

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0974**

Travis Colsen,
Appellant,

vs.

Bright Birch, Inc. d/b/a Bright Birch Real Estate and
d/b/a Bright Birch, a Minnesota corporation,
Respondent.

**Filed March 22, 2021
Affirmed
Gaïtas, Judge**

Dakota County District Court
File No. 19HA-CV-19-3191

David J. McGee, Natalie R. Walz, Tomsche, Sonnesyn & Tomsche, P.A., Minneapolis,
Minnesota (for appellant)

Seth A. Nielsen, Legacy.Law LLC, Burnsville, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and Gaïtas,
Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Travis Colsen challenges the district court's summary judgment in favor of respondent Bright Birch, Inc. d/b/a Bright Birch Real Estate and d/b/a Bright Birch (Bright Birch) on Colsen's breach-of-contract, conversion, and unjust-enrichment claims relating to real-estate sales commissions. Colsen argues that the district court erred by

(1) determining that Bright Birch did not breach a real-estate team-member agreement and brokerage agreement, (2) concluding that there were no genuine issues of material fact as to whether Colsen was the procuring cause of a sale, (3) holding that a conversion claim could not be based on money in intangible form, (4) concluding that valid contracts precluded Colsen's unjust-enrichment claim, and (5) denying Colsen's motion to amend the complaint. We affirm.

FACTS¹

Overview and Background

All real-estate salespersons in Minnesota must be licensed to act on behalf of a licensed broker and may not be licensed with more than one broker at a time. Minn. Stat. § 82.63, subd. 4 (2020). Real-estate salespersons can choose to work independently or to be part of a team or group of other salespersons within their brokerage. *See* Minn. Stat. § 82.69 (2020). Team membership affords certain advantages, such as assistance with marketing and with covering individual transactions. To advertise as a team, the member salespersons must first obtain authorization from their brokerage. Minn. Stat. § 82.69(b)(1).

Colsen is a real-estate salesperson. He was originally licensed through RE/MAX Advantage Plus (RE/MAX), a real-estate company and brokerage. In September 2017, Colsen joined a team—the Bright Birch Group—that RE/MAX, through its primary broker

¹ The facts are derived from the summary-judgment record and are presented in the light most favorable to Colsen. *See STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002).

E.M., had authorized to advertise under the RE/MAX umbrella. The Bright Birch Group was operated by Bright Birch and its lead agent N.N.

In September 2018, Bright Birch obtained its own brokerage license. The salespersons with the Bright Birch Group, including Colsen, transferred their licenses away from RE/MAX to Bright Birch Real Estate, also operated by Bright Birch. Colsen worked on real-estate transactions with Bright Birch as his brokerage for about five months until N.N. terminated his relationship with Bright Birch in February 2019. Colsen then transferred his license back to RE/MAX.

When Colsen joined the Bright Birch Group (the team) and later Bright Birch Real Estate (the brokerage), he entered into two separate agreements with Bright Birch. These agreements are central to the dispute in this case.

2017 Team Agreement

On September 1, 2017, while still with the RE/MAX brokerage, Colsen entered into a written Bright Birch Group team-member agreement (the team agreement) to join that team. The signatories to the agreement were Colsen and N.N. for Bright Birch.

The team agreement specifies the duties of team members, which include that each team member “agrees to work diligently and with his or her best efforts to sell, lease, or rent any and all real estate listed or under contract with Bright Birch and its affiliated broker.” The team agreement contains additional references to an “affiliated broker,” or simply “the broker,” throughout, but it does not specify a particular broker for the team.

The team agreement also describes the duties of Bright Birch, including that “Bright Birch agrees to assist the Team Member in developing his or her business goals and

objectives and to provide assistance with individual transactions as needed.” Bright Birch also agrees to be responsible for marketing expenses, Bright Birch administrative expenses, “for sale” signs, and email account fees for team members. Under an appendix to the agreement, team members can also receive monthly and annual bonus incentives, recruiting incentives, and annual mentoring incentives.

As to commission payments, the team agreement states that all payments shall be made to team members for services provided in accordance with the agreement “via a commission split on closed transactions in accordance with the Team Member Commission Schedule attached hereto as Appendix A.” The referenced appendix specifies that gross commission—defined as the total commission from a transaction received by or paid to the contracting parties’ broker, exclusive of broker fees—shall be split in various ways depending on who “sourced” the lead for the transaction. Team members receive 70% of the gross commission for individually-sourced leads (with Bright Birch receiving the other 30%), and 50% of the gross commission for Bright Birch-sourced leads (with Bright Birch receiving the other 50%).²

Regarding contract termination, the team agreement specifies that it can be terminated by either party upon seven days written notice to the other. It contains a provision regarding post-termination commissions that states:

Upon termination, Team Member shall be entitled, but not required, to continue working with his or her clients under contract through closing or until such contracts expire. If a

² Though not relevant here, the appendix also specifies that team members receive 100% of gross commissions for personal transactions, which are transactions where the team member sells or acquires real estate in his or her own name.

Team Member's post-termination services to a client results in a successful transaction closing, Team Member shall be entitled to the compensation set forth in Appendix A, provided that if the Team Member disassociates with Bright Birch's broker or fails to facilitate the transaction through closing, Team Member shall not be entitled to a commission unless otherwise agreed by Bright Birch.

