obligation” (fixed) members. Requirements members must purchase all of their electricity from GRE. Fixed members must purchase a fixed percentage of their electricity needs from GRE. Requirements members also may choose to become a fixed member by giving GRE “written notice . . . at any time.”

When Crow Wing signed the contract with GRE in 2004, it was a requirements member. Crow Wing became a fixed member in May 2007.

B. The rate formula and annual rate-charging process

The contract includes Appendix B, which provides a rate formula that governs GRE’s charges to members for power and energy.³ According to Appendix B, the rate formula “lock[s] in certain key elements of the rate making process, while allowing flexibility in other areas.” The contract provides that GRE may amend the rate formula after obtaining member approval. More specifically, GRE may amend the rate formula by obtaining approval of (i) at least 55% of GRE’s members *and* (ii) members representing 45% of GRE’s electric load. The contract refers to this amendment process as approval by a “dual percentage of the distribution members” (dual-percentage vote). On appeal, Crow Wing argues that the contract also requires each individual member to approve a rate-formula amendment before it is effective against that member.

³ “Rate formula” and “Appendix B” refer to the same document, or an amendment to that document, and this opinion uses the terms interchangeably.

Each year, GRE uses the rate formula in Appendix B to set its annual budget, which includes the rate charge it anticipates applying to each member. Under the contract, GRE must ensure that its annual rate charges will produce “sufficient, but only sufficient” revenues to recover GRE’s costs and other obligations and liabilities.

For a fixed member, such as Crow Wing, GRE determines the annual rate charged by using the rate formula and taking into account the costs and revenues associated with power plants or “resources” that existed at the time the member became a fixed member. In other words, fixed members may be charged different annual rates based on the different resources associated with that member.

Under the contract, GRE may retire a resource at any time, and, if GRE retires a resource that is associated with a fixed member, that member is entitled to reduce its fixed-purchase requirement. However, the contract also allows GRE to pass on certain costs associated with retired resources to all members, even to fixed members who have reduced their purchase requirement.

C. Events leading to this lawsuit

Since Crow Wing signed the contract with GRE in 2004, GRE has amended the rate formula twice, most recently in January 2009 (2009 rate formula). Crow Wing voted against both amendments, but GRE obtained the required dual-percentage vote. At the time Crow Wing commenced this lawsuit, GRE had been using the 2009 rate formula for six years.

In May 2015, Crow Wing notified GRE that it would reduce its fixed-purchase requirement in the event that GRE retired any resource in the future. Just over a year later,

in August 2016, GRE notified Crow Wing that it would retire one of the resources associated with Crow Wing—a coal-fired power plant located in Stanton, North Dakota—by May 2017. Crow Wing alleges that GRE represented that the Stanton closure would result in “significant savings” that would benefit all members.

In October 2016, GRE circulated a preliminary 2017 budget to all members. The preliminary budget proposed a 7% rate increase for Crow Wing but only a 0.9% rate increase for requirements members. In November 2016, GRE’s board approved the proposed budget.

Crow Wing sued GRE in March 2017 and served an amended complaint (complaint) in June 2017. The complaint alleges that GRE has imposed charges using the 2009 rate formula, even though Crow Wing did not agree to the amendment. The complaint also alleges that, more recently, GRE has engaged in a “bait-and-switch” scheme by promising “significant savings” with the Stanton closure, and then increasing by 7% Crow Wing’s rate for electricity.

The complaint asserts seven claims. Count I seeks a declaratory judgment that the 2009 rate formula was not a valid amendment under the contract, and count II seeks a related declaration that GRE is not allowed to use the 2009 rate formula in the future and that Crow Wing is entitled to a refund “of all amounts paid by Crow Wing to GRE” under the 2009 rate formula. Count III claims that GRE breached the contract by using the 2009 rate formula. Count IV alleges that GRE breached the contract after it retired the Stanton plant in 2016 because it “reallocated” revenue related to Stanton in a “discriminatory manner” to “recoup” losses, contrary to the terms of the contract. Count V asserts that GRE

is equitably estopped from using the 2009 rate formula to determine annual charges. Count VI alleges that the individual respondents breached their fiduciary duties to Crow Wing by using the 2009 rate formula to determine annual charges. And count VII claims that GRE has been unjustly enriched by receiving payments under the 2009 rate formula.

