

*This opinion is nonprecedential except as provided by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
A21-0271**

Margaret Liao, et al.,
Respondents,

vs.

Mohammad Sabri,
Appellant.

**Filed November 1, 2021
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CV-19-18999

Gregory N. Arenson, Christopher M. Daniels, Parker Daniels Kibort LLC, Minneapolis,
Minnesota (for respondents)

Mohammad Sabri, Minneapolis, Minnesota (pro se appellant)

Considered and decided by Ross, Presiding Judge; Jesson, Judge; Gaïtas, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Mohammad Sabri issued a \$150,000 promissory note to Margaret and Benjamin Liao as consideration for a \$150,000 certificate of deposit that the Liaos provided as collateral for a loan to a company the parties partly owned or allegedly controlled. Five months later, adjusting to a changed circumstance, Sabri issued a substitute promissory note with roughly identical material terms, and the Liaos issued a corresponding

satisfaction of the first note. The Liaos sued for breach of contract when Sabri failed to pay them on the substitute note as scheduled. The district court granted summary judgment favoring the Liaos and sanctioned Sabri for failing to respond to discovery requests. Because the undisputed facts establish that the parties formed a contract requiring Sabri to pay the Liaos under the terms of the substitute promissory note, and because Sabri fails to explain how the district court acted beyond its discretion by sanctioning him for his various discovery failures, we affirm.

FACTS

This case concerns Mohammad Sabri's failure to pay Margaret and Benjamin Liao \$150,000 as required under a 2016 promissory note that Sabri issued to the Liaos. The circumstances leading to the 2016 note began in 2013. The Liaos partly owned, and alleged that Sabri controlled, M&S Properties LLC, which sought a business loan. Venture Bank lent M&S Properties \$2,350,000 in 2013, and the Liaos provided the bank a \$150,000 certificate of deposit as collateral. Two years later the Liaos agreed to authorize the bank to liquidate the certificate of deposit to apply it to the loan if Sabri (and another man who is not party to this dispute) agreed to repay the Liaos the \$150,000 by December 2016. Sabri issued a promissory note to the Liaos in October 2015 memorializing that agreement and also including as additional consideration the assignment of 20% interest "in and to M&S Properties, LLC to Liang, LLC." Consistent with the terms of the agreement, the Liaos authorized the bank to liquidate the certificate of deposit to apply to the 2013 loan.

By March 2016 Sabri had made no payment on the promissory note and issued a second promissory note with essentially the same terms, except he changed the additional

consideration to the assignment of 20% interest “in and to M&S Properties, LLC to Chows, LLC.” The same day Sabri executed the 2016 note, Benjamin Liao executed a satisfaction of the 2015 note.

Sabri did not pay the Liaos by December 2016 as required by the promissory note. The Liaos sued Sabri for breach of contract in 2019. Citing Sabri’s incomplete responses and failure to provide documents and information requested in discovery, the Liaos successfully moved the district court to compel him to amend and supplement his discovery responses and participate in his deposition. Sabri failed to attend his scheduled deposition. The district court sanctioned Sabri \$11,942.35 in attorney fees and costs under Minnesota Rule of Civil Procedure 37.02(b).

The parties filed competing summary-judgment motions. The Liaos contended that Sabri’s failure to pay breached the 2016 promissory note. Sabri contended that the parties never formed an agreement under the 2016 promissory note, maintaining that the Liaos made no offer and provided no consideration. The district court rejected Sabri’s argument, granted the Liaos’ motion, and entered judgment. Sabri appeals.

DECISION

Sabri challenges the district court’s summary-judgment decision and its order for sanctions. His challenges fail.

We first address Sabri’s summary-judgment challenge. We review the district court’s summary-judgment decision de novo, assessing whether a genuine issue of material fact exists and whether the district court properly applied the law. Minn. R. Civ. P. 56.01;

Peterka v. Dennis, 764 N.W.2d 829, 832 (Minn. 2009). For the following reasons, we are satisfied that summary judgment is fitting based on undisputed material facts.

We see no merit to Sabri's contention that a contract never formed. A contract is formed when a party extends an offer, another party accepts the offer, and the agreement is supported by consideration. *Com. Assocs. Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. App. 2006). Sabri maintains that no viable offer occurred and that no consideration supports the 2016 promissory note.