2018 Brokerage Agreement

When Bright Birch obtained its brokerage license and Colsen transferred his real-estate license from RE/MAX to Bright Birch Real Estate, the parties entered another agreement on September 26, 2018 (the brokerage agreement). The signatories to the brokerage agreement were also Colsen and N.N. for Bright Birch. The brokerage agreement explicitly states that it does not supersede any existing team member agreements. Specifically, it provides:

21. ENTIRE AGREEMENT / TEAM MEMBER AGREEMENTS NOT IMPACTED

This Agreement, including any attached appendices and incorporated policies and procedures, is a fully integrated agreement and reflects the entire agreement between the parties relating to parties' broker-agent relationship. There are no other promises, conditions, or agreements between the parties relating to the provision of real-estate related services, with the potential exception of team member agreements. This Agreement supersedes any prior written or oral agreements between the parties, except any existing team member agreements. Any existing team member agreement between the parties, which govern the parties' team-agent relationship, is a separate agreement and shall remain in full force and effect and governed by the terms of such separate agreement. Team member agreements shall not be modified or impacted in any way by this Agreement.

An appendix to the brokerage agreement also provides that "team members" are to receive \$150 per month off of their broker fees for the first year.

Under the brokerage agreement, the agent/independent contractor (IC) “agrees to work diligently and with his or her best efforts to sell, lease, or rent any and all real estate listed or under contract with Bright Birch, to solicit additional listings and clients for purposes of effectuating real estate transactions, and to otherwise promote the Bright Birch brand and business.”

Bright Birch, for its part, “agrees to keep its broker license in full force and effect . . . to assist IC in IC’s work by providing advice and cooperation as possible” and also agrees that, “[t]o the extent that IC desires further training, transaction specific assistance, or coaching, those services may be provided to IC for an additional fee.” “Appendix A” to the brokerage agreement provides the more specific benefits available through the brokerage, which depend on the fee schedule that an agent selects from the “silver,” “gold,” or “platinum” packages. Available benefits include personal website and other business-development assistance, errors and omissions insurance, technology resources, regular business meetings, photography and videography packages, and office rental options.

As for commissions, the brokerage agreement provides that commission payments are to be made “on closed transactions,” after “all required paperwork has been completed for the transaction and provided to Bright Birch” in the amount provided for by the fee schedule that the agent selects. The “silver” package provides 90% for the agent (10% for the brokerage), while both the “gold” and “platinum” packages provide 98% for the agent (2% for the brokerage). Colsen selected the “platinum” fee schedule in the brokerage agreement, resulting in a “98/2 split.”

The brokerage agreement may be terminated by either party for any reason and upon written notice to the other party. As to whether an agent may receive commissions for real-estate transactions that close after his or her departure from the brokerage, the agreement provides:

Upon termination, all pending transactions shall remain with Bright Birch and IC shall be responsible for payment of the same fees and shall be entitled to the same commission as if IC had remained associated with Bright Birch, provided that IC remains licensed through a licensed broker and is able to and does continue working on the transaction through closing.

Following the termination of his relationship with Bright Birch, Colsen sought commission payments for several real-estate transactions that closed after he left. His complaint alleges that Bright Birch still owes him commission payments in connection with three properties, referred to as the White Bear property, the 40th Lane property, and the Brookwood property. The primary dispute underlying this action regards the Brookwood property, purchased by J.P. and S.P.

Brookwood Property and Termination of Bright Birch and Colsen's Relationship

In early November 2018, while Colsen was with Bright Birch Real Estate, J.P. reached out to Colsen via text message and expressed that he and his wife S.P. were looking at moving and wanted to talk. J.P. was familiar with both Colsen and N.N. through personal and business connections. J.P. and Colsen began exchanging messages about potential homes, with Colsen presenting options to J.P. They continued to do so periodically over the next few months. In mid-December, J.P. asked Colsen for N.N.'s

phone number, which Colsen shared, and J.P. and Colsen continued discussing properties.³ Colsen did not have J.P. sign a written representation agreement at any point.

In late January 2019, J.P. brought up the Brookwood property to Colsen. J.P. had initially discovered the Brookwood property through his own internet search, and he had previously made an unsuccessful offer on it in the fall of 2018 with the assistance of a different real-estate agent. He had noticed that it was still for sale and asked Colsen to do some research on the property. J.P. also called N.N. sometime in January 2019 and asked her to help with pursuing the Brookwood property. J.P. later explained that he sought N.N.'s assistance because Colsen was a relatively inexperienced real-estate agent, and he wanted a more experienced agent involved given the high-end property at issue and his previous unsuccessful offer.

On February 1, 2019, J.P., S.P., N.N., and Colsen all attended a showing of the Brookwood property. After the showing, J.P. and S.P. decided to make an informal offer to gauge the sellers' position before submitting a formal offer. On February 7, N.N. prepared a detailed informal offer for J.P. and S.P. N.N. sent the informal offer to J.P. and S.P. to review, copying Colsen on the email. Two days later, after J.P. and S.P. had provided feedback, N.N. sent the sellers' agent the revised informal offer via email, again copying Colsen.