GRE moved to dismiss the complaint. In addition to arguing that the complaint failed to state a claim based on the plain language of the parties' contract and valid amendments, GRE argued that Crow Wing's breach-of-contract claims were time-barred because the 2009 rate formula has been in effect for more than six years.

After a hearing, the district court granted GRE's motion and entered judgment in its favor. The district court determined that the contract required approval of rate-formula amendments by a dual-percentage vote; therefore, the 2009 rate formula was a valid amendment to Appendix B, and GRE was entitled to judgment on the declaratory-judgment and breach-of-contract claims. Alternatively, the district court determined that Crow Wing's declaratory-judgment and breach-of-contract claims were time-barred. Because Crow Wing's equitable estoppel and unjust-enrichment claims were a "re-casting" of the breach-of-contract and declaratory-judgment claims, the district court dismissed those claims. Finally, after determining that the individual respondents owe fiduciary duties to the cooperative and not to an individual member, the district court also dismissed the fiduciary-duty claim. Crow Wing appeals.

DECISION

I. The district court correctly dismissed Crow Wing's declaratory-judgment and contract claims related to the 2009 rate formula.

In counts I, II, and III of the complaint, Crow Wing's claims for declaratory judgment and breach of contract relate to the rate formula and the validity of amendments to Appendix B. Briefly stated, the district court granted GRE's motion to dismiss these counts because it determined that the contract provided how to amend Appendix B and, based on undisputed facts, the 2009 rate formula is a valid amendment to Appendix B. On appeal, Crow Wing argues that the district court applied the wrong standard of decision and also erred in its interpretation of the contract. We address each argument in turn.

A. The district court applied the correct standard of decision.

Under Minn. R. Civ. P. 12.02(e), the district court reviews the legal sufficiency of the claims for relief alleged in the complaint. *See Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). When we review a district court's decision to grant a motion to dismiss, the applicable standard of review is de novo. *Id.* Both the district court and this court review the facts alleged in the complaint using the same standard for decision: "[t]he reviewing court must consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party." *Id.*

Crow Wing argues that the district court erred because it did not apply the appropriate standard of decision under rule 12. The complaint alleges that, under the contract, GRE may amend the rate formula only if two requirements are met: approval in

writing by an individual member and also by a dual-percentage vote. The district court rejected this interpretation of the contract and determined that the contract may be amended by a dual-percentage vote. On this basis, Crow Wing argues that the district court did not accept the facts alleged in the complaint as true and failed to construe all reasonable inferences in favor of Crow Wing—the nonmoving party.

When a complaint refers to a contract and “the contract is central to the claims alleged,” then a court may consider the entire written contract along with the factual allegations in the complaint. *In re Hennepin Cty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995). Moreover, courts “are not bound by legal conclusions stated in a complaint when determining whether the complaint survives a motion to dismiss for failure to state a claim.” *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008). Interpretation of an unambiguous contract is a question of law that can be determined on a motion to dismiss and is subject to de novo appellate review. *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004).

Here, the complaint refers to the contract throughout and attaches, as exhibits, a copy of the contract, including Appendix B and the 2009 rate formula. Thus, the district court correctly considered the language of the entire contract, Appendix B, and the 2009 rate formula, in deciding the motion to dismiss. See Minn. R. Civ. P. 10.03 (“A copy of any written instrument which is an exhibit to a pleading is a part of the statement of claim or defense set forth in the pleading.”). It is true that the complaint also includes Crow Wing’s *interpretation* of the contract, but this interpretation is a legal conclusion that poses a question of law and receives de novo review on appeal. *Travertine*, 683 N.W.2d at 271.

In short, Crow Wing's interpretation of the contract is not a fact, thus, we do not accept it as true. Nor did the district court err by declining to do so.

