

*This opinion is nonprecedential except as provided by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
A21-0567**

Odyssey Medical Technologies, LLC,
Appellant,

vs.

Medtronic, Inc.,
Respondent.

**Filed January 10, 2022
Affirmed in part, reversed in part, and remanded
Johnson, Judge**

Hennepin County District Court
File No. 27-CV-20-13042

Kevin P. Hickey, Mark R. Bradford, Bassford Remele P.A., Minneapolis, Minnesota (for appellant)

David R. Marshall, Leah C. Janus, Anupama D. Sreekanth, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Two companies entered into a written “pricing agreement” to govern their pre-existing business relationship, in which one company supplied the other company with certain goods. After entering into the agreement, the buyer allegedly ceased ordering goods from the supplier. The supplier sued the buyer, asserting six claims. The buyer moved to

dismiss for failure to state a claim, and the district court granted the motion in its entirety. We conclude that the district court did not err by dismissing counts I, IV, V, and VI of the complaint. But we conclude that the district court erred by dismissing counts II and III of the complaint. Therefore, we affirm in part, reverse in part, and remand for further proceedings on counts II and III.

FACTS

Odyssey Medical Technologies, LLC, is a Delaware company with its principal place of business in Tennessee. Odyssey designs and manufactures “implant technologies for medical devices that help spine and trauma patients.” According to Odyssey’s amended complaint, Medtronic, Inc., is “a global medical device company” that is incorporated in Minnesota and has its headquarters in Ireland.

Odyssey alleges that, for approximately 17 years, the parties had a business relationship in which Odyssey supplied to Medtronic a variety of spinal screws that are used to implant Medtronic’s medical devices in human bodies.

In August 2018, the parties entered into an agreement entitled “Pricing Agreement.” The agreement, which was drafted by Medtronic, consists of six pages of text and four pages of attachments listing various products and their respective prices. The six main sections of the agreement are captioned “definitions,” “pricing and payment,” “delivery,” “quality,” “supplier performance,” and “miscellaneous.”

Odyssey alleges that, after the parties executed the agreement, Medtronic began ordering fewer products from Odyssey. Odyssey alleges further that, in August 2019, it

learned that Medtronic was purchasing similar products from a different supplier instead of buying Odyssey's products.

In May 2020, Odyssey commenced this action by serving Medtronic with a summons and complaint. In October 2020, Odyssey served and filed an amended complaint. Odyssey's amended complaint asserts four claims of breach of contract, a claim of breach of the implied covenant of good faith and fair dealing, and a claim of promissory estoppel. Medtronic moved to dismiss the amended complaint on the ground that it fails to state a claim upon which relief can be granted. *See* Minn. R. Civ. P. 12.02(e). In March 2021, the district court filed an order in which it granted Medtronic's motion and dismissed the amended complaint. Odyssey appeals.

DECISION

Odyssey argues that the district court erred by granting Medtronic's rule 12.02(e) motion and by dismissing the amended complaint.

A district court may grant a motion to dismiss if a complaint "fail[s] to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02(e). To state a claim for relief, a complaint need only "contain a short and plain statement of the claim showing that the pleader is entitled to relief." Minn. R. Civ. P. 8.01. "A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014). In considering a motion to dismiss pursuant to rule 12.02(e), a district court must "consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor

of the nonmoving party.” *Finn v. Alliance Bank*, 860 N.W.2d 638, 653 (Minn. 2015) (quotation omitted). This court applies a *de novo* standard of review to a district court’s ruling on a motion to dismiss pursuant to rule 12.02(e). *DeRosa v. McKenzie*, 936 N.W.2d 342, 346 (Minn. 2019).

I.

In count I, Odyssey asserts a claim of breach of contract. Specifically, Odyssey alleges that Medtronic breached paragraph 6.1 of the agreement, which is entitled “Term,” in two ways: (1) “by failing to continue to order the parts covered by the agreement for the five-year term of the agreement” and (2) “by failing to provide the one-year notice of its intent to terminate its performance under the agreement.”

To prevail on a breach-of-contract claim, a plaintiff must prove three elements: “(1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant.” *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011).

Paragraph 6.1 of the agreement provides:

The Agreement will become effective on the Effective Date for an initial term of Five (5) years, unless earlier terminated. The Agreement will thereafter automatically renew for additional periods of two (2) years each, unless either party provides the other with notice of non-renewal at least one (1) year before the end of the then-current term. Notwithstanding anything to the contrary contained herein, Medtronic may terminate this Agreement with or without cause upon twelve (12) months prior written notice to the Supplier. (Emphasis added.)

The district court reasoned that count I does not state a claim for relief on the ground that paragraph 6.1 does not require Medtronic to purchase any products from Odyssey. Odyssey contends that paragraph 6.1 would be “rendered meaningless if Medtronic never had any obligation to purchase a single part.” In response, Medtronic contends that paragraph 6.1 defines the term or duration of the agreement but does not require Medtronic to purchase any products from Odyssey.