³ There is no context for the phone number request in the text messages; Colsen simply shared the number and the two continued discussing properties. There is suggestion in deposition testimony, though, that J.P. used the number to wish N.N. a happy birthday.

Colsen then went on vacation from February 12 through February 18. On February 15, 2019, Bright Birch entered a written buyer-representation contract with J.P. and S.P., with N.N. signing on behalf of Bright Birch. That same day, J.P. and S.P. signed a purchase agreement for the Brookwood property, drafted by N.N.; the sellers signed the agreement the next day.

When Colsen returned from vacation on February 18, he met with E.M., the primary broker for RE/MAX. Colsen's work calendar, visible to his Bright Birch colleagues, reflected that he had a meeting with E.M. N.N. had noticed this meeting at some point while Colsen was on vacation and believed that Colsen was planning to leave Bright Birch and return to RE/MAX. When N.N. asked Colsen about the meeting, he initially seemed to deny that it occurred. But then he told her he was soliciting a donation from RE/MAX for his brother's charity.

The same day that Colsen returned from vacation and met with E.M., he sent N.N. an email expressing that he was "[s]uper disappointed with how [the Birchwood dealings] shook down signing a friend/client while I was on vacation." N.N. replied, stating that she was "taken aback and offended at [Colsen's] accusation that [N.N.] stole [his] friend/client" and noting that the meeting with E.M. was inappropriate. She notified Colsen that she was terminating Bright Birch Real Estate's relationship with him. N.N. instructed Colsen to select a new brokerage within two days.

Colsen promptly transferred his license back to RE/MAX. He asked J.P. to move the Brookwood transaction over to RE/MAX, but J.P. elected to remain with Bright Birch and work with N.N.

N.N. continued working on the Brookwood transaction, and her services ultimately included completing the purchase agreement, negotiating with the seller's agent, helping with the inspection process, helping with the removal of contingencies in the purchase agreement, and attending the closing. Colsen asked N.N. that the commission for the Brookwood transaction "be handled as assigned in [their] contract," but Bright Birch maintained that Colsen was not contractually entitled to commission for the transaction and ultimately did not pay him any commission for it.

White Bear and 40th Lane Properties

Two other transactions that Colsen worked on while at Bright Birch Real Estate closed after his departure. The first, for the White Bear property, closed on February 20, 2019. Bright Birch sent Colsen a \$5,425.10 commission check for the White Bear property a few weeks later, which specified that it was calculated based on a 70/30 team split and 98/2 brokerage split.

The second, for the 40th Lane property, closed on March 27, 2019. The administrative manager of Bright Birch emailed Colsen several times, both before and after the closing, to notify him that documentation was missing from his file on the property that needed to be submitted before his commission payment could issue. Bright Birch let Colsen know, and has consistently maintained, that Colsen can receive commission for the 40th Lane transaction as soon as he submits the missing documentation.

This Lawsuit

Colsen initiated this lawsuit in April 2019, asserting four claims in connection with allegedly unpaid commissions for the Brookwood, White Bear, and 40th Lane transactions:

(1) breach of contract, (2) conversion, (3) unjust enrichment, and (4) failure to pay wages in violation of Minnesota Statute section 181.145 (2020).⁴ In January 2020, Bright Birch moved for summary judgment on all the claims, arguing that the team agreement and the brokerage agreement control the commission at issue and that neither agreement entitles Colsen to any unpaid amounts. Specifically, Bright Birch asserted that Colsen properly received payment pursuant to the team and brokerage agreements for the White Bear transaction, that Colsen had not fulfilled his prerequisite contractual obligations (completing the file documentation) to receive payment for the 40th Lane transaction, and that Colsen has no legitimate claim—under the agreements or otherwise—to a commission for the Brookwood transaction.

On February 3, 2020, Colsen moved to amend his complaint. He sought leave to add “an additional five real estate transactions to his existing claims against Bright Birch” from his time with Bright Birch Real Estate. He asserted that Bright Birch had taken a share of the commissions for those transactions in accordance with both the team member and brokerage agreements, when it should have retained only a 2% share under the brokerage agreement because the team agreement no longer applied when he moved his license to the Bright Birch brokerage.

The district court held a hearing on both the motion for summary judgment and motion to amend the complaint at the end of February 2020. In May 2020, the district court

⁴ Colsen does not challenge on appeal the district court’s dismissal of his claim for violation of section 181.145.

issued an order granting summary judgment in favor of Bright Birch on all counts, denied Colsen's motion to amend the complaint, and entered judgment accordingly.

This appeal follows.

DECISION

Appellate courts “review the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law.” *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). Reviewing courts “view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

Summary judgment is proper if the movant shows, by citing to particular parts of the record, including depositions, documents, affidavits, admissions, and interrogatory answers, that “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01, 56.03(a). A genuine issue of material fact exists “when reasonable persons might draw different conclusions from the evidence presented.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

A district court's denial of a motion to amend the complaint is reviewed for an abuse of discretion. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

I. The district court did not err by dismissing Colsen's breach-of-contract claim on summary judgment.

To establish a claim for breach of contract, a plaintiff needs to show: (1) the formation of a contract, (2) performance by plaintiff of any conditions precedent to his

right to demand defendant's performance, and (3) a breach of the contract by defendant. *Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014). Colsen alleges that Bright Birch breached the brokerage agreement by failing to pay him the full amount of his commissions owed for the White Bear Property, 40th Lane Property, and Brookwood Property transactions.

