

*This opinion is nonprecedential except as provided by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
A24-0537**

Groebner and Associates, Inc.,
Respondent,

vs.

VW Dig LLC, d/b/a VW Connect,
an Arizona limited liability company,
Appellant.

**Filed October 21, 2024
Affirmed
Bratvold, Judge**

Hennepin County District Court
File No. 27-CV-22-10884

Paul W. Chamberlain, Ryan R. Kuhlmann, Chamberlain Law Firm, Wayzata, Minnesota
(for respondent)

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Considered and decided by Johnson, Presiding Judge; Bratvold, Judge; and Jesson,
Judge.*

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant installs gas piping, and respondent sells gas piping. Appellant refused to pay for gas piping delivered by respondent, and respondent sued for breach of contract. In

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

this appeal from a final judgment for respondent, appellant raises two issues: (1) the district court erred by determining in its summary-judgment order that material facts related to the parties' contract were undisputed and (2) the district court clearly erred by determining, after a bench trial, that appellant's rejection of respondent's product as nonconforming based on the printline was not "seasonable." We conclude, first, that the record evidence supports the district court's determinations that certain facts were undisputed on summary judgment and, second, that the district court did not clearly error in its factual findings following the bench trial. Thus, we affirm.

FACTS

Appellant VW Dig LLC d/b/a VW Connect is based in Arizona and installs "utility lines and connections."¹ Respondent Groebner and Associates Inc. (Groebner) is headquartered in Rogers and supplies natural-gas-distribution materials. Before the transaction at the center of this appeal, VW Connect bought natural-gas piping from Groebner several times.

We first turn to the evidence submitted on summary judgment as well as the relevant procedural history. In 2021, VW Connect asked about buying polyvinyl chloride (PVC) gas piping from Groebner. On July 14, 2021, the territory manager for Groebner responded by email to the vice president of VW Connect and forwarded "a spec sheet for a potential

¹ The caption is taken from the district court record. Minn. R. Civ. App. P. 143.01 ("The title of the action shall not be changed in consequence of the appeal."). The portion of the caption here identifying VW Connect as an LLC contains a typographical error that reads "liability" instead of "liability," which we do not change.

alternative to PVC called ‘Sleeve-It’ made with high density polypropylene (HDPE).”² The spec sheet stated that “Sleeve-It is made of HDPE instead of PVC.” Groebner’s email also asked VW Connect whether “this will work for your needs.”

On July 20, 2021, VW Connect’s executive assistant project manager emailed Groebner’s territory manager and stated that VW Connect was implementing “new ordering practices and schedules” and that VW Connect’s purchasing manager “will be submitting requests for pricing every 60 days” and “will confirm agreements within 3 business days.” VW Connect’s purchasing manager received a copy of this email, as did VW Connect’s vice president.

Groebner’s territory manager replied by email on the same day, stating that he had sent “a spec sheet on a poly sleeve material that meets the spec of PVC” and asking if it had been approved. This email also attached the Sleeve-It spec sheet. Once again, VW Connect’s purchasing manager received a copy of this email, as did VW Connect’s vice president.

VW Connect’s executive assistant project manager replied by email, saying, “I believe it is awaiting approval” from VW Connect’s customer. Groebner’s territory manager asked by email if VW Connect “would like for [him] to add that material on [their] quote sheet.” The executive assistant project manager responded by email, stating, “Yes, please! That would be great!” Other evidence established that VW Connect requested that

² Groebner submitted evidence to show that it offered VW Connect an alternative to PVC piping because PVC was in short supply. VW Connect responded with evidence that Groebner did not inform VW Connect of any shortage. The district court concluded that Groebner’s reason for offering the alternative product was not material.

Groebner cut the gas piping in 20-foot lengths and have “custom printing on them saying ‘GAS SLEEVE.’”

On August 24, 2021, at 12:45 p.m., Groebner’s territory manager emailed VW Connect with a quote for “Sleeve-It Gas Conduit.” Twenty minutes later, VW Connect’s purchasing manager replied by email: “Please move forward with this order.”

The next day, VW Connect’s purchasing manager emailed Groebner that he had spoken with VW Connect’s vice president and that VW Connect wanted “two truckloads of 1 1/2 [inch] gas sleeving and [one] truck-load of 2 [inch] gas sleeving for the first order.” On August 27, 2021, in a separate email chain, VW Connect’s vice president emailed Groebner’s territory manager, confirming the amount of gas-sleeve product ordered.