Odyssey’s contention requires the court to interpret paragraph 6.1 of the agreement. “The primary goal of contract interpretation is to ascertain and enforce the intent of the parties.” *Valspar Refinish, Inc. v. Gaylord’s, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009). The corollary to this principle is that “the intent of the parties is determined from the plain language of the instrument itself,” so long as the agreement is unambiguous. *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). “When the language is clear and unambiguous, we enforce the agreement of the parties as expressed in the language of the contract.” *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). A contract is ambiguous “if, judged by its language alone and without resort to parol evidence, it is reasonably susceptible of more than one meaning.” *Metro Office Parks Co. v. Control Data Co.*, 205 N.W.2d 121, 123 (Minn. 1973). “We construe a contract as a whole and attempt to harmonize all of its clauses.” *Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). We apply a *de novo* standard of review to the question whether a contract is ambiguous. *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 45 (Minn. 2008).

The first part of Odyssey's claim fails because paragraph 6.1 unambiguously does not require Medtronic to purchase any particular quantity of products from Odyssey. The first sentence of paragraph 6.1 simply defines the period of time in which the agreement shall be effective. During that period of time, Medtronic is required to comply with all provisions of the agreement (which concerns the subjects of pricing and payment, delivery, quality, and supplier performance). But, as Medtronic contends, Odyssey has not identified any particular provision of paragraph 6.1 that requires Medtronic to purchase any products from Odyssey. To the contrary, another paragraph of the agreement expressly contemplates the possibility that Medtronic would purchase the same type of products from other suppliers. Paragraph 6.2 provides that, "except as expressly provided in the Agreement, nothing prevents" Medtronic "from sourcing" the same or similar products "from another vendor." Pursuant to that same paragraph, the second part of Odyssey's claim fails simply because Medtronic has not terminated the agreement by not purchasing products from Odyssey.

Thus, the district court did not err by granting Medtronic's motion to dismiss with respect to count I.

II.

In count II, Odyssey asserts a second claim of breach of contract. Specifically, Odyssey alleges that Medtronic breached paragraph 5.4 of the agreement by "failing to provide any of the rolling, six-month forecasts of business that were required on a monthly basis."

Paragraph 5.4 provides:

Medtronic shall provide a rolling six month forecast for the following product families: Crescents, Capstones, and UAS Screws with firm purchase orders for the first six months with a new, with rolling forecast for the second six months. Each month a new month of firm orders to be released by Medtronic. (Emphasis added.)

The district court agreed with Odyssey's premise that paragraph 5.4 requires Medtronic to provide Odyssey with rolling six-month forecasts. But the district court reasoned that, to prevail, Odyssey also must prove that it sustained damages and that, despite alleging certain forms of financial injuries, Odyssey had "failed to provide any proof of damages resulting from the failure to provide a forecast."

Odyssey contends that the district court erred by incorrectly applying the caselaw applicable to a motion to dismiss under rule 12.02(e), which asks only whether a plaintiff has made a sufficient allegation, not whether the plaintiff has sufficient evidence to prove the allegation. Odyssey is correct that the district court's order reflects a misapplication of the caselaw governing a motion to dismiss under rule 12.02(e). To reiterate, "A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Walsh*, 851 N.W.2d at 603. In addition, a district court must "consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party." *Finn*, 860 N.W.2d at 653 (quotation omitted). In this case, the district court misanalyzed the motion by focusing on "proof" and "evidence" rather than allegations.

Medtronic attempts to justify the district court's analysis by contending that its dismissal was based on Odyssey's failure to allege a causal link between the alleged breach of contract and the alleged damages. In context, the district court's use of the words "resulting from" does not clearly connote the meaning that Medtronic assigns to them. In any event, even if the district court's ruling hinged on the lack of a causal nexus between breach and damages, Medtronic's contention fails because the supreme court has "recognized that the plaintiff may not have to allege that the breach caused damages in order to state a claim for breach of contract." *Park Nicollet Clinic*, 808 N.W.2d at 833 n.5. And even if there were a duty to allege that a breach of contract caused the damages, the plaintiff's pleading burden would be minimal. In *Halva v. Minnesota State Colls. & Univs.*, 953 N.W.2d 496 (Minn. 2021), which is cited by both parties, the plaintiff's complaint was "sparse with details" and did "not contain a direct causal statement explaining" how the defendant's allegedly wrongful actions had "caused him harm." *Id.* at 503. The supreme court nonetheless concluded that the plaintiff's complaint "sufficiently identified the facts that gave rise to his claim" because "[t]he only pleading requirement . . . was [an] explanation of the factual nexus and the alleged damages that resulted from that factual nexus." *Id.* The supreme court reasoned, "Even though a claimant's damages may be difficult to prove, it is improper to deny the claimant a chance to prove those damages by dismissing the claim based on the allegations of the complaint." *Id.* at 502.

