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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0008**

Minnesota Bank & Trust,
Respondent,

vs.

11 Water LLC, et al.,
Defendants,

David Jon Monson,
Appellant.

**Filed September 7, 2021
Affirmed
Cochran, Judge**

Hennepin County District Court
File No. 27-CV-20-574

John Rock, Kathryn Stephens, Rock Hutchinson, PLLP, Minneapolis, Minnesota (for respondent)

Erik F. Hansen, Elizabeth M. Cadem, Burns & Hansen, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Cochran, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

This appeal arises from respondent-lender's lawsuit related to a loan. Appellant, one of the guarantors of the loan, challenges the district court's grant of summary

judgment. He argues that the district court erred as a matter of law by granting summary judgment with respect to both respondent's breach-of-contract claims and appellant's counterclaims. Appellant further argues that respondent's summary-judgment motion was premature. We affirm.

FACTS

The facts are undisputed. In December 2015, respondent Minnesota Bank & Trust (the bank), through its predecessor Signature Bank, loaned \$5 million to defendant-below 11 Water LLC (11 Water). At the time of the loan, appellant David Jon Monson and defendant-below Jack B. Strommen each owned 50% of 11 Water. In addition to 11 Water, Strommen owned and managed Sanatio Capital LLC (Sanatio). The loan was part of a hotel redevelopment project. The loan initially had a maturity date of December 22, 2016. The loan was secured by a personal guaranty signed by Strommen as well as securities owned by Strommen. After 11 Water failed to make payments in accordance with the promissory note for the loan, the parties entered into additional agreements in 2018 and 2019 which are described below. The agreements included a personal guaranty by Monson, two security agreements, and two forbearance agreements.

The Additional Agreements

On February 22, 2018, Monson executed a personal guaranty and a security agreement as part of an arrangement with the bank to extend the maturity date of the loan. At that time, 11 Water had repaid only \$300,000 of the original \$5 million loan. Under the terms of the personal guaranty, Monson "absolutely and unconditionally guarantee[d]" full payment and "performance and discharge of all [11 Water's] obligations under the Note

and the Related Documents.” Under the terms of the security agreement, he pledged his 45% interest in a company called JJ3 Capital LLC (JJ3) as collateral for the loan. On the same date, Strommen executed a security agreement on behalf of Sanatio, which also had an interest in JJ3. In that agreement, Sanatio pledged its 45% interest in JJ3 as additional collateral for the loan. Both security agreements contained identical operative language and, by their terms, expressly extended the maturity date of the loan to December 22, 2019.

In December 2018, the bank entered into a forbearance agreement at the request of 11 Water, Monson, and Strommen as borrower and guarantors respectively. The 2018 forbearance agreement provided that the outstanding principal balance owed to the bank by 11 Water was approximately \$4,140,000. The parties agreed that 11 Water was “in default.” The bank agreed to “forbear” from exercising its legal remedies under the loan and related documents provided that the borrower and guarantors complied with the terms of the forbearance agreement, including that 11 Water make certain payments as specified in the agreement. In addition, the guarantors specifically reaffirmed the validity of the personal guaranties that they had previously signed. The 2018 forbearance agreement also provided that the borrower and guarantors agreed to “irrevocably waive and release” the bank from any and all claims, defenses, and counterclaims resulting from any act or omission by the bank, other than willful acts or omissions, before the date of agreement. And the 2018 forbearance agreement shortened the maturity date of the loan from December 2019 to May 2019.

After 11 Water defaulted on the 2018 forbearance agreement, the same parties signed a second forbearance agreement in August 2019. Under the terms of the 2019

forbearance agreement, the maturity date of the loan was reset to August 28, 2019. In addition, the bank agreed to forbear from pursuing any claims against 11 Water and the guarantors until that date, provided that there was not a “forbearance default” as defined by the agreement. Further, as part of the agreement, 11 Water promised to make a \$300,000 principal payment on or before the new maturity date and to make monthly interest payments. In addition, Monson and Strommen reaffirmed that the guaranties they each executed were valid, legal, and enforceable, and they again waived all defenses and counterclaims arising from the loan. The bank did not receive the \$300,000 principal payment until November 1, 2019, more than two months after the deadline.

