This opinion is nonprecedential except as provided by Minn.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
A24-0355

Distinctive Iron, LLC,
Respondent,

vs.

Liberty Mutual Insurance Company, et al.,
Appellants,

vs.

Vulcraft Sales Corporation, et al.,
Respondents.

Filed April 7, 2025
Affirmed in part, reversed in part, and remanded
Smith, John, Judge[*]

Sherburne County District Court
File No. 71-CV-20-871

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Considered and decided by Bjorkman, Presiding Judge; Bond, Judge; and Smith, John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We reverse the district court's grant of summary judgment in favor of respondent/cross-appellant Distinctive Iron, LLC and respondent Vulcraft Sales Corporation because there are genuine issues of material fact that preclude summary judgment and remand. Accordingly, we decline to address Distinctive's claim for 18% prejudgment interest.

We affirm the district court's grant of summary judgment on the negligence claim of appellant/cross-respondent RJM Construction, LLC against Vulcraft, commonly known as the economic-loss doctrine, because the contract involved "the sale of goods between merchants of goods of the kind, and the alleged damage is indisputably to the goods themselves."

We conclude that appellant/cross-respondent Liberty Mutual Insurance Company's surety defenses relating to whether it is required to pay Distinctive remain intact, but any argument that Distinctive failed to comply with the statutory requirements of Minn. Stat. § 574.31 (2024) fails.

FACTS

The City of Elk River (the city) began the Elk River Ice Arena Project in 2019 (the project). The city hired RJM to manage the Project and the contractors and subcontractors working on it. The city contracted with Distinctive to provide structural steel materials for the project, which included steel joists and a roof deck. The city then assigned its rights and obligations under the contract to RJM as the construction manager. The contract and bid provided that the steel joists would comply with: Section 05 2100 Steel Joist Framing, Society for Protective Coatings Paint Specification No. 15 (SSPC-Paint 15), and Steel Joist Institute (SJI) standards. Distinctive purchased the steel joists from Vulcraft. The purchase agreement between Vulcraft and Distinctive provided that the joists, which were to be shop-primed with a protective paint coating, would conform to the "Standard Specifications of the Steel Joist Institute." Vulcraft delivered the shop-primed joists to the project site in mid-November 2019.

In late January 2020, the painting contractor for the project hired an inspector to determine whether certain surfaces, including the shop-primed joists, were in an appropriate condition to paint over. The painter's inspector observed: that the steel joists "had paint strings hanging from some of the bolted junctions and the film looked thick and smeared in many spots"; debris in the paint film and under the paint surface; paint drips; and paint that "was thick and not dry or cured in many spots," which required additional surface preparation work before the painter could paint the joists.

Following review of the inspector's report, Vulcraft representative Nichole Zoz went to the project site to see the joists. She and a colleague observed that "[t]here were 2-3 dozen places with excessive primer build up. We were able to pull off pieces of the primer and it was like silly putty, not even close to being dry." Zoz acknowledged that while the painter was responsible for prepping the joists for painting, "these locations seemed more than what a painter should anticipate for work." Zoz stated that Vulcraft was "trying to keep this project moving forward and avoid any delay back charges," and would get an estimate on touch-up costs for the uncured areas.

Distinctive then hired Tim Williams to review the condition of the shop-primed joists. Williams observed that the joists showed no signs of coating degradation or surface rusting. He noted that the shop-primed coating was thicker than the manufacturer's specifications in some areas, ranging from 1.06 to 26 mils, with "areas of runs, drips and sags," but there were also "a number of areas which did not exhibit" excessive thickness and had "a more uniform and intact primer coating." Williams opined that the "areas of inconsistent and excessive shop primer thicknesses . . . were most likely the result of poor-quality workmanship exacerbated by a lack of proper" quality control oversight and inspection.

In early February 2020, Zoz emailed Distinctive representatives objecting to Vulcraft being charged for surface preparation, noting that Vulcraft complied with subsections 2.01 and 2.03 of section 05 2100 and SSPC-Paint 15. Zoz noted that the painting subcontractor was responsible for preparing the joists for painting. In March 2020, RJM hired American Sandblasting to clean and prep the joists for painting. On March 16, Distinctive, Vulcraft, and RJM met to discuss "any change order or back charge [that would be] deducted from [Distinctive]'s contract" for the sandblasting. The parties did not reach an agreement, and on March 23, RJM issued a deductive change order for costs related to sandblasting, totaling $332,879, which Distinctive did not sign.[1]

On May 21, a Vulcraft representative emailed a Distinctive representative objecting to the March deductive change order and offering Distinctive $50,000 "as an in-good-faith

[1] RJM issued a subsequent deductive change order for additional related costs of $38,383.88 on August 4, 2020.

measure." The Vulcraft representative noted that if the offer was not accepted, "swift legal action [would] follow."