In this case, Odyssey alleged in count II that Medtronic breached the forecast provision of paragraph 5.4 and that, "[a]s a direct result of this breach, Odyssey has been damaged in the form of lost revenues, [lost] profits, the lost opportunity of pursuing other

business, and other losses.” This allegation is sufficient to satisfy Odyssey’s obligation to make “a short and plain statement of the claim showing [it] is entitled to relief.” *See* Minn. R. Civ. P. 8.01. Consequently, “it is possible,” if Odyssey produces evidence that is consistent with its theory, that the fact-finder might “grant the relief demanded.” *See Walsh*, 851 N.W.2d at 603.

Thus, the district court erred by granting Medtronic’s motion to dismiss with respect to count II.

III.

In count III, Odyssey asserts a third claim of breach of contract. Specifically, Odyssey alleges that Medtronic breached paragraph 5.4 of the agreement by “failing to provide monthly firm purchase orders for all the products in the specified quantities.” Paragraph 5.4 of the amended complaint is quoted above in part II. For purposes of count III, Odyssey relies on the last sentence of that paragraph, which states, “Each month a new month of firm orders to be released by Medtronic.”

The district court reasoned that Medtronic did not breach paragraph 5.4 on the ground that the agreement does not require Medtronic to purchase any products from Odyssey and expressly allows Medtronic to purchase products from other suppliers. Odyssey contends that the district court erred on the ground that the second sentence of paragraph 5.4 “requires Medtronic to submit ‘firm purchase orders’ each month that contain quantity terms.”

The meaning of the second sentence of paragraph 5.4 is unclear, primarily because it does not appear to be a proper sentence. The verb phrase “to be released” does not make

sense in light of the noun phrase that precedes it and the prepositional phrase that follows it. The second sentence could be understood to mean that Medtronic must release firm orders each month. It also could be understood to mean that Medtronic has some other obligation that is related to the first sentence. Or it could be understood in some other way. Accordingly, at this stage of the case, we must conclude that the second sentence of paragraph 5.4 is ambiguous for purposes of Medtronic's motion to dismiss because "it is reasonably susceptible of more than one meaning." See *Metro Office Parks*, 205 N.W.2d at 123. Parol evidence is necessary to determine the meaning of the second sentence of paragraph 5.4. See *Housing & Redevelopment Auth. of Chisholm v. Norman*, 696 N.W.2d 329, 337 (Minn. 2005).

Thus, the district court also erred by granting Medtronic's motion to dismiss with respect to count III.

IV.

In count IV, Odyssey asserts a fourth claim of breach of contract. Specifically, Odyssey alleges that Medtronic breached paragraph 2.1.1 of the agreement, which is entitled "Product Pricing," by "failing to honor the requirement that prices on the subject products would remain 'firm' for three years unless a party requested 'good faith negotiation' of the prices, which Medtronic never did before moving the products to a purported cheaper supplier."

Paragraph 2.1.1 provides:

Product prices shall be firm for an initial period of three
(3) Years except as set forth below. The pricing in the purchase
order may be amended by authorized representatives of

[Odyssey] and Medtronic by amending this agreement. Thereafter, such prices will be subject to review and good faith negotiation at the request of either party, not more than once per year. Mutually agreed prices will remain in effect until changed on the basis specified in this Section.

The district court reasoned that Odyssey did not state a claim for relief because it did “not provide evidence or allege that [Medtronic] engaged in bad faith price negotiations or that [Medtronic] failed to pay the agreed upon price for any products ordered.” Odyssey contends that the district court erred by requiring “evidence” instead of merely an allegation and further contends that it did allege conduct that violates paragraph 2.1.1.

Odyssey’s contention fails because its amended complaint does not allege any action by Medtronic that would be inconsistent with the plain language of paragraph 2.1.1. Odyssey does not allege that Medtronic acted contrary to the first, second, or fourth sentences of paragraph 2.1.1. by failing to pay an agreed-upon price for any of Odyssey’s products without an amendment. Odyssey does not allege that Medtronic acted contrary to the third sentence of paragraph 2.1.1. because that sentence applies only after the initial three-year period, which did not end until August of 2021. When Odyssey commenced this action in October 2020, the agreement had not been in effect for three years, so “good faith negotiation” was not required.

Thus, the district court did not err by granting Medtronic’s motion to dismiss with respect to count IV.

V.