Interest-Reserve Payment and Commencement of Litigation

According to Monson, in early November 2019, a bank officer contacted him and requested \$200,000 as an “interest-reserve” payment. The bank officer represented to him that the payment was necessary “for the pending renewal of the [l]loan.” The parties agree that Monson paid the requested \$200,000 to the bank. But instead of renewing the loan, the bank applied the \$200,000 to the outstanding principal balance. Shortly thereafter, on November 11, 2019, the bank sent a notice of default to 11 Water, Strommen, and Monson. In the letter, the bank demanded immediate payment of all outstanding principal, accrued interest, and late fees.

In January 2020, after the demand for immediate payment was not fulfilled, the bank served its complaint. The complaint alleged multiple counts of breach of contract against 11 Water, Monson, Strommen, and Sanatio including: (1) breach of contract against 11 Water based on its failure to perform its obligations under the promissory note;

(2) breach of contract against Monson and Strommen based on their respective guaranties and the forbearance agreements; and (3) breach of contract against Monson and Sanatio based on the security agreements. 11 Water, Strommen, and Sanatio admitted liability on the bank's breach-of-contract claims. Monson alone disputed liability. In his answer, Monson raised a number of affirmative defenses, including lack of consideration and fraud. He also brought counterclaims of fraud, intentional misrepresentation, negligent misrepresentation, promissory estoppel, and unjust enrichment.

In February 2020, the bank filed a reply to Monson's counterclaims. The bank asserted that Monson's counterclaims were barred by the waiver language included in the forbearance agreements.

In March 2020, the parties proposed a joint discovery plan. The district court entered a scheduling order that required all discovery to be noticed and completed on or before July 31, 2020.

The Bank's Summary-Judgment Motion

In August 2020, after the close of discovery, the bank moved for summary judgment and submitted a memorandum in support of its motion. The bank argued that summary judgment was appropriate against 11 Water because it was undisputed that 11 Water had not met its obligations under the promissory note. Next, the bank argued that summary judgment was appropriate against Strommen and Monson under the forbearance agreements because the bank did forbear as promised and the defendants could "offer no evidence" that they satisfied their obligations under the forbearance agreements. The bank made a similar argument with respect to the guaranties signed by Strommen and Monson.

And, with respect to the security agreements, the bank argued that there was no dispute that Monson and Sanatio had not complied with their obligations under the agreements. The bank also argued that it was entitled to summary judgment on Monson's counterclaims because Monson had waived all defenses and counterclaims under the terms of the forbearance agreements. Further, the bank argued that Monson produced no competent evidence in support of his defenses and counterclaims.

Monson submitted a memorandum in opposition to the bank's motion for summary judgment. He argued that he had shown genuine issues of material fact regarding whether the agreements that he had signed were unenforceable due to a lack of consideration. He also argued that genuine issues of material fact existed regarding his fraudulent inducement, promissory estoppel, and unjust enrichment claims. And, he argued that discovery deficiencies made summary judgment inappropriate. In a reply memorandum, the bank argued that the alleged discovery deficiencies did not preclude entry of summary judgment in its favor because Monson failed to diligently pursue discovery.

In an order dated September 21, 2020, the district court granted the bank's motion for summary judgment against all defendants. The district court first concluded that summary judgment against 11 Water, Strommen, and Sanatio was appropriate because they admitted liability "under the Note, guaranty, and security agreement they signed." The district court then concluded that summary judgment against Monson was appropriate because the agreements that he signed were supported by consideration, he waived his defenses and counterclaims that predated the forbearance agreements, and he did not demonstrate a genuine issue of material fact as to his counterclaims that postdated those

agreements. The district court did not explicitly rule on Monson's alleged discovery-violation argument. Monson now appeals.