On July 1, 2020, Distinctive served an amended notice of claim on payment bond for public work pursuant to Minn. Stat. § 574.31, on RJM, Liberty Mutual (RJM's surety), and the city, seeking $359,026.50 plus interest and legal fees. Following nonpayment, on August 25, 2020, Distinctive sued RJM and Liberty Mutual alleging (1) breach of contract, (2) payment bond foreclosure, (3) quantum meruit/unjust enrichment, and (4) promissory estoppel. RJM counter-claimed with breach-of-contract and negligence claims. RJM and Distinctive both filed third-party complaints against Vulcraft. Distinctive alleged claims of indemnification or contribution, breach of contract, and quantum meruit/unjust enrichment. RJM alleged claims of negligence and contribution or indemnification.

Distinctive and Vulcraft moved for summary judgment and the district court held a hearing on the motion on June 9, 2022. The district court granted summary judgment for Vulcraft and partial summary judgment for Distinctive, dismissing: (1) all claims against Vulcraft, including RJM's negligence claim, Distinctive's breach-of-contract claim, and RJM and Distinctive's contribution or indemnity claims; (2) RJM's counterclaims for negligence and breach of contract against Distinctive; and (3) several of Liberty Mutual's affirmative surety defenses related to its claim that Distinctive "failed to establish a '[c]laim' by failing to provide a copy of the applicable contract."

The case went to trial on Distinctive's claim for breach of contract against RJM; Distinctive's payment bond foreclosure claim against RJM and Liberty Mutual; RJM's affirmative defenses of waiver, estoppel, and laches; and damages. The jury returned a special verdict in favor of Distinctive and found that: RJM breached its contract with Distinctive, which caused Distinctive damages; RJM would not be harmed if the contract's payment provisions were enforced; and RJM did not have a good-faith basis for failing to pay Distinctive. The jury awarded Distinctive $357,743.68 in damages.

Distinctive requested that the district court award 18% prejudgment interest in accordance with Minn. Stat. § 337.10, subd. 3 (2024). The district court determined that neither Minn. Stat § 337.10, subd. 3, nor § 471.425, subd. 4a, were applicable to Distinctive's calculation of prejudgment interest because its services were not "undisputed," as required by both statutes.[2] This appeal follows.

DECISION

I. The district court erroneously granted summary judgment on RJM's breach-of-contract claims, RJM's indemnity or contribution claims against Vulcraft, Distinctive's indemnity or contribution claims against Vulcraft, and Liberty Mutual's surety defenses.

RJM makes several arguments relating to the district court's grant of summary judgment. It argues that the district court erred when it (1) failed to consider evidence about whether the primer was supposed to remain on the joists long-term and whether the primer was excessively thick and cured; (2) failed to view the facts in the light most favorable to RJM as the nonmoving party; and (3) excluded certain evidence by RJM. While these are each discrete arguments, the overarching issue is whether the district court

[2] The district court's subsequent order amending its May 2024 order did not affect its determination that Minn. Stat. § 471.425, subd. 4a, was inapplicable to the circumstances of this case.

erred in granting summary judgment. We conclude that the district court erred in granting summary judgment on all claims except RJM's negligence claim.

On appeal from summary judgment, appellate courts ask two questions: (1) whether there are any genuine issues of material fact, and (2) whether the district court erred in applying the law. *J.E.B. v. Danks*, 784 N.W.2d 741, 746 (Minn. 2010). "The question on summary judgment is whether, when viewing the evidence in the light most favorable to the nonmoving party, the [district] court can say that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.* at 748. Appellate courts review summary judgment decisions de novo, *see Doe v. Archdiocese of St. Paul & Minneapolis*, 817 N.W.2d 150, 163 (Minn. 2012), and "must view the evidence in the light most favorable to the party against whom judgment was granted," *J.E.B.*, 784 N.W.2d at 746. Appellate courts will affirm a grant of summary judgment if it can be sustained on any ground but will reverse when the district court erred in concluding that there were no disputed material facts. *Id*.