On August 30, 2021, Groebner’s territory manager emailed VW Connect an order acknowledgment, which included the amount, length and width of gas piping and the total purchase price of \$215,443.20.

On September 15, 2021, VW Connect’s purchasing manager emailed, seeking an “updated delivery ETA,” and Groebner’s territory manager responded that “it is still on schedule for the week of 11-02.” Before delivery by Groebner, VW Connect replaced its purchasing manager.

On November 7, 2021, Groebner delivered two truckloads of Sleeve-It gas piping to VW Connect. On November 10, 2021, VW Connect’s new purchasing manager emailed Groebner’s territory manager, asking Groebner to hold production on the Sleeve-It gas piping: “We ordered PVC not HDPE check you[r] records.”

In December 2021, Groebner emailed an invoice for \$59,270.40 to VW Connect for the product delivered. VW Connect did not pay the invoice. In May 2022, Groebner made a written demand for payment, asking that VW Connect pay the balance owed and accept delivery of the rest of the custom order for Sleeve-It gas piping. VW Connect did not pay the amount demanded and instead asked Groebner to pick up the Sleeve-It piping that had been delivered.

In July 2022, Groebner sued VW Connect, seeking damages for breach of contract and, in the alternative, promissory estoppel. The complaint alleged that “VW Connect placed a non-cancellable order of customized materials” and “breached the contract by cancelling the non-cancellable Purchase Order and by failing to pay Groebner.” VW Connect answered, denying many factual allegations and asserting that “the product supplied was nonconforming to the order that was placed.”

Groebner moved for summary judgment. Groebner argued that “there is no genuine dispute of material fact” and that it was entitled to summary judgment for the unpaid invoices plus interest and attorney fees. VW Connect opposed summary judgment.

After a hearing, the district court denied summary judgment. First, the district court agreed with Groebner that undisputed evidence established that the parties formed a contract when VW Connect accepted Groebner’s offer for Sleeve-It gas piping. Second, the district court determined that the parties submitted conflicting evidence about whether Groebner delivered a nonconforming product. The district court concluded that whether Groebner “delivered a usable product and whether the timing of [VW Connect’s] rejection was reasonable are factual determinations” for trial.

Still, the district court noted that Minn. R. Civ. P. 56.07 “permits the court to state which material facts are not genuinely at issue in the case, even if it does not grant summary judgment.” Accordingly, the district court determined that these facts were undisputed: “a contract for the purchase of Sleeve-It with HDPE was formed, based on the specifications set forth in the August 24, 2021 Quote, . . . for the amounts set forth in the . . . Order Acknowledgement”; the VW Connect purchasing manager “had the apparent authority to accept the contract”; and “the contract was accepted by VW Connect.” The district court also determined that the “only material issues remaining in dispute for trial” were (1) “whether VW Connect was lawfully entitled to reject the Sleeve It, and if so, whether the rejection was within a reasonable time after delivery,” (2) the amount of Groebner’s damages, and (3) “what amount of attorney fees and interest, if any, are due to Groebner.”

After a bench trial in August 2023, the district court filed findings of fact, conclusions of law, and an order for judgment.³ The district court considered VW Connect’s two asserted two reasons that the product was not conforming.⁴ First,

³ The district court’s order stated additional findings related to the amount of damages, some of which were also established as part of the summary-judgment record. The district court found that Groebner delivered “[t]wo truckloads of Sleeve-It product” to VW Connect on November 7, 2021, and that VW Connect rejected the product “because it was HDPE and did not have bell-ends.” The district court also found that a “second shipment of Sleeve-It was produced by the manufacturer but not delivered, based on the rejection of the first shipment” and VW Connect’s refusal to coordinate a delivery date. And the district court found that, on November 9, 2021, VW Connect’s new purchasing manager emailed Groebner to “request[] cancellation of the remaining Sleeve-It order” and that Groebner “was able to stop production of the remaining Sleeve-It order.”

⁴ The district court noted that, at summary judgment, VW Connect claimed that Groebner delivered nonconforming product for a third reason—the gas piping was nonconforming because it was made of HDPE rather than PVC. The district court reasoned that, because

VW Connect pointed out that the gas piping had no bell-ends, so the product needed to be connected some other way. The district court found that it was “known in the industry” that HDPE “cannot be made with bell-ends,” and the district court found credible Groebner’s evidence that VW Connect knew the Sleeve-It gas piping “would not feature bell-ends before it entered into the contract.”