DECISION

Monson argues that the district court erred by granting summary judgment to the bank on both its breach-of-contract claims against him and his own counterclaims. Alternatively, he argues that the bank's summary-judgment motion was premature and reversal is warranted on that basis as well. We are not persuaded.

Summary judgment "is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law." *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 189-90 (Minn. 2019) (quotation omitted). "A genuine issue of material fact exists when there is sufficient evidence regarding an essential element to permit reasonable persons to draw different conclusions." *St. Paul Park Ref. Co. v. Domeier*, 950 N.W.2d 547, 549 (Minn. 2020). If the nonmoving party fails to identify evidence sufficient to create a genuine issue of material fact in support of one or more essential elements of the party's claim, and the moving party is entitled to judgment as a matter of law, the district court should grant the motion for summary judgment. *See Eng'g & Constr. Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695, 704 (Minn. 2013) (explaining when summary judgment is appropriate).

We review a district court's decision to grant summary judgment de novo to determine whether there are any genuine issues of material fact and whether the court erred in its application of the law. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). We "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). A grant of summary judgment may be affirmed on any grounds. *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012). With this standard in mind, we address Monson’s arguments.

I. The district court correctly determined that there are no genuine issues of material fact as to the bank’s breach-of-contract claims against Monson and that the bank is entitled to judgment as a matter of law.

Monson argues that the district court erred by granting summary judgment to the bank because (1) the guaranty, security agreement, and forbearance agreements that he signed are unenforceable due to lack of consideration, and (2) genuine issues of material fact exist as to his fraud defense. We consider these arguments in turn.

A. The undisputed facts show that the various agreements Monson signed are supported by consideration.

The bank contends that the undisputed evidence shows that Monson breached his personal guaranty, his security agreement, and both forbearance agreements by failing to comply with the terms of the agreements. Monson argues that these agreements lacked consideration and therefore are not enforceable against him. Specifically, he contends that the guaranty and security agreement lacked consideration. He further argues that the forbearance agreements, which were predicated on the guaranty, lack consideration as a result of the guaranty lacking consideration. Monson’s arguments fail as a matter of law because the undisputed facts show the agreements were supported by adequate consideration.

It is black-letter law that “[t]he formation of a contract requires communication of a specific and definite offer, acceptance, and consideration.” *Commercial Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. App. 2006). “Consideration is something of value given in return for a performance or promise of performance.” *Powell v. MVE Holdings, Inc.*, 626 N.W.2d 451, 463 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. July 24, 2001). Whether a contract is supported by consideration is a question of law. *Brooksbank v. Anderson*, 586 N.W.2d 789, 794 (Minn. App. 1998), *review denied* (Minn. Jan. 27, 1999).

A guaranty to pay a pre-existing debt must be supported by consideration beyond the original obligation. *Baker v. Citizens State Bank of St. Louis Park*, 349 N.W.2d 552, 557 (Minn. 1984). But when the pre-existing debt is past due, an extension of time on the debt is sufficient consideration to support a guaranty of payment by a third party. *O’Neil v. Dux*, 101 N.W.2d 588, 594 (Minn. 1960). And “the detriment sustained in relying on a guaranty is sufficient consideration to support it.” *Tri-Cty. State Bank of Ortonville v. Golf Props., Inc.*, 395 N.W.2d 409, 412 (Minn. App. 1986). Further, the consideration running from the lender to the borrower, and the lender’s detriment in relying on the guaranty, is adequate consideration even where “no benefit whatever accrued to” the guarantor. *Southdale Ctr., Inc. v. Lewis*, 110 N.W.2d 857, 863 (Minn. 1961).

Here, the undisputed facts show that the bank agreed to extend the loan beyond its original maturity date based on Monson’s guaranty and security agreement (as well as the security agreement of Sanatio). The bank’s extension of the loan provides adequate

consideration for the agreements that the bank seeks to enforce. *O'Neil*, 101 N.W.2d at 594.