Although Sabri frames his challenge as contesting both offer and consideration, he inflates one argument into two. He asserts that no "offer existed as of March 16, 2016, to form a valid, binding, and enforceable contract" specifically "because the \$150,000 Certificate of Deposit held as collateral for the 2015 Note was liquidated on November 3, 2015" and because "no evidence of separate consideration or any benefit that could be bestowed upon [Sabri] was presented beyond the availability of the Certificate of Deposit." And he similarly asserts that no consideration existed because "there is no evidence of what consideration [Sabri] received [on March 16, 2016] for entering into this bargain." We address his appeal as essentially challenging only one component: consideration in the form of the Liaos' agreement to allow the bank to liquidate the certificate of deposit and apply it to the business loan.

Sabri conceded in the district court that the 2015 promissory note memorialized a binding contract. But he argued in the district court and on appeal that, because the bank had already liquidated the certificate of deposit when Sabri issued the 2016 promissory note, the Liaos' agreement to authorize the liquidation cannot constitute consideration for

the 2016 promise to pay the \$150,000. Sophistry. The 2016 note is an extension of the promise in the 2015 note and rests on the same consideration. Consideration exists when a contractual promise is the product of a bargained-for exchange, such as “an obligation by one party upon condition of an act or forbearance of an act by the other.” *Baehr v. Penn-O-Tex Oil Corp.*, 104 N.W.2d 661, 665 (Minn. 1960). It is evident that Sabri received consideration for the 2016 agreement. Contemporaneous with the 2016 promissory note, the Liaos executed a satisfaction of the 2015 note, on which Sabri had made no payments. But for his issuing the 2016 note (the obligation), the Liaos had no reason to release him from his duty to pay under the 2015 note (the forbearance). Even if this were not so, Sabri executed the 2016 note “FOR VALUE RECEIVED,” and the note identified part of that value received as “payment of \$150,000 Certificate of Deposit.” *See Liberty State Bank v. Metro. Church Ass’n*, 191 N.W. 414, 415 (Minn. 1923) (explaining that “for value received” in a promissory note relieves the plaintiff of the burden to prove consideration). Under either theory, Sabri received valuable consideration for his 2016 promise to pay.

We likewise find no merit in Sabri’s contention that the district court abused its discretion by imposing discovery sanctions. We consider Sabri’s challenge on the merits notwithstanding the Liaos’ assertion that the sanctions order is not properly before us. The Liaos contend that the appeal from the order is untimely because the district court issued it two months before granting summary judgment and seven months before Sabri filed his notice of appeal, long after the 60-day appeal period in Minnesota Rule of Appellate Procedure 104.01. The Liaos correctly highlight that the district court entered judgment on the sanctions order and that they served notice of the filing of the judgment. But an appeal

from a judgment that is not final, meaning it does not adjudicate “all the claims and rights and liabilities” of all the parties, is not immediately appealable unless “the trial court makes an express determination that there is no just reason for delay and expressly directs the entry of a final judgment.” Minn. R. App. P. 104.01, subd. 1. The district court did not make that express determination here. The judgment on the order imposing discovery sanctions was therefore subject to the district court’s authority to revise and was not immediately appealable. Minn. R. Civ. P. 54.02. We turn to the merits of Sabri’s appeal from the sanctions order.

Sabri incorrectly argues that the district court imposed sanctions under Minnesota Rule of Civil Procedure 11.03, which authorizes the district court to penalize a party for representations to the court. He challenges the sanctions award on his contention that “the record does not demonstrate sufficient evidence to support a determination that [Sabri] acted in bad faith, asserted a frivolous claim or unfounded position, or committed a fraud upon the court.” But the district court did not order sanctions for any of these reasons under rule 11.03. It instead sanctioned Sabri and ordered him to pay attorney fees and costs under Minnesota Rule of Civil Procedure 37.02(b), which authorizes the court to sanction a party who fails to obey a discovery order. The district court rested its rule 37 order on Sabri’s multiple discovery offenses. The record reflects that Sabri failed to respond to the Liaos’ discovery requests and that, after the district court reminded him to participate in discovery, he offered responses that were vague, incomplete, and unaccompanied by requested documents. He then failed to attend his scheduled deposition. Because Sabri fails to dispute the various bases for the district court’s sanction or offer any argument explaining how the

order is inappropriate under rule 37, he gives us no reason to consider how the order reflects an abuse of discretion.

Affirmed.