Second, VW Connect claimed that “the printline on the gas sleeve was illegible or incomplete.” The district court determined that “VW Connect did not assert defects with the printline as a basis for rejection of the Sleeve-It product until February 9, 2023”—in response to Groebner’s discovery requests. Because “the printline defect was not latent and could have been discussed after a reasonable examination of the product,” the district court concluded that raising the printline defect “more than a year after delivery of the product” was not “seasonable” notice, relying on a provision of the Uniform Commercial Code (UCC). The district court also rejected VW Connect’s evidence that the printline was illegible.⁵

VW Connect accepted Groebner’s offer for HDPE, not PVC, this was not a valid reason to reject the piping.

⁵ The district court relied on three pieces of evidence to determine that the printline on the gas piping was conforming. First, the district court determined that “there was no allegation that the printline was defective on the Sleeve-It product which was produced but not delivered to VW Connect” and that “VW Connect would not have had any basis to reject the second shipment before even seeing the printline on the product.” Second, the district court relied on testimony and photographs that VW Connect offered into evidence and noted that “it is more likely that these defects arose as a result of the product being exposed to . . . the sun over the fifteen months between delivery” and the time the photos were taken. Third, the district court observed that a photograph of the Sleeve-It product taken at the manufacturing plant showed an intact printline.

The district court determined that Groebner’s damages for breach of contract totaled \$147,828.98, including all unpaid invoices, a finance charge, and interest. Groebner sought attorney fees under Minn. R. Gen. Prac. 119, which the district court granted. The district court directed entry of judgment for Groebner in the amount of \$147,828.98 in damages and \$80,231.25 in attorney fees, for a total judgment of \$228,060.23.

VW Connect appeals.

DECISION

I. The record supports the district court’s summary-judgment determinations that certain material facts were undisputed and that the parties entered into a valid contract for the purchase of Sleeve-It gas piping.

Under Minn. R. Civ. P. 56.07, when the district court “does not grant all relief requested by the [summary-judgment] motion, it may enter an order stating any material fact . . . that is not genuinely at issue and treating the fact as established in the case.” “A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party.” *SVAP III Riverdale Commons LLC v. Coon Rapids Gyms, LLC*, 967 N.W.2d 81, 84 (Minn. App. 2021). When reviewing a summary-judgment order, appellate courts determine “de novo whether a genuine issue of material fact exists.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). Appellate courts view the evidence submitted on summary judgment in the light most favorable to the nonmoving party. *See Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (“All doubts and factual inferences must be resolved against the moving party.” (quotation omitted)).

VW Connect is the nonmoving party and argues that the district court erred by determining on summary judgment that VW Connect accepted Groebner's offer to produce and deliver Sleeve-It gas piping made of HDPE. According to VW Connect, it was "clear beyond any dispute . . . that VW Connect never expressly agreed to buy HDPE from Groebner" and "[t]here is no document wherein VW Connect requests or orders gas sleeve made from HDPE by name." VW Connect also contends that there was a credibility issue for trial. While Groebner offered evidence that employees from each company discussed using HDPE instead of PVC, VW Connect submitted the affidavit of its vice president, who "unequivocally denied" that these discussions "took place." Groebner counters that we should affirm the district court's "detailed legal analysis of each of the elements [of contract formation], finding that Groebner made a written offer of HDPE sleeves, VW Connect accepted the offer by email, and there was consideration of the agreed purchase price."

"The formation of a contract requires communication of a specific and definite offer, acceptance, and consideration." *Com. Assocs., Inc v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. App. 2006). The district court determined that the "offer, acceptance, and consideration are documented" in the email exchanges including the Sleeve-It spec sheet and Groebner's quote.

On appeal, VW Connect disputes only whether it accepted Groebner's offer. We conclude that the district court's determination is supported by the record evidence. VW Connect's purchasing manager replied by email to Groebner's email that presented a quote for Sleeve-It and told Groebner to "[p]lease move forward with this order,"

specifying “the quantity being requested” and later confirming the quantity. The district court determined that “the uncontradicted evidence at the time the contract was formed” shows that VW Connect’s purchasing manager accepted Groebner’s offer.

VW Connect contends that, even if the purchasing manager accepted Groebner’s offer, no evidence shows that the purchasing manager “had the actual, apparent, or implied authority to do so.” The district court determined that, even if it accepted as true that the purchasing manager did not have *actual* authority to accept the offer, the purchasing manager had *apparent* authority to accept the offer. Accordingly, we first consider the district court’s summary-judgment determination that VW Connect’s purchasing manager had apparent authority.