Monson's arguments to the contrary do not persuade us that the agreements lacked consideration. Monson first argues that the bank did not receive consideration because there is no evidence that the bank loaned any additional funds to 11 Water or assumed any new obligation with respect to the original loan. Monson next argues that there is no evidence that he received any personal benefit from signing the documents. These arguments are unpersuasive because, as discussed above, the extension of the loan by itself is sufficient consideration. *Id.* No additional obligation on the part of the bank or benefit to Monson is required to find adequate consideration. *Id.*

Accordingly, Monson has not shown that his guaranty and security agreement lacked consideration. And because his argument that the forbearance agreements lacked consideration depends on his argument that the guaranty was unenforceable, that argument is unsuccessful as well. The district court did not err when it concluded, as a matter of law, that the agreements signed by Monson are supported by adequate consideration.

B. Monson has not shown a genuine issue of material fact as to whether the bank fraudulently induced him to sign the guaranty and security agreement.

Monson also argues that the district court erred by granting summary judgment to the bank on its breach-of-contract claims against him because there is a genuine issue of material fact regarding his defense of fraud. He contends that the bank fraudulently induced him to sign both the guaranty and the security agreement when a bank officer falsely represented material facts to him. The district court determined that Monson's

defense was not supported by sufficient evidence because Monson had not produced competent evidence of fraud “as to the intent and falsity of [the bank’s] representations.” We first review the elements of a fraud defense and then consider whether Monson showed that there is a genuine issue of material fact concerning his fraudulent inducement defense.

To establish a defense of fraudulent inducement, Monson must show that (1) the bank officer made a false representation of a past or existing material fact susceptible of knowledge, (2) the officer made the representation either knowing it was false or not knowing whether it was true or false, (3) the officer intended to induce Monson to act in reliance on the representation, (4) the representation caused Monson to act in reliance upon it, and (5) Monson suffered pecuniary damages as a result of the reliance. *Valspar Refinish, Inc. v. Gaylord’s Inc.*, 764 N.W.2d 359, 368 (Minn. 2009). To show that the district court erred by granting summary judgment to the bank on his defense, Monson must present evidence establishing all elements of fraud. *Cf. McRae v. Grp. Health Plan, Inc.*, 753 N.W.2d 711, 716 (Minn. 2008) (requiring moving party to establish each element of affirmative defense); *Glass Serv. Co. v. State Farm Mut. Auto. Ins. Co.*, 530 N.W.2d 867, 870 (Minn. App. 1995) (requiring nonmoving party to establish each element of claim to survive summary-judgment motion), *review denied* (Minn. June 29, 1995).

Monson argues that his declaration provided sufficient evidence that he was fraudulently induced to sign the guaranty and security agreement. In his declaration, Monson alleged that the bank officer repeatedly requested that he “co-guarantee the Loan to give the bank an ‘interim’ security while they aggressively pursued the recovery” of the original collateral. He further alleged that the bank officer told him “that this was only a

‘good faith’ measure that would assist [the officer] greatly.” Monson then alleged that he signed the guaranty based on a representation from the bank officer that the officer would remain in charge of the 11 Water loan after the sale of Signature Bank to Minnesota Bank & Trust. Monson further alleged that the bank officer knew the original collateral provided by Strommen was no longer available but represented otherwise to him. Monson also alleged that the bank officer knew that the bank “was in fact not going to pursue the recovery of the [collateral] that otherwise secured the 11 Water Loan when inducing [his] co-guarantee but represented the exact opposite to [him].” Monson provided no evidence to support these allegations regarding the bank officer’s knowledge or the bank’s plans regarding the original collateral secured by the loan.