To determine whether a breach of contract occurred here, the first question is which contract or contracts govern the disputed transactions. The district court concluded that the team agreement and the brokerage agreement both apply to the transactions at issue, and it found no ambiguity in the agreements. Colsen argues that this was an error; he asserts that certain ambiguities in the contracts create a genuine issue of material fact as to which agreement controls, and he ultimately argues that his commission splits are only governed by the brokerage agreement. We accordingly begin by considering whether both contracts apply, before turning to the specific allegations of breach.

A. The district court did not err by determining that there is no ambiguity in the team member and brokerage agreements and that both apply to the disputed transactions.

“Whether language in a contract is plain or ambiguous is a question of law that [appellate courts] review de novo.” *Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). “When the intent of the parties can be determined from the writing of the contract, the construction of the instrument is a question of law for the court to resolve, and this court need not defer to the district court’s findings.” *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 671 N.W.2d 213, 221 (Minn. App. 2003) (quotation omitted), *review denied* (Minn. Jan. 20, 2004).

To determine the intent of parties to a contract, courts review the language of the contract. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). “When the language is clear and unambiguous, [appellate courts] enforce the agreement of the parties as expressed in the language of the contract.” *Id.* Only if the language is ambiguous do courts look to “parol evidence,” or evidence outside the four corners of the written agreement, to determine the parties’ intent. *Flynn v. Sawyer*, 272 N.W.2d 904, 907-08 (Minn. 1978); *NC Properties, LLC v. Lind*, 797 N.W.2d 214, 219-20 (Minn. App. 2011). Contract language is ambiguous “if it is susceptible to two or more reasonable interpretations.” *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 45 (Minn. 2008). But words in a contract are not to be viewed in isolation, and “intent is ascertained, not by a process of dissection in which words or phrases are isolated from their context, but rather from a process of synthesis in which the words and phrases are given a meaning in accordance with the obvious purpose of the contract as a whole.” *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 324 (Minn. 2003) (quotation omitted).

On appeal, Colsen contends that there are two ambiguities in the agreements. First, he argues that the team agreement is ambiguous on its own as to the term “affiliated broker,” and second, he argues that “the language of the agreements when read together is ambiguous.” He then attempts to use the asserted ambiguities to argue that the team agreement became impossible to perform when he entered the brokerage agreement. Given this impossibility, he argues, the team agreement “has no effect,” and his transactions with Bright Birch Real Estate should have been subject only to the 98/2 brokerage split and not a 70/30 or 50/50 team split.

We note that Colsen’s argument largely ignores the express language of the brokerage agreement, which states that the brokerage agreement does not affect existing team agreements. Again, the brokerage agreement contains a heading: **“ENTIRE AGREEMENT / TEAM MEMBER AGREEMENTS NOT IMPACTED,”** and specifies thereunder that “Any existing team member agreement between the parties, which govern the parties’ team-agent relationship, is a separate agreement and shall remain in full force and effect and governed by the terms of such separate agreement. Team member agreements shall not be modified or impacted in any way by this Agreement.” This language in the brokerage agreement unambiguously expresses the parties’ intent that both agreements would continue to apply—meaning that Colsen would split commission with Bright Birch in a member/team capacity (70/30 or 50/50) and an agent/broker capacity (98/2)—when Colsen switched his license to the Bright Birch brokerage. Furthermore, as the district court noted, the choice of the generic “affiliated broker” and “the broker” language, as opposed to “RE/MAX,” in the team agreement demonstrates that the parties intended the team agreement to survive a change in the team’s brokerage.

But Colsen does not argue that the above language from the brokerage agreement is ambiguous, and instead makes two arguments for ambiguities elsewhere in the agreements that he contends create an impossibility of contract performance. We address the merits of each argument in turn.

1. Whether the team agreement is ambiguous as to “affiliated broker”

Colsen first argues that “[t]he language of the 2017 [team] [a]greement is ambiguous because it does not define ‘affiliated broker.’” He then asserts that, under a standard dictionary definition, “affiliated” means “associated with another.” *See Merriam-Webster’s Collegiate Dictionary* 21 (11th ed. 2014). Using that definition, Colsen reasons that once he switched his license to Bright Birch Real Estate and entered the brokerage agreement, his own performance under the team agreement became “impossible.” He explains that this is so because the language of the team agreement requires him to engage in real estate transactions with Bright Birch *and its “affiliated broker.”* (Emphasis added.) Once Bright Birch Group’s “affiliated broker” became Bright Birch, engaging in such transactions became impossible because Bright Birch cannot “affiliate” with itself; it must associate with “another” in order to be “affiliated” per the dictionary definition.

After reviewing the team agreement, we disagree with Colsen’s initial assertion that the term “affiliated broker” in the team agreement is ambiguous. While Colsen contends that “[t]he language of the [team] [a]greement is ambiguous because it does not define ‘affiliated broker,’” the absence of a definition in the contract does not, by itself, create an ambiguity. Contract language is ambiguous if it is susceptible to more than one reasonable interpretation, *Carlson*, 749 N.W.2d at 45, and this inquiry takes into account the “obvious purpose of the contract as a whole.” *Motorsports Racing Plus, Inc.*, 666 N.W.2d at 324 (quotation omitted).