“A principal is bound not only by an agent’s actual authority but also by authority that the principal has apparently delegated to the agent.” *Powell v. MVE Holdings, Inc.*, 626 N.W.2d 451, 457 (Minn. App. 2001), *rev. denied* (Minn. July 24, 2001). To prove apparent authority, three elements must be satisfied: (1) “[t]he principal . . . held the agent out as having authority or . . . knowingly permitted the agent to act on its behalf,” (2) “the party dealing with the agent . . . [had] actual knowledge that the agent was held out by the principal as having such authority or had been permitted by the principal to act on its behalf,” and (3) “the proof of the agent’s apparent authority must be found in the conduct of the principal, not the agent.” *Truck Crane Serv. Co. v. Barr-Nelson, Inc.*, 329 N.W.2d 824, 826 (Minn. 1983).

The district court concluded that the first two elements were undisputed and showed apparent authority because (1) VW Connect allowed the purchasing manager to use a

signature block in his email “that designates him as ‘Purchasing Manager & Panel Shop Supervisor’” and (2) VW Connect knowingly permitted the purchasing manager “to hold himself out as ‘purchasing manager’ in emails to Groebner.” The district court also concluded that the third element was undisputed because VW Connect’s executive assistant project manager emailed Groebner’s territory manager that the purchasing manager “will be ‘submitting requests for pricing every 60 days’ and that he will ‘confirm agreements within 3 days.’” VW Connect copied both the purchasing manager and its vice president on this email.

The district court’s legal analysis of the summary-judgment evidence is sound. Because VW Connect introduced Groebner to the purchasing manager as the new contact for “pricing” and “confirm[ing] agreements,” and because VW Connect allowed the purchasing manager to identify himself as “Purchasing Manager” on his email, VW Connect held out the purchasing manager as having authority to accept purchase offers. The summary-judgment record also shows that Groebner knew VW Connect was holding the purchasing manager out as having authority and that VW Connect’s own conduct established that the purchasing manager had apparent authority. Accordingly, the district court did not err by determining that it was undisputed that the purchasing manager had apparent authority to accept Groebner’s offer.⁶

⁶ VW Connect also argues on appeal that Groebner “misle[d] a junior VW Connect employee” and “trick[ed] him into issuing an order for the wrong product.” At oral argument, VW Connect’s attorney explained that VW Connect is arguing that Groebner’s quote was misleading because it stated that VW Connect’s vice president ordered the product when he had not approved the purchase of Sleeve-It. It is true that Groebner’s quote lists VW Connect’s vice president as the ordering party. But no record evidence

We note that the district court did not exclusively rely on the purchasing manager's apparent authority. The district court also cited an August 27, 2021 email from VW Connect's vice president that told Groebner, "Bill, [for] our first order we would like two truck loads of 1 1/2 [inch] and one truck load of 2 [inch] gas sleeve." After reviewing all email communications submitted on summary judgment, the district court found that the emails proved VW Connect accepted Groebner's offer to deliver Sleeve-It gas piping:

Nothing in the record indicates that there were any other quotes or orders in progress between the parties between July and November of 2021; thus, there is no evidence to suggest that any of the communications from VW Connect were in reference to an order other than that contained in the August 24, 2021 quote [by Groebner] and the August 30, 2021 Order Acknowledgement—Direct Order for Sleeve-It made with HDPE.

VW Connect also contends on appeal that the district court erred by granting summary judgment on the formation of a purchase contract between the parties because VW Connect's vice president and executive assistant project manager stated in their respective affidavits that they did not approve the substitution of HDPE for PVC and "were not aware" of any other VW Connect employees approving this substitution. While we take these affidavits as true and view them favorably to VW Connect, the affidavits do not contradict other evidence presented on summary judgment.

The August 24, 2021 email from the purchasing manager tells Groebner to "move forward with this order" and therefore accepts Groebner's offer to deliver Sleeve-It gas

suggests that the quote misled the purchasing manager. Indeed, the purchasing manager's email from August 25, 2021, confirmed that he spoke with VW Connect's vice president and that VW Connect wanted three truckloads of the gas piping.

pipng. It is true that VW Connect's vice president and executive assistant project manager were not copied on the August 24, 2021 email. But the vice president and executive assistant project manager attest only that they were not "aware" of another VW Connect employee accepting Groebner's offer. While VW Connect's vice president also avers that he did not "approve[] the substitution of HDPE for PVC," VW Connect offers no evidence disputing the acceptance conveyed by the purchasing manager in the August 24, 2021 email.