B. The plain language of the contract provides that the rate formula may be amended by a dual-percentage vote.

Crow Wing argues that the district court incorrectly interpreted the contract for one of two reasons. First, Crow Wing asserts that the district court misinterpreted the plain language of the contract provisions that state how to amend the rate formula. Second, and in the alternative, Crow Wing argues that, at a minimum, the parties' conflicting interpretations of the relevant contract provisions indicate that its terms are "susceptible of more than one interpretation that gives rise to an ambiguity"; thus, the complaint states a claim and dismissal is improper. As already mentioned, the interpretation of a contract is a question of law. *Id.* Similarly, whether contract terms are ambiguous is also a question of law, subject to de novo review. *See Republic Nat'l Life Ins. Co. v. Lorraine Realty Corp.*, 279 N.W.2d 349, 354 (Minn. 1979).

"The primary goal of contract interpretation is to determine and enforce the intent of the parties." *Travertine*, 683 N.W.2d at 271. In a written contract, reviewing courts determine the intent of parties "from the plain language of the instrument itself." *Id.* Reviewing courts must interpret a contract "in a way that gives all of its provisions meaning." *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). When the parties' intent is "totally ascertainable" from a contract, this court's task is to "construe [the] contract as a whole and attempt to harmonize all clauses of the contract." *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525-26 (Minn. 1990).

Generally, specific language in a contract controls over general provisions. *See Burgi v. Eckes*, 354 N.W.2d 514, 519 (Minn. App. 1984).

When contract terms are clear and unambiguous, courts interpret the contract as a matter of law and “should not rewrite, modify, or limit its effect by a strained construction.” *Travertine*, 683 N.W.2d at 271. On the other hand, if a contract is ambiguous because it “is reasonably susceptible of more than one interpretation,” its interpretation is a question of fact for a jury to decide. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346-47 (Minn. 2003). To determine ambiguity, courts do not read “words or phrases . . . in isolation,” but rather look to “the meaning assigned to the words or phrases in accordance with the apparent purpose of the contract as a whole.” *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997).

Our analysis of the legal sufficiency of Crow Wing’s declaratory-judgment and breach-of-contract claims (counts I, II, and III) begins with an understanding of the contract generally and then focuses on the language of three sections of the contract: sections 2.3.2, 2.3.3, and 11.9.1. The contract is 25 pages, begins with recitals about the purpose of the power agreement and mutual benefits provided, and continues with a total of 11 sections. Section 1 sets out purchase and sale obligations. Section 2 has provisions relating to rates in 12 separately numbered paragraphs.

Section 2, in the first numbered paragraph, 2.1, titled “In General,” provides that members shall pay GRE for “all electric power and energy purchased” under the contract at rates “determined by applying the Rate Formula to budgets” and “upon the terms and conditions set forth in this Agreement and in Appendix B attached hereto.”

Section 2.3 is titled “Rate Revisions” and has four subparagraphs. Relevant to Crow Wing’s complaint, section 2.3.2 and 2.3.3 state:

2.3.2. Rate Formula Revisions. *Appendix B may be revised by GRE, at any time and from time to time; provided, however, (i) . . . GRE shall receive the approval of a Dual Percentage of the Distribution Members; [and] (ii) Appendix B to each of the Other Power Purchase Contracts shall be at all times the same as Appendix B to this Agreement; . . .*⁴

2.3.3. Effectiveness of Rate Revisions. Any revised budget . . . or *any revised Rate Formula* from time to time established by GRE as provided in Section 2.3.2 *shall be deemed to be substituted for the then existing budget or Rate Formula*, as the case may be, *whether or not the Member has approved such revised budget or Rate Formula*. The Member shall pay for electric power and energy purchased by it under this Agreement after the effective date of any such revision pursuant to such revised budget or Rate Formula.

(Emphasis omitted and emphasis added.) Section 2 continues with other provisions relating to special rates, costs of member services, and allocations to resources. The contract has eight other sections that are not relevant to the issues on appeal.