When read in context, the term “affiliated broker” in the team agreement has only one reasonable meaning. *See id.* (explaining that the meaning of a contract is not ascertained “by a process of dissection in which words or phrases are isolated from their context” (quotation omitted)). The parties agree that, under Minnesota law, all real-estate salespersons must be licensed to act on behalf of one, and only one, licensed broker. Minn. Stat. § 82.63, subd. 4. And the only statute regarding real estate teams provides that salespersons who are “part of a team or group within *the brokerage*” must obtain authorization from the primary broker of the brokerage in order to advertise as a team. Minn. Stat. § 82.69 (emphasis added). These statutes suggest that real estate agents on a team must all be part of the same brokerage, and Colsen himself asserts that this is the case. Consequently, the team’s “affiliated brokerage” as used in the team agreement can have only one meaning: the brokerage under which the team advertises and that holds the members’ licenses.

Colsen proposes an alternative reasonable definition, which is that “affiliated broker” refers exclusively to RE/MAX. This definition is not reasonable in the context of the team agreement though. The parties could have drafted the agreement to refer specifically to RE/MAX, but instead the agreement uses the generic “affiliated broker” or “the broker” language. No language in the team agreement suggests that the agreement is meant to terminate upon a change in brokers for the team. And, contrary to Colsen’s assertions, RE/MAX did not “authorize” formation of the team, and did not otherwise take part in the team agreement; RE/MAX merely authorized the team to advertise under its brokerage in accordance with section 82.69. Ultimately, the language of the contract does

not permit the reasonable interpretation that “affiliated broker” refers exclusively to RE/MAX.

Applying the only reasonable definition, that Bright Birch Group’s “affiliated broker” is the broker under which the team advertises and that hold the members’ licenses, the “affiliated broker” when Colsen entered the team agreement in 2017 was RE/MAX. When Colsen entered the brokerage agreement in 2018, though, the team’s affiliated broker was Bright Birch—the brokerage under which the team members advertised once they switched their licenses away from RE/MAX. Again, this is where Colsen asserts an impossibility by using a dictionary definition of “affiliated,” arguing that Bright Birch cannot “affiliate” with itself.

In response to Colsen’s impossibility argument, Bright Birch argues that nothing prevents a business from affiliating or doing business with another business owned or operated by the same legal entity. In other words, nothing prevents the Bright Birch Group real estate team from being affiliated with Bright Birch Real Estate as its brokerage. Bright Birch contends that even the full Merriam-Webster definition that Colsen offers, which is “closely associated with another typically in a dependent or subordinate position,” does not support his argument. *Merriam-Webster’s, supra*, at 21. This definition, Bright Birch submits, certainly captures a team working under a legal entity that also operates as the team’s brokerage.⁵

⁵ Bright Birch notes that the usage example provided with the Merriam-Webster dictionary definition is “the university and its *affiliated* medical school,” which suggests that the medical school may affiliate with the university even if the two are part of one legal entity. See *Merriam-Webster’s, supra*, at 21.

We agree that, even applying the dictionary definition selected by Colsen, no “impossibility” results. That definition does not prevent the Bright Birch Group from affiliating with Bright Birch Real Estate as its broker. And other dictionaries define “affiliated” or its root word, “affiliate,” in ways that even more clearly indicate that the term does not require two or more separate legal entities. The American Heritage Dictionary, for example, defines “affiliate” as “to associate (oneself) as a subordinate, subsidiary, employee, or member.” *The American Heritage Dictionary of the English Language* 28 (5th ed. 2011).

Additionally, we discern no legal or practical difficulty with defining “affiliated broker” in the team agreement to mean the brokerage under which the Bright Birch Group advertises and that holds the team members’ licenses. Indeed, as the district court noted, Colsen and Bright Birch effectively split commissions in accordance with both agreements until Colsen transferred his license back to RE/MAX. Because “affiliated broker” is subject to only one reasonable interpretation, and because that interpretation does not create an impossibility, the district court did not err when it found that the team agreement is unambiguous.

2. Whether the agreements are ambiguous when read together

Colsen next argues that even if the team agreement is not ambiguous on its own, provisions of the team agreement and brokerage agreement, when read together, are ambiguous. He points to two specific “conflicting terms” that he asserts create ambiguity: the agreements contain different commission splits that cover all of Colsen’s real estate transactions, and the agreements contain different termination provisions.

Bright Birch argues in response that there is simply no reason to look at the agreements together to try to discern an ambiguity in either. The two agreements govern two separate relationships: the agent-team relationship and the agent-broker relationship. Bright Birch acknowledges that there are differences between the two, but asserts that these are “by design” and present no problem, interpretive or otherwise.

We conclude that absent ambiguity in either agreement, we need not look to the other agreement—which is extrinsic evidence as to the first—and compare the two agreements. *See Flynn*, 272 N.W.2d at 907-08. But even if we did compare them as Colsen suggests, the provisions do not create a conflict.

