STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0595

Linnihan Foy Advertising, LLC,
Respondent,

vs.

Talon Real Estate Holding Corp.,
Appellant.

Filed March 4, 2019
Affirmed
Reyes, Judge

Hennepin County District Court
File No. 27-CV-17-3029

Andrew A. Green, Cottrell Law Firm, P.A., Mendota Heights, Minnesota (for respondent)

Ryan J. Hatton, Gurstel Law Firm, P.C., Golden Valley, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Reyes, Judge; and Cochran, Judge.

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

REYES, Judge

Appellant real-estate-investment company challenges the district court's determination that it owed respondent advertising agency damages under claims for breach of contract and account stated, arguing that respondent failed to perform the conditions precedent to its right to demand payment and that a prior debtor-creditor relationship between them did not exist. We affirm.

FACTS

In 2015, MG Kaminski, the chief executive officer of Talon Real Estate Holding Corporation (Talon), authorized its senior vice president, Gregory Pfleider, to hire an outside firm to redesign Talon's website. Pfleider hired respondent Linnihan Foy Advertising (Linnihan Foy). Pfleider later testified at trial that he communicated this engagement to Kaminski. On May 14, 2015, Pfleider and Linnihan Foy's co-founder, Sean Foy, signed a written contract under which Linnihan Foy agreed to provide certain services and produce deliverables to Talon in three distinct phases of the overall project. Each phase had its own cost: Phase 1 – $22,000; Phase 2 – $12,000; and Phase 3 – $2,000. Pfleider and Foy met on several occasions. Foy provided Pfleider with completed work (website copy, images, and design mockups) for review, and Pfleider expressed his satisfaction with it.

On June 8, 2015, Linnihan Foy sent Talon a first invoice totaling $10,000, "for "creative services . . . for [Talon's] phase 1 web work." The invoice required payment by July 8, 2015. On July 13, 2015, Linnihan Foy sent Talon a second invoice totaling $9,547.07, for additional work, requiring payment by August 12, 2015. When the deadlines for payment of both invoices had passed, Linnihan Foy began emailing Talon to inquire about payment. Twice Pfleider responded from his work e-mail, acknowledging that Talon was "way past due" on payment, indicating that Talon was "working to generate capital to pay off [its] balance [with Linnihan Foy]," and consenting to the application of any late penalties. Pfleider informed Linnihan Foy that, while he didn't "have a clear date in mind. . . " as to when Talon would pay off its balance, he was "confident in [Talon's] on going [sic] efforts to rectify this issue sooner than later." As a result of Talon's nonpayment, in October 2016, Linnihan Foy sent Talon's account to its collections agency.

Linnihan Foy sued Talon for the amount of both invoices, $19,547.07, claiming breach of contract and account stated. The district court held a court trial and heard testimony from Foy, Pfleider (who, at the time of trial, no longer worked for Talon), and Kaminski. The district court credited the testimony of Foy and Pfleider. On February 15, 2018, the district court issued its order for judgment, holding Talon liable to Linnihan Foy for $19,547.07 as of July 31, 2015, plus interest, costs, and disbursements. Talon moved the district court to amend and supplement its findings of fact and conclusions of law. The district court construed it as a motion for reconsideration, which it denied.[1] This appeal follows.

D E C I S I O N

Talon first argues that the district court erred in holding that it breached the contract by failing to timely pay the invoices because the contract did not include an agreement that Linnihan Foy would charge for work-in-progress before completing a phase. Next, Talon challenges the account-stated claim, arguing that no prior debtor-creditor relationship

[1] Talon's motion to "amend and supplement findings of fact and conclusions of law" is not a proper motion under the rules. While the district court construed Talon's motion as a motion to reconsider, we note that, before filing a motion to reconsider, a litigant must first file a request with the district court to file a motion to reconsider. Minn. R. Gen. Prac. 115.11. Talon did not file such a request.

existed between the parties because Linnihan Foy failed to complete work for any of the three work phases in the contract. We first address the account-stated claim.

"We review a district court's application of the law de novo." *Harlow v. State Dep't of Human Servs.*, 883 N.W.2d 561, 568 (Minn. 2016). To recover on its account-stated claim, Linnihan Foy must establish (1) a prior debtor-creditor relationship with Talon; (2) mutual assent between the parties that the balance owing is correct; and (3) a promise by Talon to pay the balance owing. *Mountain Peaks Fin. Servs., Inc. v. Roth-Steffen*, 778 N.W.2d 380, 387 (Minn. App. 2010), *review denied* (Minn. Apr. 28, 2010).

Talon challenges only the first element of Linnihan Foy's account-stated claim.[2] The record supports a finding that a prior debtor-creditor relationship existed between the parties. Pfleider was an employee of Talon, authorized by its CEO to enter into a contract with Linnihan Foy on behalf of Talon. Therefore, by signing the contract with Linnihan Foy, he lawfully bound Talon to the contract. Pfleider also knew of the deliverables for each phase of work and their respective costs. *C.f. Manderfeld v. Krovitz*, 539 N.W.2d 802, 806 (Minn. App. 1995) (finding spouse not bound by contract of which she was unaware, was not party to, and to which she did not consent), *review denied* (Minn. Jan. 25, 1996); *see also Roehrdanz v. Schlink*, 368 N.W.2d 409, 412 (Minn. App. 1985) (finding professional agreement to pay whatever amount was charged did not exist when client was unaware of any fee other than basic rate, time spent on any particular service, or how charge would be allocated). The district court did not err in determining that Linnihan Foy met

[2] Although Talon does not challenge the second and third elements of the account-stated claim, upon careful review of the record, we conclude that these elements are satisfied.

all the elements of its account-stated claim. Because Talon can be found liable to Linnihan Foy under either an account-stated claim or a breach-of-contract claim, we need not analyze the breach-of-contract claim.

Affirmed.