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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0477**

Laurie Jatho, et al.,
Respondents,

vs.

Northeast Title Company,
Appellant.

**Filed November 9, 2020
Reversed and remanded
Frisch, Judge**

St. Louis County District Court
File No. 69VI-CV-19-436

Andy Borland, Sellman Borland & Simon PLLC, Hibbing, Minnesota (for respondents)

Bryan M. Lindsay, Trenti Law Firm, Virginia, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Frisch, Judge; and Smith, John,
Judge.*

UNPUBLISHED OPINION

FRISCH, Judge

A jury found that an escrow agent breached the terms of an agreement related to the
release of escrowed funds to upgrade a septic system and awarded damages after the district

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

court declined the agent's request to instruct the jury regarding elements of the breach-of-contract claim. Because the district court omitted from the instructions an essential element of the pleaded claim, we reverse and remand.

FACTS

In January 2018, respondents Laurie and Thomas Jatho entered into a purchase agreement to buy a home, contingent on a septic-system inspection following the spring thaw. The purchase agreement provided that the sellers would cover the entire cost of an upgrade or replacement of a septic system if discovered during the inspection to be noncompliant with local ordinance.

In March, the Jathos entered into an escrow agreement with the sellers to preserve the septic-system funds. The agreement provided that the funds would “be placed and held in escrow by [appellant] Northeast Title Company” pending certain findings by an inspector, at which point “all remaining funds [would] be released” to the sellers. Northeast Title prepared the escrow agreement but was not listed as a party and did not sign the agreement.

Following a May inspection, Northeast Title released the septic system funds to the sellers. The Jathos complained that the inspector's findings did not justify the release and eventually filed a breach-of-contract claim against Northeast Title in district court.

The matter proceeded to a jury trial. The Jathos requested that the jury instructions include the definition of “breach of contract”—but not contract formation—and damages. Northeast Title requested, among other things, an additional jury instruction regarding the definition of a contract, arguing that the evidence did not show that it was a party to the

escrow agreement. The district court ultimately declined and only instructed the jury on the definition of a breach and damages.

The jury returned a special verdict finding that Northeast Title “breach[ed] its obligation” to the Jathos “with respect to escrow funds held for septic compliance” and awarding the Jathos damages. Northeast Title appeals.

DECISION

Northeast Title challenges the district court’s denial of its requested jury instruction on contract formation.¹ We review the denial of a requested jury instruction for an abuse of discretion. *Daly v. McFarland*, 812 N.W.2d 113, 122 (Minn. 2012). District courts have considerable latitude in deciding whether a specific instruction is appropriate. *Morlock v. St. Paul Guardian Ins. Co.*, 650 N.W.2d 154, 159 (Minn. 2002). But when the record contains evidence to support a party’s theory, the district court must instruct the jury on that theory. *Oldendorf v. Eide*, 110 N.W.2d 310, 314 (Minn. 1961). “[A] jury charge should affirmatively set forth the law that applies” *Schlieman v. Gannett Minn. Broad., Inc.*, 637 N.W.2d 297, 302 (Minn. App. 2001), *review denied* (Minn. Mar. 19, 2002).

The pleaded claim in this case was breach of contract. A breach-of-contract claim requires a plaintiff to prove three elements: (1) contract formation, (2) performance of any

¹ We note that the parties bear the responsibility of supporting arguments with legal analysis and citations. Both parties make numerous, unsupported assertions throughout their briefs. Although the omissions do not rise to the level of forfeiture, we remind counsel that a party risks forfeiting its claims by failing to articulate an argument or cite supporting authority. See *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971).

conditions precedent, and (3) breach of the contract by the defendant. *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011). The first element—contract formation—requires an offer, acceptance, and consideration between the parties. *Commercial Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. App. 2006). Whether the parties formed a contract is a question of fact for the jury. See *Morrisette v. Harrison Int’l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992).

At trial, Northeast Title argued that a contract-formation instruction was necessary because the evidence did not show that it signed the escrow agreement or received consideration. The district court rejected this request because the “[j]ury instructions as they are written right now, accommodate whether this is a breach of contract case or what it truly is, which is a breach of fiduciary duty.”² The district court reasoned that “the real question” for the jury “regardless of the theory, is whether or not there was a breach of [the escrow] agreement.” At the close of the evidence, the district court gave the standard jury instruction on the element of breach. See 4 *Minnesota Practice*, CIVJIG 20.45 (2018). But the district court omitted a key and contested element of the breach-of-contract claim—whether the parties to this action formed a contract in the first instance.

The Jathos did not plead or pursue a claim for breach of fiduciary duty. The district court abused its discretion by refusing to instruct the jury on a contested element of the

² There are four elements to the tort claim of breach of fiduciary duty: the existence of a fiduciary duty, a breach of that duty, causation, and damages. *Hansen v. U.S. Bank Nat’l Ass’n*, 934 N.W.2d 319, 327 (Minn. 2019).

sole cause of action pleaded and presented by the Jathos.³ Northeast Title is therefore entitled to a new trial.

Reversed and remanded.

³ Northeast Title additionally argues that (1) the evidence warranted an instruction on mitigation of damages and (2) the evidence did not support the amount of damages awarded. We do not reach the merits of these issues given our decision to reverse and remand. We reiterate that in any subsequent trial following remand, the district court must instruct the jury on any theory supported by the evidence. *Oldendorf*, 110 N.W.2d at 314.