The team and brokerage agreements, under their explicit terms, govern two separate relationships and sets of services. Accordingly, it makes sense that they contain differing commission splits. And again, there is no practical difficulty applying the commission provisions in both agreements to all of Colsen’s transactions, as the brokerage (Bright Birch) simply retains first, its 2% brokerage fee, and second, its split of gross commissions under the team agreement. As to the termination provisions, the team agreement requires 7 days’ written notice to terminate while the brokerage agreement requires only written notice. This difference is immaterial; Colsen does not show how it makes either agreement ambiguous or makes the two agreements impossible to perform simultaneously. Thus, even if we read the two agreements “together,” no ambiguity or conflict results.

B. The district court did not err by determining Colsen is not entitled to additional commission payments under the applicable agreements.

Having determined that both the team and brokerage agreements apply to Colsen's commission splits for transactions conducted while he was working under Bright Birch Real Estate, the next inquiry is whether there is a genuine issue of material fact that Bright Birch breached the agreements. Colsen argues that he is owed additional commissions for three transactions that closed after he separated from Bright Birch.

Under the termination provision of the team agreement, Colsen is entitled, but not required, to "continue working with his . . . clients under contract through closing or until such contracts expire." If his "post-termination services to a client results in a successful transaction closing, [Colsen] shall be entitled to the compensation set forth in Appendix A." As a caveat, though, if Colsen "disassociates with Bright Birch's broker or fails to facilitate the transaction through closing, [he] shall not be entitled to a commission unless otherwise agreed by Bright Birch."

Under the termination provision of the brokerage agreement, "all pending transactions shall remain with Bright Birch and [Colsen] shall be responsible for payment of the same fees and shall be entitled to the same commission as if [Colsen] had remained associated with Bright Birch," as long as Colsen "remains licensed through a licensed broker and is able to and does continue working on the transaction through closing."

With the applicable provisions for post-termination commission payments in mind, we analyze each disputed transaction in turn.

1. White Bear transaction

The parties agree that Colsen acted as the buyer's agent for the White Bear property transaction, which closed on February 20, 2019. They also agree that Bright Birch issued Colsen a check for \$5,425.10 on March 4, 2019, and that the check accurately reflected the commission splits in the team member and the brokerage agreements.

Colsen's contention for unpaid commission on the White Bear property is simply that Bright Birch should not have retained commission under both the team and brokerage agreements for the transaction because the team agreement no longer applied once he entered the brokerage agreement. As explained above, the district court properly rejected that argument. There is thus no genuine issue of material fact that Bright Birch paid Colsen in full for this transaction under the applicable contracts.

2. 40th Lane transaction

The parties also agree that Colsen acted as the buyer's agent for the 40th Lane property transaction, which closed on March 27, 2019. Bright Birch declined to pay Colsen commission on this transaction until he completed the file for the transaction by submitting missing documentation. Though not in the record, the parties represent to this court on appeal that Colsen has submitted the missing documentation and has been paid commission for the 40th Lane property in accordance with the splits in the team and brokerage agreements. Accordingly, Colsen's argument for this transaction is the same as the White Bear transaction—that Bright Birch should not have retained commission under both the team and brokerage agreements—and it fails for the same reason.

3. Brookwood transaction

Colsen argues that he is entitled to a commission payment for the Brookwood property under the brokerage agreement.⁶ It is undisputed that Bright Birch did not pay Colsen any commission in connection with the Brookwood property. Bright Birch contends that it did not need to, though, because Colsen is not contractually entitled to any commission for that transaction.

Again, the brokerage agreement provides that, upon termination of the agreement, “all pending transactions shall remain with Bright Birch and IC shall be responsible for payment of the same fees and shall be entitled to *the same commission as if IC had remained associated with Bright Birch*, provided that IC . . . is able to and *does continue working on the transaction through closing*.” (Emphasis added.)

Bright Birch argues that summary judgment as to the Brookwood transaction was proper, first, because even if Colsen had remained with Bright Birch, the brokerage agreement only entitles him to commissions for his own transactions, and second, because Colsen did not provide any post-termination services on the transaction. We agree with Bright Birch on both accounts.

As to the first argument, we conclude that the record, construed in the light most favorable to Colsen, shows that J.P. and S.P. ultimately elected to work with N.N. rather than Colsen as their real estate agent, and that N.N. performed all of the material work on

⁶ Colsen does not argue that he is entitled to a commission payment for the Brookwood property under the team agreement, as he maintains that “only the [brokerage] [a]greement applies to [his] commissions.”

the Brookwood transaction. N.N. had J.P. and S.P. sign a representation agreement, drafted the informal offer, negotiated with the seller's agent, completed the purchase agreement, helped remove contingencies from the purchase agreement, and attended the closing. Colsen, on the other hand, had the initial contact with J.P. and discussed various other properties with him, and he researched the Brookwood property upon J.P.'s request and set up a showing. But the brokerage agreement only entitles agents to payment on "closed transactions," and it was N.N. that performed all material aspects of and closed the Brookwood transaction. Colsen's initial involvement with J.P. and the Brookwood property does not entitle him to a commission under the brokerage agreement when the clients ultimately elected to work with another agent.