Monson’s fraud defense fails as a matter of law for two reasons. First, Monson’s alleged misrepresentations relate to future—and not present or past—facts. A misrepresentation about future events does not constitute fraud unless the record shows that “the promisor had no intention to perform at the time the promise was made.” *Valspar*, 764 N.W.2d at 368-69 (quotation omitted). The alleged misrepresentations at issue here concern whether the bank officer *would* remain in charge of the loan and whether the bank *would* pursue the original collateral or seek to enforce his guaranty. Monson’s opposition to the bank’s summary-judgment motion lacked any evidence that the bank officer knew he would not remain in charge of the loan, or that the bank never intended to pursue the recovery of the original securities. Monson’s unsupported assertions in his declaration are insufficient to create a genuine issue of material fact. *See* Minn. R. Civ. P. 56.03(d)

(providing affidavit opposing summary judgment must be based on personal knowledge, set out admissible facts, and show affiant is competent to testify on matters stated).

Second, Monson's fraudulent inducement argument is directly contradicted by the terms of the guaranty. The guaranty provides that: "This is a guaranty of payment and performance and not of collection, so Lender can enforce this Guaranty against Guarantor even when Lender has not exhausted Lender's remedies against anyone else obligated to pay the Indebtedness *or against any collateral securing the Indebtedness.*" (Emphasis added.) The guaranty further provides that the "guarantor acknowledges having read all the provisions of this guaranty and agrees to its terms." Here, the allegedly false representations by the bank official regarding the guaranty directly conflict with the terms of the guaranty. A claim of fraudulent inducement fails where the alleged misrepresentation either "relate[s] to matters known to be covered by the written agreement," or the alleged misrepresentation is a claim that a given contractual provision would not be effective. *Vint v. Nelson*, 127 N.W.2d 177, 181 (Minn. 1964). Because Monson has not produced competent evidence of an intentional misrepresentation to support his fraud defense, Monson has not identified a genuine issue of material fact precluding summary judgment as to the bank's breach-of-contract claims against him. *Cf. Glass Serv.*, 530 N.W.2d at 870 (requiring nonmoving party to show all elements essential to party's case to survive summary judgment).

II. The district court correctly determined that there are no genuine issues of material fact as to Monson’s counterclaims and that the bank is entitled to judgment as a matter of law.

Monson also argues that the district court erred by granting summary judgment to the bank on his counterclaims. Monson first contends that the district court erred by concluding that Monson waived all counterclaims that predated the forbearance agreements. He next argues that the district court erred by concluding that his remaining counterclaims were not supported by competent evidence. We consider the waiver-related arguments first, and then consider the remaining counterclaims.

A. The district court correctly determined that Monson waived all claims that predate the forbearance agreements.

The district court concluded that Monson’s counterclaims that predate the forbearance agreements were “all precluded by his waiver and release of claims and counterclaims” included in the forbearance agreements. Both the 2018 and 2019 forbearance agreements expressly provide that Monson waives and releases all claims, defenses, and counterclaims “arising out of, connected with, resulting from or related to any act or omission” by the bank with respect to the loan documents or collateral “other than [the bank’s] willful acts or omissions,” arising on or before the date of the agreements.

Monson argues that the district court erred in its application of this language for two reasons. First, he argues that his counterclaims all involve willful conduct by the bank, and the waiver clause excludes claims arising out of the bank’s willful acts. As a result, he contends that the waiver clause does not bar his counterclaims. Monson, however, did not raise the argument before the district court. As a result, Monson has not preserved this

willful-acts argument for appellate review. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). We will not consider arguments raised for the first time on appeal. *Id.*

Second, Monson argues that he did not waive his fraud counterclaims because a fraud claim cannot be waived by a contractual provision under Minnesota law.¹ Monson relies on *Nat'l Equip. Corp. v. Volden* to support his argument. 252 N.W. 444 (Minn. 1934). In *Volden*, the plaintiff filed suit to enforce a purchase agreement for construction equipment. *Id.* at 444. At trial, the defendants, who purchased the equipment, argued that they were induced to buy the equipment by false representations and that the equipment did not perform as represented. *Id.* The trial resulted in a verdict for the defendants. *Id.* On appeal, the plaintiff contended that the district court should not have admitted evidence about the false representations because the contract contained a warranty and provided a remedy for its breach. *Id.* The supreme court held that evidence of the false representations was admissible notwithstanding the contract because the fraudulent representations were made before the parties entered into the contract and “[p]arol evidence is admissible to show that the making of the contract was procured by fraudulent representations.” *Id.* at 445 (quotation omitted).