Section 11, which is the last section in the contract, is titled “General,” and has 15 separately numbered paragraphs on varying topics. Section 11.9 is titled “Amendments” and has four subparagraphs. Section 11.9.1 states:

11.9.1. General. . . . [T]his Agreement may be amended by agreement between GRE and the Member, but no such amendment to this Agreement shall be effective *unless it is in writing and executed by both parties; provided, however, that*

⁴ Section 2.3.2 includes a third requirement, as follows: “and (iii) so long as GRE is an RUS Borrower, RUS shall approve such amendment in writing.” “RUS” is the Rural Utilities Service, which administers a program under the U.S. Department of Agriculture. This third requirement is not relevant to the issues on appeal.

changes to Appendix B shall be effective only when made in accordance with Section 2.3.2.

(Emphasis omitted and emphasis added.)

Crow Wing contends that section 11.9.1 establishes two conditions that must both be satisfied before GRE can amend the rate formula: one before the “provided, however” language, and one after. As such, Crow Wing contends that an amendment to the rate formula is not effective until (1) a member agrees to the amendment in a writing executed by the member and GRE, *and* (2) the amendment complies with section 2.3.2 and is approved by a dual-percentage vote.

On the other hand, GRE interprets section 11.9.1’s “provided, however” language as “carv[ing] out” an exception for rate-formula amendments, and not imposing an additional requirement. GRE argues that section 11.9.1 is a general provision that governs how to amend most provisions in the contract. Because section 11.9.1 refers to section 2.3.2, and because section 2.3.2 includes specific requirements for rate-formula amendments, GRE contends that section 2.3.2 governs how to amend or revise the rate formula.⁵

⁵ Both parties provide dictionary definitions in support of their interpretations of the contract. Crow Wing cites dictionary definitions that state “provided” means “on condition that.” GRE cites other dictionary definitions that state “provided” means “with the understanding that.” But we do not construct contracts at the level of individual words or phrases. *Boe v. Christlieb*, 399 N.W.2d 131, 133 (Minn. App. 1987) (“Contracts must be construed as a whole, with the parties’ intentions gathered from the entire instrument, not from isolated clauses.”). Without considering the context of the entire contract, neither definition is convincing.

Whether section 2.3.2 or section 11.9.1 govern rate amendments is at the heart of Crow Wing's claims for declaratory and contract relief. It is undisputed that the 2009 rate formula was approved by a dual-percentage vote and it is also undisputed that Crow Wing opposed the 2009 rate formula and did not agree to it in writing. Crow Wing alleges that, because GRE never obtained Crow Wing's written agreement to the 2009 rate formula, it is invalid and Crow Wing is entitled to declaratory-judgment relief (counts I and II) and breach-of-contract damages (count III).

Both parties claim their respective interpretation gains strength when the specific provisions are read in the context of the remaining contract provisions. Crow Wing looks to section 2.3.3, quoted above, which provides that members shall pay for electric power under a new rate formula after its "effective date." Crow Wing contends that section 2.3.3's "effective date" language supports its view of section 11.9.1, which states that no amendment "shall be effective unless it is in writing and executed by both parties." In short, Crow Wing's argument is that Crow Wing's written consent is required for a rate amendment to "be effective" against Crow Wing under section 11.9.1.

GRE also points to section 2.3.2 and 2.3.3, quoted above, as providing important context because, read together, these sections provide that the rate formula is the same for all members and individual approval of rate-formula amendments is not required. Section 2.3.2 provides that the rate formula is "at all times the same" for all members, and section 2.3.3 states that "any revised Rate Formula . . . shall be deemed to be substituted . . . whether or not a Member has approved such . . . Rate Formula."

GRE argues that, under Crow Wing's interpretation of section 11.9.1, the rate formula will *not* be the same at all times for all members and a revised rate formula will *not* be substituted "whether or not" a member has approved of a revised rate formula. In other words, GRE argues that Crow Wing's interpretation of section 11.9.1 renders meaningless the explicit same-rate-formula-for-all language in sections 2.3.2 and 2.3.3. The district court interpreted the contract in line with GRE's position, declaring that an amendment of the rate formula "did not require there to be an approval both by a vote of a dual percentage of the members, and also by every individual member."