Most notably, though, it appears undisputed that Colsen did not perform post-termination services of any kind for the Brookwood transaction as required by the brokerage agreement. The record shows that he asked J.P. and S.P. to move the transaction over to RE/MAX with him as their agent, but J.P. and S.P. declined to do so and elected to remain with N.N. Ultimately, the undisputed fact that Colsen provided no services after leaving Bright Birch bars him from earning a commission on the Brookwood property under the brokerage agreement.

Colsen's arguments do little to cast doubt on this conclusion. He appears to concede that he did not provide any post-termination services under the brokerage agreement; his primary contention is that he *could not* provide post-termination services because he was fired. He contends that, under applicable law, "[A real estate] salesperson . . . may not be licensed to act on behalf of more than one broker in this state during the same period of

time.” Minn. Stat. § 82.63, subd. 4. This provision, Colsen argues, prevented him from working on the Brookwood transaction once he transferred his license back to RE/MAX. Essentially, Colsen seems to argue that in requiring post-termination services for a commission, the Bright Birch brokerage agreement violates applicable law and is thus unenforceable. *See, e.g., Rochester Ins. Co. v. Martin*, 13 Minn. 59, 65 (Minn. 1868) (explaining that an illegal contract is unenforceable). He requests that the requirement be “severed” from the brokerage agreement, and asserts that, if it is severed, he is entitled to a commission.

Colsen’s argument is not persuasive. The brokerage agreement does not contravene the statute that Colsen cites. Under the statute, a real estate salesperson cannot be *licensed* to act on behalf of more than one broker; it does not prohibit a real estate agent who switches brokerages from completing a file with the permission of his or her new and old broker. *See* Minn. Stat. § 82.63, subd. 4. Indeed, the record reflects that Colsen worked on the White Bear and 40th Lane transactions after he transferred his license back to RE/MAX. Colsen has not shown that the brokerage-agreement requirements violate the law, and accordingly has not shown that a genuine issue of material fact exists as to whether the brokerage agreement entitles him to a commission for the Brookwood transaction.

In sum, the district court did not err by granting summary-judgment dismissal of Colsen’s breach-of-contract claim, as Colsen has not shown a genuine issue of material fact that the applicable contracts entitle him to additional commissions for the three disputed properties.

II. The district court did not err by determining that there are no genuine issues of material fact as to whether Colsen was the procuring cause of the Brookwood sale.

Colsen next argues that the district court erred by determining that there are no genuine issues of material fact as to whether he was the procuring cause of the Brookwood sale. He asserts the procuring-cause doctrine as an independent basis—separate from the contracts—for why he is entitled to commissions on the Brookwood property.

Minnesota courts have applied the procuring-cause doctrine in the real-estate context to hold that “[a] broker is not entitled to a commission unless he was the procuring cause of the sale; that is, it must have been the direct result of his efforts to bring it about, and a broker seeking to recover a commission has the burden of proving this affirmatively.” *Rees-Thomson-Scroggins, Inc. v. Nelson*, 150 N.W.2d 568, 571 (Minn. 1967) (citing *Neumeier v. Sperzel*, 25 N.W.2d 651, 653 (Minn. 1946)).⁷ An agent is the “procuring cause” of a sale if he or she “originated a course of events which without a break in their continuity created a cause of which the sale was the result.” *Spring Co. v. Holle*, 78 N.W.2d 315, 318 (Minn. 1956). “It is not enough that [the agent’s] services merely contributed to the result. They must be the producing and effective means thereof.” *Id.*

“[T]he procuring cause doctrine is an equitable remedy that is only available where there is no contract remedy; that is, where commissions were not contractually earned at

⁷ While it appears that the caselaw on procuring cause in the real-estate context primarily relates to brokers finding sellers for nonexclusive listings, *see, e.g., Rees-Thomson-Scroggins, Inc.*, 150 N.W.2d at 571, we assume without deciding that the equitable doctrine could potentially apply to agents in the event that their relationship with their broker for commissions was not governed by a valid contract.

the time of termination [of a listing agreement].” *Rosenberg v. Heritage Renovations, LLC*, 685 N.W.2d 320, 330 (Minn. 2004). “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). Specifically, “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).

The district court determined that Colsen cannot bring a procuring-cause claim because his post-termination compensation is governed by the termination provisions of the team and brokerage agreements. It reasoned that where the parties willfully entered agreements that provide the scope of available remedies, a resort to equitable doctrines is not appropriate. The district court also went on to decide in the alternative that, even if Colsen could bring a procuring-cause claim, there is no genuine issue of material fact that his claim fails the applicable test.

Colsen challenges both decisions. As to the first, he argues that “the provisions purporting to address [his] commissions upon termination in the [a]greements are at best conflicting, but are also contrary to the law as they require [him] to continue to work on real estate transactions after he is no longer affiliated with [Bright Birch].” Accordingly, he contends, neither agreement provides a remedy pertaining to his commissions earned at the time of termination.

Colsen’s argument is not persuasive. As already explained, the differences in the termination provisions of the agreements are immaterial, and the requirement that he perform work on an ongoing transaction after switching brokerages is not contrary to law.