In a subsequent case, *Vint*, the supreme court distinguished *Volden* and concluded that it would not apply the holding in *Volden* to a case where the claimed fraudulent statements contradicted provisions of the written agreement. 127 N.W.2d at 181. In *Vint*, defendant sellers of real property claimed that the plaintiff real estate agent had represented

¹ As argued, there does not appear to be a substantive difference between Monson’s affirmative defense of fraud and his fraud counterclaims.

to them that they could cancel a six-month exclusive-listing contract at any time. *Id.* at 178-79. The supreme court concluded that the defense of fraud was *not* available to defendants where the alleged fraudulent statements relied upon regarding the cancellation period “related to matters known to be covered by the written agreement.” *Id.* at 181.

Here, the misrepresentation alleged by Monson is essentially that the bank would not enforce his guaranty against him. This alleged misrepresentation is directly contradicted by the terms of the guaranty, which specifically provides that “Lender can enforce this Guaranty against Guarantor even when Lender has not exhausted Lender’s remedies against anyone else.” Because the alleged misrepresentation directly conflicts with the terms of the guaranty, *Vint* instructs that Monson’s fraud counterclaims are barred by the language of the guaranty. *See id.* In addition, both forbearance agreements, which postdate the guaranty, include a waiver clause that specifically provides that Monson irrevocably releases and waives “any and all claims . . . defenses, [and] counterclaims.” Accordingly, Monson has not shown that the district court erred when it concluded that Monson’s counterclaims that predate the forbearance agreements have been waived.

B. Monson did not show a genuine issue of material fact as to his remaining counterclaims.

Monson’s only counterclaims premised on facts that postdate the forbearance agreements are his counterclaims with respect to the interest-reserve payment.² Monson argues that there are genuine issues of material fact precluding summary judgment on those

² At oral argument, Monson’s counsel agreed that only the counterclaims relating to the interest-reserve payment postdated the forbearance agreements.

remaining claims concerning whether: (1) the bank fraudulently induced him to make the interest-reserve payment, and (2) equity requires enforcement of the bank's promise to renew the loan or disgorgement of the \$200,000 payment under alternate theories of promissory estoppel and unjust enrichment. We address these arguments in turn.

Fraudulent Inducement Counterclaim

Monson argues that the district court erred when it concluded that no genuine issue of material fact exists regarding whether the bank fraudulently induced Monson to provide a \$200,000 interest-reserve payment with no intention of renewing the loan. In his declaration, Monson alleged that in November 2019, a few months after the last forbearance agreement was signed, a bank officer demanded that he pay \$200,000 as an interest-reserve payment for the “pending renewal of the [l]oan.” Monson alleged that he made the payment, but the bank did not renew the loan and instead applied the interest-reserve payment to the outstanding balance of the loan. He further alleged that he would not have made the interest-reserve payment if he had known that the loan was not going to be renewed. He then asserted, without support, that the bank “fraudulently induced [him] to provide the \$200,000 with no intention of renewing the Loan.” The district court concluded that the bank was entitled to summary judgment on Monson's claim of fraudulent inducement relating to the interest-reserve payment because the “conclusory statement” from Monson's declaration was “incompetent evidence of fraud as it is unaccompanied by any foundation for Monson's knowledge.”

An affidavit used to oppose a motion for summary judgment “must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the

affiant is competent to testify on the matters stated.” Minn. R. Civ. P. 56.03(d); *see also Mountain Peaks Fin. Servs., Inc. v. Roth-Steffen*, 778 N.W.2d 380, 387 (Minn. App. 2010) (discussing requirements for affidavits submitted in support of or opposition to summary judgment), *review denied* (Minn. Apr. 28, 2010). The district court correctly concluded that Monson’s declaration is not competent evidence of fraudulent inducement because he merely asserts, without support, that the bank had “no intention of renewing the Loan.” This assertion is not within Monson’s personal knowledge because he provides no basis upon which we could conclude that the bank never intended to renew the loan. Because Monson’s assertion relates to a future event and he has presented no evidence that the bank officer who made the statement had no intention to follow through with the promise to renew the loan, Monson has not produced competent evidence of fraud. *Valspar*, 764 N.W.2d at 368-69.