Because the contract includes separate and specific provisions for how to revise the rate formula, we conclude that, when the contract is read as a whole, section 2.3.2 governs rate-formula revisions, and section 11.9.1 provides that, while amendments to other contract provisions must be in writing and executed by both a member and GRE, individual member consent is not required to amend the rate formula. This interpretation of the contract gives effect to the parties' intent because it harmonizes and gives effect to all terms of the contract. *See Current Tech. Concepts*, 530 N.W.2d at 543 ("A contract must be interpreted in a way that gives all of its provisions meaning."). Additionally, this interpretation of the contract recognizes that the specific provisions of a contract govern over general provisions. *See Burgi*, 354 N.W.2d at 519 ("[T]he specific in a writing governs over the general.").

Crow Wing's interpretation of the contract fails to either give effect to all terms or recognize the importance of specific provisions. Crow Wing's view inserts section 11.9.1's individual-member-consent requirement into section 2.3.2's requirement for rate-formula

revisions. This insertion effectively eliminates the dual-percentage-vote requirement because unanimity—and not a majority—would be required to revise the rate formula. In other words, if individual consent is required for rate-formula revisions, then each member would have veto power to prevent revisions to the rate formula.

Crow Wing argues that its interpretation of the contract would not give each member veto power to stop rate-formula revisions; rather, section 11.9.1 simply means that rate-formula revisions are not effective against an individual member until the member has given its individual consent. In other words, according to Crow Wing, the 2009 rate formula is effective for all members who favored it in the dual-percentage vote and who gave individual written consent. We are not persuaded because, this “individual opt out” interpretation of the contract ignores the very specific rate-revision terms in section 2.3.2, which provides that the rate formula is “the same” for all members, and section 2.3.3, which provides that a revised rate formula is substituted “whether or not the Member has approved” the revision.

Crow Wing asserts that its interpretation of the contract, in which individual members can opt out of rate-formula amendments, is necessary to prevent “unfair treatment.” Crow Wing contends that if rate-formula revisions are allowed with only the dual-percentage requirement, GRE would be able to “exten[d] special rates to a majority group of Members and forc[e] a minority group of Members to subsidize that special pricing arrangement.” However, “[i]f a contract is unambiguous, the contract language must be given its plain and ordinary meaning, and shall be enforced by courts even if the result is harsh.” *Denelsbeck*, 666 N.W.2d at 346-47 (quotation omitted). Here, the language

of the contract is plain and unambiguous, and therefore, this court must enforce the agreement.

Alternatively, Crow Wing argues that section 11.9.1 is ambiguous. We conclude that neither section 2.3.2 nor section 11.9.1 is ambiguous because the “purpose of the contract as a whole” is to impose the specific requirements of section 2.3.2 on rate-formula amendments. *See Art Goebel*, 567 N.W.2d at 515. For reasons already stated, sections 2.3.2 and 11.9.1 are clear and unambiguous when the contract is read in its entirety. As already discussed, Crow Wing’s interpretation is not reasonable because it inserts individual consent provisions from section 11.9.1 into section 2.3.2’s dual-percentage requirement and renders meaningless the same-rate-formula-for-all-members language in sections 2.3.2 and 2.3.3.⁶

In short, the district court correctly concluded, first, that the contract specifically provides in section 2 that the rate formula may be revised by a dual-percentage vote of the members, and second, that the individual-member-consent requirement for other contract amendments in section 11 does not apply to revisions of the rate formula. Because it is undisputed that the 2009 rate formula was approved by a dual-percentage vote, we conclude that the 2009 rate formula is valid and applies to Crow Wing even though it did

⁶ Crow Wing also claims that the contract is ambiguous because the parties each cite different definitions of the word “provided” and this term is fundamental to any interpretation of section 11.9.1. But the fact that a word has different definitions does not make a contract ambiguous. *Bd. of Regents of Univ. of Minn. v. Royal Ins. Co. of Am.*, 517 N.W.2d 888, 892 (Minn. 1994) (“Because a word has more than one meaning does not mean it is ambiguous.”).

not consent in writing. Therefore, the district court did not err in dismissing Crow Wing's declaratory-judgment and breach-of-contract claims (counts I, II, and III).