Colsen has not shown that the termination provisions in the contracts are invalid. The provisions are part of a bargained-for agreement between the parties, and we decline to apply the gap-filling procuring-cause doctrine when a specific, valid contractual provision controls the post-termination commissions. *See U.S. Fire Ins. Co.*, 307 N.W.2d at 497. The district court properly concluded that Colsen’s procuring-cause claim fails as a matter of law. Accordingly, we need not determine if a genuine issue of material fact exists as to whether Colsen was the procuring cause of the Brookwood transaction.

III. The district court did not err by dismissing Colsen’s conversion claim on summary judgment.

Colsen next claims that the district court erred by dismissing his conversion claim. This claim is based on the assertion that he holds a property interest in the commissions that Bright Birch owes him for the sale of the White Bear property, the Brookwood property, and the 40th Lane property. The district court dismissed the claim because it determined that conversion cannot be based on a claim for money in an intangible form, and Colsen argues that this was an error.

The tort of conversion occurs when a person “willfully interferes with the personal property of another without lawful justification depriving the lawful possessor of use and possession.” *Williamson v. Prasciunas*, 661 N.W.2d 645, 649 (Minn. App. 2003) (quotations omitted). “The elements of common law conversion are: (1) plaintiff holds a property interest; and (2) defendant deprives plaintiff of that interest.” *Id.*; *see also Bates v. Armstrong*, 603 N.W.2d 679, 682 (Minn. App. 2000), *review denied* (Minn. Mar. 14,

2000) (“Conversion is the wrongful exercise of dominion or control over the property of another.”).

While the district court concluded that Colsen could not show conversion with a claim to money in an intangible form, *see Halla v. NW. Bank, N.A.*, 601 N.W.2d 449, 450 (Minn. App. 1999), *review denied* (Minn. Dec. 14, 1999), we need not reach that question because Colsen’s conversion claim fails for a more basic reason: he has not shown a property interest at all, even in money. He alleges that he should have been paid additional commissions, but he has not shown entitlement to those commissions under either his contract or procuring-cause theories. Accordingly, in light of our earlier analysis, we affirm the district court’s grant of summary judgment on the ground that Colsen has not shown the requisite “property interest,” *Williamson*, 661 N.W.2d at 649, to support a conversion claim. *See Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012) (explaining that appellate courts may affirm summary judgment on alternative grounds).

IV. The district court did not err by dismissing Colsen’s unjust-enrichment claim on summary judgment.

Colsen next argues that the district court erred by dismissing his claim for unjust enrichment, again contending that he has no adequate remedy in contract and should accordingly be allowed to proceed on this equitable claim.

Unjust enrichment “allows a plaintiff to recover a benefit conferred upon a defendant when retention of the benefit is not legally justifiable.” *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 838 (Minn. 2012). However, relief under the

unjust-enrichment doctrine “cannot be granted where the rights of the parties are governed by a valid contract.” *U.S. Fire Ins. Co.*, 307 N.W.2d at 497.

Colsen’s unjust-enrichment argument mirrors his procuring-cause argument. He again contends that “the [a]greements fail to properly address payment of [his] commissions upon his termination.” But as already discussed, this is simply not the case. Both the team and brokerage agreements contain valid provisions governing post-termination commissions. Because the rights of the parties are specifically addressed by the contracts, Colsen’s unjust-enrichment claim fails as a matter of law. *See id.*

V. The district court did not abuse its discretion by denying Colsen’s motion to amend the complaint to add other real-estate transactions.

Finally, Colsen argues that the district court erred by denying his motion to amend his complaint to add five additional real estate transactions. He asserts on appeal that he did not wish to add new *claims*, but merely wished to add these transactions “as a factual basis for his existing claims.”

The Minnesota Rules of Civil Procedure provide that leave to amend a complaint “shall be freely given when justice so requires.” Minn. R. Civ. P. 15.01. But this standard is not without limit; a proposal to amend should be denied where the amended pleading could not survive a motion for summary judgment. *Rosenberg*, 685 N.W.2d at 332; *see also Hunt v. Univ. of Minn.*, 465 N.W.2d 88, 95 (Minn. App. 1991).

Colsen argues that he should have been able to amend the complaint to add the other transactions “as a factual basis” because the team and brokerage agreements are ambiguous and, accordingly, “a genuine issue of material fact exists as to the parties’ intent as to

Colsen's compensation pursuant to the [a]greements." He seems to assert that these transactions would support his proposed interpretation of the agreements.⁸

Because we have already rejected Colsen's arguments that the team and brokerage agreements are ambiguous, extrinsic evidence for interpreting the agreements is not permissible. *See Flynn*, 272 N.W.2d at 907-08. Accordingly, permitting Colsen to add the additional transactions to his complaint would have no effect on the outcome of the summary-judgment decision. The unambiguous contracts control, so Colsen's complaint cannot survive a motion for summary judgment regardless of whether it contains the extrinsic evidence of the other transactions. *See Rosenberg*, 685 N.W.2d at 332. The district court did not abuse its discretion by denying Colsen's motion to amend the complaint.

Affirmed.

⁸ It is unclear how Colsen believes the other transactions would advance his case, as it appears to be undisputed that Colsen was paid in accordance with both the team and brokerage agreements for these transactions, which arguably suggests that the parties intended for both agreements to apply all along.