On appeal, Monson argues for the first time that circumstantial evidence supports his assertion that the bank never intended to renew the loan. Because Monson did not raise his circumstantial-evidence argument before the district court, he has not preserved the argument for appeal. *Thiele*, 425 N.W.2d at 582. Accordingly, Monson has not shown a genuine issue of material fact exists precluding summary judgment as to his fraudulent-inducement counterclaim relating to the interest-reserve payment.

Promissory Estoppel and Unjust Enrichment Counterclaims

Next, Monson argues under two quasi-contract theories that the bank should not be allowed to retain the \$200,000 interest-reserve payment. First, he argues that the bank’s promise to renew the loan should be enforced according to the doctrine of promissory

estoppel. Second, he argues that the bank should be forced to disgorge the payment according to the doctrine of unjust enrichment. We consider these arguments in turn.

Promissory estoppel requires proof that (1) a definite promise was made, (2) the promisor intended to induce reliance and the promisee in fact detrimentally relied on the promise, and (3) the promise must be enforced to avoid injustice. *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000). Monson argues that the bank officer made him “a clear and definite promise to extend the Loan if [he] made” the interest-reserve payment and “intend[ed] to induce his reliance thereon.” And he asserts that he relied on this promise to his detriment by making the payment. Viewing the evidence in the light most favorable to Monson, he has met the first two prongs of the promissory-estoppel analysis. But Monson does not argue in his brief, and did not argue at oral argument, why equity requires the bank’s promise to be enforced.

The question is “whether enforcement is required to prevent an injustice.” *Cohen v. Cowles Media Co.*, 479 N.W.2d 387, 391 (Minn. 1992). Here, it is undisputed that the loan was in default at the time of the bank officer’s alleged promise in November 2019. Monson has not demonstrated that any injustice resulted from the bank declining to extend the multimillion-dollar loan once again. Accordingly, Monson has not shown a genuine issue of material fact as to his promissory-estoppel counterclaim concerning the interest-reserve payment.

We next consider Monson’s argument relating to his unjust-enrichment claim. To show unjust enrichment, Monson must show that (1) the bank knowingly received something of value to which it was not entitled, and (2) circumstances are such that

it would be unjust for the bank to retain the benefit. *In re Estate of Neuman*, 819 N.W.2d 211, 216 (Minn. App. 2012). Viewing the evidence in the light most favorable to Monson, his allegation that he would not have made the \$200,000 interest-reserve payment had the bank not represented that it would renew the loan satisfies the first prong. But again, Monson has not argued why it would be unjust to allow the bank to retain the benefit. Because the bank applied the interest-reserve payment to the outstanding principal owed on the loan, even if the bank disgorged the payment, the practical result would be to increase Monson’s obligation on the loan by the same amount. Accordingly, Monson has not presented evidence that could support a finding that it would be unjust for the bank to retain the benefit of the \$200,000 interest-reserve payment.

In sum, Monson has not shown that the district court erred by granting summary judgment to the bank on his counterclaims.

III. The bank’s summary-judgment motion was not premature.

Lastly, Monson argues that the district court erred by granting summary judgment to the bank because the bank’s motion was “procedurally premature.” First, he argues that the bank moved for summary judgment too early. Second, he argues that the district court abused its discretion by entering summary judgment before all discovery disputes were resolved. Neither argument persuades us.

A. The bank moved for summary judgment at an appropriate time.

Monson argues that the bank “filed its motion in violation of Minn. R. Civ. P. 56.02.” We “review the application of the Minnesota Rules of Civil Procedure de novo.” *Schulz v. Town of Duluth*, 936 N.W.2d 334, 338 (Minn. 2019). Rule 56.02 provides that

“[u]nless the court orders otherwise, a party may not file a motion for summary judgment more than 30 days *after* the close of all discovery.” (Emphasis added.)