II. The district court erred by dismissing Crow Wing's breach-of-contract claim involving the Stanton facility.

Crow Wing next alleges that its breach-of-contract claim (count IV) associated with the closure of the Stanton facility is "separate and independent" of its claims involving GRE's rate-formula revisions. Even if the 2009 rate formula is valid and enforceable, Crow Wing contends GRE breached the contract in 2017 when it increased Crow Wing's rate by 7% after closing the Stanton facility. The district court appears to have dismissed count IV based on its interpretation of the contract, the validity of the 2009 rate formula, and the statute of limitations.⁷ Because the Stanton breach-of-contract claim arose in 2017, Crow Wing argues that the action was commenced well within the six-year limitations period.

For a breach-of-contract claim, the statute of limitations is six years. Minn. Stat. § 541.05, subd. 1(1) (2018). The statute of limitations for a cause of action begins to run when "the cause of action accrues." Minn. Stat. § 541.01 (2018). "A cause of action accrues when all of the elements of the action have occurred, such that the cause of action could be brought and would survive a motion to dismiss for failure to state a claim." *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 832 (Minn. 2011). A cause of action for breach of contract occurs at the time of the breach even if no damages have occurred yet. *Id.*

⁷ In its memorandum, the district court did not mention the Stanton facility, but it appears to have concluded either that count IV depended on the validity of the 2009 rate formula and/or that count IV was asserted outside the limitations period.

The pertinent facts to the Stanton claim are as follows. In May 2015, Crow Wing exercised its contractual right to reduce its fixed-purchase requirement in the event that GRE retires any resource in the future. Just over a year later, GRE announced that it would retire Stanton by May 2017. GRE allegedly promised “significant savings” from the retirement of Stanton, but instead later increased Crow Wing’s rates by 7% while requirements members only received a 0.9% increase.

GRE does not dispute that the Stanton claim arose within the limitations period. Rather, GRE argues that the claim depends solely on the validity of the 2009 rate formula. GRE points to language in the complaint stating that GRE “simply reallocated the revenue requirement related to Stanton to other Resources in Crow Wing’s Resource Pool in a discriminatory manner” and did not apply “the terms” of the contract and the original 2004 rate formula. GRE asserts that Crow Wing never argues that GRE did not correctly apply the 2009 rate formula, and therefore, that Crow Wing’s claim about the Stanton facility is just another variation on its claim that GRE adopted and applied the incorrect rate formula.

In a motion to dismiss, “[t]he complaint must be liberally construed in determining whether it states a cognizable cause of action.” *Gertken v. State*, 493 N.W.2d 290, 292 (Minn. App. 1992), *review denied* (Minn. Feb. 9, 1993). We conclude that, when Crow Wing’s complaint is liberally construed, it presents a breach-of-contract claim that does not depend on the validity of the 2009 rate formula.

It is true that Crow Wing alleges that GRE was not using the 2004 rate formula in setting the 2017 budget and imposing the 7% rate increase, but Crow Wing’s Stanton claim, as alleged in count IV, goes beyond these factual allegations. Crow Wing alleges that it

reduced its fixed-purchase requirement in 2016, and that its revenue requirements remained “virtually unchanged” even though it would be purchasing less electricity. Crow Wing also alleges that it requested a “complete accounting” of the 2017 rate increase, and that GRE’s accounting contained “unexplained number shifting” and “accounting gimmicks” that effectively raised Crow Wing’s rates to make up for GRE’s loss of revenue from the Stanton facility closure. As an example, Crow Wing argues that GRE doubled the revenue requirement of a resource that represents 83% of Crow Wing’s resources, but “a much smaller percentage of the [resources] assigned to the [requirements members].” Moreover, in its complaint, Crow Wing asserts that the “reallocation of the revenue requirement related to Stanton to other resources” is how GRE breached the contract.