In count V, Odyssey asserts a claim of breach of the implied covenant of good faith and fair dealing. Specifically, Odyssey alleges that Medtronic “secretly negotiat[ed] a deal

with another supplier of the same parts shortly after entering into a five-year supply agreement with Odyssey without ever allowing Odyssey a fair chance to negotiate in good faith on pricing or any other terms.” Odyssey further alleges that Medtronic “took advantage of the price concessions offered by Odyssey in exchange for a long-term agreement, without fulfilling its obligations to perform under the agreement.”

In Minnesota, “every contract includes an implied covenant of good faith and fair dealing.” *In re Hennepin Cnty. 1986 Recycling Bond Litigation*, 540 N.W.2d 494, 502 (Minn. 1995). This covenant forbids a party from “‘unjustifiably hinder[ing]’ the other party’s performance of the contract” and from “tak[ing] advantage of the failure of a condition precedent when the party itself has frustrated performance of that condition.” *Id.* To prevail on this claim, a plaintiff must prove that a defendant acted in bad faith and with an ulterior motive. *Minnwest Bank Central v. Flagship Props. LLC*, 689 N.W.2d 295, 303 (Minn. App. 2004). A party does not act in bad faith merely by asserting its rights under a contract. *Sterling Capital Advisors, Inc. v. Herzog*, 575 N.W.2d 121, 125 (Minn. App. 1998).

In this case, the district court reasoned that Medtronic did not breach the covenant because paragraph 6.2 of the agreement expressly allows Medtronic to purchase products from other suppliers. Odyssey contends that the district court erred on the ground that Medtronic unjustifiably hindered it from “performing under the agreement by not allowing it to negotiate a different price before Medtronic” changed suppliers.

The district court correctly reasoned that Odyssey’s claim fails because paragraph 6.2 of the agreement expressly states that “nothing prevents” Medtronic from sourcing

products “from another vendor.” Odyssey cannot prove that Medtronic engaged in bad faith by doing what the agreement expressly stated Medtronic could do. Medtronic was merely asserting its rights under the agreement, which cannot be a breach of the implied covenant. *See Sterling Capital Advisors*, 575 N.W.2d at 125.

Thus, the district court did not err by granting Medtronic’s motion to dismiss with respect to count V.

VI.

In count VI, Odyssey asserts a claim of promissory estoppel. Specifically, Odyssey alleges that if the “contractual provisions are unenforceable or otherwise do not apply, Odyssey reasonably relied to its detriment on the promises from Medtronic that the parties would continue their successful, long-term business relationship.” Odyssey’s amended complaint does not provide any specifics concerning the representations by Medtronic on which this claim is based.

To establish a claim of promissory estoppel, a plaintiff must prove that (1) “a clear and definite promise was made,” (2) “the promisor intended to induce reliance and the promisee in fact relied to his or her detriment,” and (3) “the promise must be enforced to prevent injustice.” *Martens v. Minnesota Mining & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000). But the doctrine of promissory estoppel “only applies where no contract exists.” *Banbury v. Omnitrition Int’l, Inc.*, 533 N.W.2d 876, 881 (Minn. App. 1995). In other words, the doctrine of promissory estoppel does not apply if “an actual contract existed.” *Del Hayes & Sons, Inc. v. Mitchell*, 230 N.W.2d 588, 593 (Minn. 1975). That is so because

promissory estoppel is, in essence, “a contract implied in law where no contract exists in fact.” *Id.*

In this case, the district court reasoned that Odyssey did not make allegations of a clear and definite promise that would reasonably induce reliance. Odyssey contends in a rather conclusory manner that the district court erred because its claim was pleaded with sufficient specificity. In response, Medtronic contends primarily that a promissory-estoppel claim is not viable because the parties entered into a valid contract. Medtronic quotes the following statement from this court’s opinion in *Banbury*: “A party cannot use the doctrine of promissory estoppel to alter a contract by using evidence that is barred by the parol evidence rule.” 533 N.W.2d at 881.

We agree with Medtronic that the existence of a valid contract concerning Medtronic’s purchase of products from Odyssey prevents Odyssey from proving a promissory-estoppel claim based on any oral statements by Medtronic concerning the same subject. The claim plainly is barred by well-established caselaw. *See Del Hayes & Sons*, 230 N.W.2d at 593; *Banbury*, 533 N.W.2d at 881. Because that is a sufficient basis for disposing of the claim, we need not address Medtronic’s other arguments for affirmance.

Thus, the district court did not err by granting Medtronic’s motion to dismiss with respect to count VI.

In sum, the district court did not err by granting Medtronic’s motion to dismiss with respect to counts I, IV, V, and VI. But the district court erred by granting Medtronic’s

motion to dismiss with respect to counts II and III. Therefore, we affirm in part, reverse in part, and remand for further proceedings on counts II and III.

Affirmed in part, reversed in part, and remanded.

A handwritten signature in blue ink that reads "Matthew E. Johnson". The signature is written in a cursive, flowing style with a prominent initial "M".