The plain language of rule 56.02 *requires* a party to move for summary judgment within 30 days of the close of discovery, which the bank did here. Under the district court’s scheduling order, discovery closed on July 31, 2020. The undisputed facts show that the bank filed its motion on August 18, 2020, within 30 days of the close of discovery. Thus, the bank’s motion for summary judgment was timely under rule 56.02.

B. No outstanding discovery issues precluded the district court from granting summary judgment.

Monson next argues that the district court should have denied the bank’s motion for summary judgment because of “outstanding discovery issues.” The district court did not explicitly address Monson’s discovery argument but implicitly rejected it by granting the bank’s motion for summary judgment. *See Palladium Holdings, LLC v. Zuni Mortg. Loan Tr.*, 775 N.W.2d 168, 177-78 (Minn. App. 2009) (“Appellate courts cannot assume a district court erred by failing to address a motion, and silence on a motion is therefore treated as an implicit denial of the motion.”), *review denied* (Minn. Jan. 27, 2010).

When a nonmoving party shows by affidavit that “it cannot present facts essential to justify its opposition, the court may” allow additional time “to take discovery.” Minn. R. Civ. P. 56.04. This court reviews a district court’s decision to rule on a motion for summary judgment without allowing time for additional discovery for an abuse of discretion. *Molde v. CitiMortgage, Inc.*, 781 N.W.2d 36, 45 (Minn. App. 2010). A district court abuses its discretion if, among other things, it “misapplies the law, or resolves the

matter in a manner that is contrary to logic and the facts on record.” *Madden v. Madden*, 923 N.W.2d 688, 696 (Minn. App. 2019).

A party resisting summary judgment on the ground that it requires additional time to conduct discovery must submit an affidavit. Minn. R. Civ. P. 56.04. This affidavit “must be specific about the evidence expected, the source of discovery necessary to obtain the evidence, and the reasons for the failure to complete discovery to date.” *Molde*, 781 N.W.2d at 45 (quotation omitted). When considering a request for additional discovery, the district court should consider whether (1) the nonmoving party has a good-faith belief that material facts will be uncovered and (2) the nonmoving party has “been diligent in obtaining or seeking discovery before requesting” further time. *Id.* (quotation omitted). But, a party’s “failure to submit such an affidavit, by itself, justifies the district court’s decision to rule on the motion without granting relief under rule” 56.04.³ *Id.*

Here, Monson did not submit an affidavit as required by rule 56.04 and *Molde*. This alone justifies the district court’s decision to rule on the bank’s summary-judgment motion without allowing additional time for discovery. *Id.* Further, the failure to submit an affidavit notwithstanding, the record shows that Monson was not “diligent in obtaining or seeking discovery.” *Id.* (quotation omitted). The record reflects that Monson did not serve

³ At the time *Molde* was decided, the relevant rule was numbered 56.06. *Id.* In 2018, the supreme court promulgated amendments to the rules of civil procedure that included rephrasing and renumbering the former rule 56.06 into the current rule 56.04. *Order Promulgating Amendments to the Rules of Civil Procedure*, No. ADM04-8001 (Minn. Mar. 13, 2018).

any discovery requests until July 1, 2020, the last possible day to serve discovery in compliance with the district court's scheduling order and the rules of civil procedure. And Monson never filed a motion to compel any outstanding discovery responses. Nor did he file a motion to extend discovery. In fact, the record reflects that Monson first raised the issue of the alleged discovery issues with the district court in his memorandum in opposition to summary judgment, which was filed on September 1, 2020—more than 30 days after discovery closed. Monson has not shown that he was diligent in obtaining discovery before seeking to delay the entry of summary judgment. Accordingly, the district court acted well within its discretion by ruling on the bank's motion for summary judgment without extending the time for discovery beyond the deadline set in the district court's scheduling order.

Affirmed.