Crow Wing’s breach-of-contract claim regarding the Stanton facility can only be dismissed “if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded.” *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963). We are not now considering the merits of Crow Wing’s Stanton claim, but it appears that facts *could be introduced* that would support granting relief. For example, if expert review of GRE’s budget spreadsheets and other discovery establishes that GRE raised Crow Wing’s rates contrary to the terms of the contract and the 2009 rate formula, this may support relief for Crow Wing. Because count IV pleaded a legally sufficient claim that does not depend on the validity of the 2009 rate formula and Crow Wing is entitled to discovery on its breach-of-contract claim regarding the Stanton plant, we reverse the district court’s decision to dismiss count IV.

III. The district court did not err in dismissing Crow Wing's equitable claims because Crow Wing had an adequate contractual remedy.

In counts V and VII, Crow Wing asserts claims for unjust enrichment and equitable estoppel. "It is well settled in Minnesota that one may not seek a remedy in equity when there is an adequate remedy at law." *Southtown Plumbing, Inc. v. Har-Ned Lumber Co.*, 493 N.W.2d 137, 140 (Minn. App. 1992). In particular, "equitable relief cannot be granted where the rights of the parties are governed by a valid contract." *U.S. Fire Ins. Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn. 1981).

Crow Wing relies, in large part, on *Anderson v. Delisle* to argue that it can be compensated on equitable theories despite the existence of a contract. 352 N.W.2d 794, 796 (Minn. App. 1984), *review denied* (Minn. Nov. 8, 1984). In *Anderson*, a seller of real estate anticipated that the buyer was unlikely to be able to perform on a contract to purchase property. *Id.* at 795. Before the parties signed the contract, the buyer began making substantial improvements to the property with the seller's knowledge. *Id.* The parties then signed the contract, which provided that "all improvements made upon the premises, and all payments made hereunder, shall belong to [the seller] as liquidated damages for the breach of this contract by [the buyer]." *Id.* The buyer then failed to make a down payment and the seller cancelled the contract, relying on state law, and kept all of the improvements, as the contract expressly allowed. *Id.* On appeal, this court reversed the dismissal of the buyer's unjust enrichment claim because the seller "stood silent and watched [the buyer] make extensive improvements to their property" despite knowing that "there was little or no chance that he could perform under the contract." *Id.* at 796.

Anderson is distinguishable because the seller cancelled the contract, as he was allowed to do under state law. The buyer was, therefore, without a contract upon which to base a claim for relief for the improvements. Therefore, despite Crow Wing's assertion otherwise, *Anderson* does *not* stand for the rule that "a plaintiff may recover on an unjust enrichment claim even where a contract exists."

Here, Crow Wing has a contractual remedy. Because the rights of the parties are governed by a valid contract, this precludes the possibility of equitable relief. See *U.S. Fire Ins. Co.*, 307 N.W.2d at 497. We conclude that the district court correctly dismissed Crow Wing's equitable-estoppel and unjust-enrichment claims.

IV. The district court did not err in dismissing Crow Wing's claim that GRE's directors and its chief executive officer breached their fiduciary duties to Crow Wing.

Crow Wing argues that the district court erred in dismissing count VI, its claim against the individual respondents for breach of fiduciary duties. The district court reasoned that the individual respondents, who are officers and directors of the GRE cooperative, "only owe fiduciary duties to the cooperative and not to the cooperative's individual members"; therefore, because the individual respondents did not owe a duty to Crow Wing, its claim must be dismissed.

On appeal, Crow Wing argues that GRE owed it fiduciary duties for two reasons. First, GRE is a cooperative corporation under Minnesota law and its officers and directors owe fiduciary duties to each member, including Crow Wing, as provided by statute. Second, GRE is in a superior position of knowledge to Crow Wing, creating a special

relationship that gives rise to fiduciary duties to each member, including Crow Wing. We consider each argument in turn.

Crow Wing bases its first theory for breach of fiduciary duty on specific language in the Minnesota Cooperative Law, in part, because GRE is organized under this law. Minn. Stat. § 308A.325, subd. 2, provides:

The articles may not eliminate or limit the liability of a director:

(1) for *a breach of the director's duty of loyalty to the cooperative or its members*;

(2) for acts or omissions that are not in good faith or involve intentional misconduct or a knowing violation of law.