A. Breach-of-contract claims

The interpretation of a contract is a question of law that appellate courts review de novo. *Travertine v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). "Under a contract analysis, [appellate courts] first look to the language of the contract and examine extrinsic evidence of intent only if the contract is ambiguous on its face." *Hous. & Redev. Auth. of Chisholm v. Norman*, 696 N.W.2d 329, 337 (Minn. 2005). "A contract is ambiguous if, based upon its language alone, it is reasonably susceptible to more than one interpretation." *Trebelhorn v. Agrawal*, 905 N.W.2d 237, 242 (Minn. App. 2017) (quoting *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003)). "In interpreting a contract, the language is to be given its plain and ordinary meaning." *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). But if a contract is clear and unambiguous, "courts should not rewrite, modify, or limit its effect by a strained construction." *Travertine*, 683 N.W.2d at 271.

RJM argues that the district court failed to consider evidence it presented at summary judgment that the primer was intended to remain on the joists long-term and that the primer was "unacceptably excessive, thick, and uncured," in violation of Distinctive and Vulcraft's contractual obligations.

Specifically, RJM argues that the district court ignored expert testimony from Tim Williams that Distinctive and Vulcraft failed to comply with the requirements of SSPC-Paint 15 and the SJI standards. RJM also argues that the district court's determination that "the [manufacturer's] data sheet does not identify a range of permitted primer thicknesses or provide for a maximum thickness" contradicts both the manufacturer's specification for dry film thickness (DFT) in its data sheet and Williams's testimony that the primer as-applied "significantly exceeded" the acceptable thickness and ignores a genuine issue of material fact. We agree with RJM that this evidence alone should have precluded summary judgment because it raised genuine issues of material fact.

At issue on the breach-of-contract-claims is whether Vulcraft and Distinctive fulfilled their contractual obligations. In its summary judgment order, the district court determined that Distinctive and Vulcraft "were obligated to supply steel joists in compliance with the SSPC-Paint 15 specification," to apply one coat of primer, which was "intended to provide temporary protection to the steel joists during delivery, storage on site, and erection . . . [and was] intended to be used as a holding primer that may or may not be removed before or after erection or assembly."

Notably, SSPC-Paint 15 provides in relevant part:

> 4.4 The dry film thickness of the primer *shall be as recommended by the manufacturer*. If no recommendation is given, the dry film thickness shall be a minimum of 20 micrometers (0.8 mils) unless indicated otherwise.

(Emphasis added.)

The joist primer manufacturer's data sheet, under "technical data," provides a coating thickness range of "1.0 +/- 0.2 (0.8-1.2) mils DFT."

The question at summary judgment was whether Distinctive and Vulcraft complied with their contractual obligations, which include all the requirements of SSPC-Paint 15. The district court concluded that the thickness identified in the manufacturer's data sheet was only a recommendation and characterized it as a "related guideline" that should be "[i]nterpreted in the light of the function of the dip-applied primer" and in that light, "the thickness and drainage requirements are intended as guidelines to ensure the effectiveness of the primer as a temporary protective coating." However, SSPC-Paint 15 is clear: the DFT "*shall be* as recommended by the manufacturer." (Emphasis added.) As the parties conceded at oral argument, SSPC-Paint 15 is part of the relevant contracts between the parties. Therefore, the manufacturer's stated DFT range is incorporated into the contract.

The district court did not "view the facts in the light most favorable to the nonmoving party" on the primer-thickness issue; instead, it interpreted the manufacturer's thickness specifications "in the light of the function of the dip-applied primer." *J.E.B.*, 785

N.W.2d at 748. The primer-thickness issue raises a genuine issue of material fact because it is a contractual requirement. The evidence presented at summary judgment created a fact issue as to whether Distinctive and Vulcraft complied with all of their contractual obligations. Therefore, the district court erred when it granted summary judgment on the breach-of-contract claims.

B. RJM's negligence claim against Vulcraft[3]

The district court dismissed RJM's negligence claim against Vulcraft on summary judgment, reasoning that the claim was barred by Minn. Stat. § 604.101 (2024), which is commonly known as the economic-loss doctrine. The district court reasoned that, because the contract involved "the sale of goods between merchants of goods of the kind, and the alleged damage is indisputably to the goods themselves" as opposed to other tangible property, RJM's claim was barred by the economic-loss doctrine. We agree, and therefore decline to address RJM's argument that Vulcraft had an independent duty to exercise reasonable care in supplying and shop-priming the joists for the project.