(Emphasis added.) Crow Wing points out that it is a member of GRE. Because subdivision 2 provides that a cooperative's articles may not eliminate or limit a director's liability "for a breach of the . . . duty of loyalty . . . to the cooperative *or its members*," *id.* (emphasis added), Crow Wing reasons that (1) GRE's directors owe a duty of loyalty to the cooperative *and* its members; and (2) Crow Wing's membership in the GRE cooperative means that it may enforce the individual respondents' fiduciary duties by legal action.

GRE responds that its directors owe fiduciary duties to the cooperative and not to individual members. GRE highlights language from Minn. Stat. § 308A.328, subd. 1, that is titled "standard of conduct":

A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the cooperative, and with the care an ordinary prudent person in a like position would exercise under similar circumstances.

(Emphasis added.)

Crow Wing does not convince us that a cooperative's directors owe fiduciary duties to individual members. The statutory standard of conduct in section 308A.328, subdivision 1, provides that directors shall discharge their fiduciary duties "in a manner the director reasonably believes to be in the best interests of the *cooperative*." *Id.* (emphasis added). Although section 308A.325, subdivision 2, provides that the articles of incorporation cannot limit a director's duty of loyalty to the cooperative "or its members," this language does not expressly provide that a director owes a fiduciary duty to individual members. *See* Minn. Stat. § 308A.325, subd. 2.

We read and construe a statute "as a whole." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). In light of the express legislative standard of conduct providing that directors must act in the best interests of the cooperative, other sections of the cooperative law must be read in a manner that is consistent with this standard. If we were to read section 308A.325, subdivision 2, as imposing a fiduciary duty between a director and individual cooperative members, that reading would undercut the plain meaning of section 308A.328, subdivision 1. Therefore, we decline to read the brief reference to "members" in section 308A.325, subdivision 2, as imposing member-specific fiduciary duties on cooperative directors.

Crow Wing also does not provide any precedential caselaw in Minnesota that holds a cooperative director owes a fiduciary duty to individual members. It is not the function of the court of appeals to establish new causes of action, and this court has no authority to change the law. *Stubbs v. N. Mem'l Med. Ctr.*, 448 N.W.2d 78, 80-81 (Minn. App. 1989), *review denied* (Minn. Jan. 12, 1990); *see also Lake George Park, L.L.C. v. IBM*

Mid-America Emps. Fed. Credit Union, 576 N.W.2d 463, 466 (Minn. App. 1998) (“This court . . . is without authority to change the law.”), *review denied* (Minn. June 17, 1998). “The function of the court of appeals is limited to identifying errors and then correcting them.” *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Here, we decline to expand the law in this state by imposing fiduciary duties on GRE’s directors toward its individual members.

Crow Wing also argues that we may accept its claim for breach of fiduciary duty because GRE has special knowledge relating to the cooperative, and as a result, GRE’s directors have fiduciary duties toward Crow Wing. Minnesota caselaw has narrowly construed fiduciary relationships by characterizing a “fiduciary” as one with superior knowledge in whom others place “a high level of trust and confidence.” *Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 330-31 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). A fiduciary relationship “transcends the ordinary business relationship which, if it involves reliance on a professional, surely involves a certain degree of trust and a duty of good faith and yet is not classified as ‘fiduciary.’” *Id.* at 331. In *D.A.B. v. Brown*, we held that the physician-patient relationship is not fiduciary in nature. 570 N.W.2d 168, 171 (Minn. App. 1997). In so holding, we reasoned, in part, that “[t]o hold otherwise would permit avoidance of every statute defining the physician/patient relationship.” *Id.*

Crow Wing, a cooperative member, is a sophisticated party that is in a business relationship with GRE, a cooperative. Also, Minnesota statutes define the duties of a cooperative corporation. Reading a fiduciary relationship into this business relationship

would undercut the legislature's efforts to define and codify these duties. Since Crow Wing provides no exceptional facts that would permit such a departure, it has not successfully pleaded a breach of fiduciary duty based on a special relationship.

In sum, we reverse the district court's grant of GRE's motion to dismiss with respect to Crow Wing's breach-of-contract claim relating to the closure of the Stanton facility. We affirm the district court's decision with respect to all other claims and remand for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.