The economic-loss doctrine "applies to any claim by a buyer against a seller for harm caused by a defect in the goods sold or leased, or for a misrepresentation relating to the goods sold or leased [] regardless of whether the seller and the buyer were in privity." Minn. Stat. § 604.101, subd. 2(1). The statute defines a product defect tort claim as "a

[3] RJM also advanced a negligence claim against Distinctive before the district court. The district court seemingly did not decide this claim on summary judgment, and it does not appear that it proceeded to trial. However, RJM did not brief this issue on appeal, and we therefore decline to address it. *State Dep't of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997).

common law tort claim for damages caused by a defect in the goods." *Id.*, subd. 1(e). On product defect claims, "[a] buyer may not bring a product defect tort claim against a seller for compensatory damages unless a defect in the goods sold or leased *caused harm to the buyer's tangible personal property* other than the goods *or to the buyer's real property*." *Id.*, subd. 3 (emphases added).

Under their contract, Vulcraft would provide Distinctive with shop-primed steel joists for the project. Because the economic-loss doctrine does not require privity, the fact that RJM and Vulcraft were not in privity with each other and instead had a relationship based on each party's separate contracts with Distinctive does not prevent this doctrine from applying. Minn. Stat. § 604.101, subd. 2(1). In its complaint, RJM alleged that "among other things," Vulcraft breached its duties by "providing defective materials and/or applying excess, uncured, and otherwise inadequate primer on the joists." RJM alleged that Vulcraft's breach caused RJM damages in excess of $50,000 "which include, but are not limited to, the costs of corrective work and investigation and testing fees."[4] RJM's complaint does not allege harm to tangible personal property or real property. The district

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[4] RJM relies on this court's decision in *Village Homes of Grandview Square II Ass'n v. R.E.C., Inc.*, to support its argument that the economic-loss doctrine does not apply. No. A19-1681, 2020 WL 4432818, at *9 (Minn. App. 2020); *see* Minn. R. Civ. App. P. 136.01, subd. 1(c) ("Nonprecedential opinions . . . are not binding authority [but] . . . may be cited as persuasive authority."). *Village Homes* is not persuasive because the negligence claim at issue was neither a product defect claim nor a misrepresentation claim; here, however, RJM's negligence claim is in fact a product-defect claim because, as evidenced by RJM's complaint, it alleged damages from defective materials provided by Vulcraft. *Village Homes*, 2020 WL 4432818, at *9. Therefore, RJM's reliance on *Village Homes* is misplaced.

court therefore correctly determined that the economic-loss doctrine applies and bars RJM's negligence claim.

C. Contribution and indemnity claims

Because the district court erroneously granted summary judgment on RJM's breach-of-contract claims, its dismissal of both RJM and Distinctive's contribution or indemnity claims on the basis that Vulcraft and Distinctive complied with their respective contracts was erroneous because there is a genuine issue of material fact as to whether the companies did in fact comply with their contractual obligations.

D. Distinctive's quantum meruit/unjust enrichment claims

While the district court ultimately dismissed all claims against Vulcraft, it did not specifically address Distinctive's quantum meruit/unjust enrichment claims against Vulcraft. However, none of the parties raise this issue on appeal and appellate courts generally do not address issues that the parties have not adequately briefed. *Wintz Parcel Drivers, Inc.*, 558 N.W.2d at 480. We therefore decline to address the issue. *Id.*

E. Exclusion of evidence

RJM and Liberty Mutual argue that the district court erred when it excluded the following evidence at summary judgment: (1) the declaration of RJM's vice president-community Brad Barickman; (2) the declaration of 292 architect Tom Betti; (3) and evidence of Vulcraft and Distinctive's offers to pay for joist remediation.

Because the district court erroneously granted summary judgment on multiple claims, we decline to decide whether it also erred in excluding this evidence, as it will need to reevaluate its admissibility on remand given the genuine issues of material fact.

F. Liberty Mutual's surety defenses

RJM and Liberty Mutual argue that the district court erred when it determined that Distinctive met the surety bond requirements because "there was no valid bond claim because no payment was due to Distinctive." Liberty Mutual's surety defenses relating to whether it is required to pay Distinctive remain intact because the payment amount is disputed. Any argument that appellants make regarding Distinctive's failure to comply with the statutory requirements of Minn. Stat. § 574.31 fails as a matter of law because the record reflects that Distinctive served its bond claim on Liberty Mutual, RJM, and the city within 120 days of its last day of work; complied with the statutory format requirements; and brought an action to enforce the bond claim within one year after its last day of work.

G. Claims tried by jury trial

The issues that continued to a jury trial were Distinctive's breach-of-contract claim against RJM, Distinctive's payment bond foreclosure claim against RJM and Liberty Mutual, RJM's affirmative defenses, and damages. Because RJM's breach-of-contract claim directly conflicts with Distinctive's breach-of-contract claim, and the outcome of the breach-of-contract claims implicate the indemnity or contribution claims, we must reverse and remand for a new trial.

Affirmed in part, reversed in part, and remanded.