Accordingly, the district court did not err by determining that it was undisputed on summary judgment that VW Connect accepted Groebner's offer for Sleeve-It, which uses HDPE instead of PVC.

II. The district court's factual findings support its legal conclusion that VW Connect did not seasonably notify Groebner that the gas piping was nonconforming.

In its brief to this court, VW Connect argues that the district court erred by ruling for Groebner on the nonconformity issue. "On appeal from judgment following a court trial, this court reviews whether the district court's findings were clearly erroneous and whether the district court erred as a matter of law." *In re Distrib. of Attorney's Fees*, 855 N.W.2d 760, 761 (Minn. App. 2014), *aff'd*, 870 N.W.2d 755 (Minn. 2015). "A finding is clearly erroneous if we are left with a definite and firm conviction that a mistake has been made." *Id.* (quotation omitted). "In an appeal from a bench trial, we do not reconcile conflicting evidence"; instead, we "give the district court's factual findings great deference and do not set them aside unless clearly erroneous." *Porch v. Gen. Motors*

Acceptance Corp., 642 N.W.2d 473, 477 (Minn. App. 2002), *rev. denied* (Minn. June 26, 2002).

Groebner’s brief to this court notes that VW Connect did not provide this court with a trial transcript. The appellant bears the burden of providing an adequate record on appeal. *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995). The appellant has the duty to order any transcript “deemed necessary for inclusion in the record.” Minn. R. Civ. App. P. 110.02, subd. 1(a). When a party does not provide a trial transcript on appeal, we “are limited to determining whether the trial court’s findings of fact support its conclusions of law.” *Am. Fam. Life Ins. Co. v. Noruk*, 528 N.W.2d 921, 925 (Minn. App. 1995), *rev. denied* (Minn. Apr. 27, 1995).⁷ Thus, to decide whether to affirm the district court’s decision on the nonconformity issue, we consider whether the findings of fact support the conclusions of law.

VW Connect makes two arguments in support of its position on the nonconformity issue. VW Connect contends that the district court erred, first, by determining that “VW Connect . . . failed to object to the illegible print-line seasonably” and, second, by “credit[ing] speculative testimony that the print-line on the conduit might have been legible at the time of delivery but faded over time.” Groebner argues that “the trial court did not

⁷ VW Connect acknowledges in its brief to this court that it “made the decision not to order the entire trial transcript” and therefore did not “enable the court of appeals to verify [VW Connect’s] assertion about the lack of testimony about the print lines.” VW Connect argues that this court “must rely on [VW Connect’s and Groebner’s] lawyers and their ethical obligation of candor before the tribunal” under Minnesota Rule of Professional Conduct 3.3. Although attorneys are ethically bound to be candid with the court, the applicable caselaw and rules of civil appellate procedure provide, as discussed above, that VW Connect had the burden to provide an adequate record for appellate review.

clearly err by rejecting VW Connect’s excuse for failing to pay based on the quality of the print line on the products Groebner delivered.”

We first address VW Connect’s argument that the district erred by determining that VW Connect did not seasonably notify Groebner about its objection to the printline as illegible. The UCC, Minn. Stat. §§ 336.2-101 to .2-725 (2022), governs the sale of goods. Under Minn. Stat. § 336.2-106(2), goods “conform to the contract when they are in accordance with the obligations under the contract.” If goods do not conform to the contract, the buyer may reject them so long as the rejection occurs within a “reasonable time after delivery.” Minn. Stat. §§ 336.2-601(1), .2-602(1). Rejection “is ineffective unless the buyer seasonably notifies the seller.” Minn. Stat. § 336.2-602(1). Thus, a buyer must seasonably notify the seller of any product nonconformity.

The district court “found [t]wo truckloads of Sleeve-It product were delivered” to VW Connect in November 2021 and that VW Connect called Groebner the same day the Sleeve-It was delivered to reject the product because it was HDPE and not PVC. The district court also found that VW Connect “did not raise any issues with the printline on the delivered product” until February 2023. The district court concluded that VW Connect’s notice of the printline defect “more than a year after delivery of the product cannot be considered ‘seasonable,’ especially because the printline defect was not latent and could have been discovered after reasonable examination of the product.”

VW Connect does not dispute that it first raised the printline defect in February 2023. VW Connect claims that it “immediately” rejected the gas piping as nonconforming based on its composition and that doing so “does not vitiate” another reason for rejection,

such as the printline nonconformity, which was “relatively non-obvious on receipt.” We are not persuaded for two reasons.

First, under Minn. Stat. § 336.2-605(1)(a), “[t]he buyer’s failure to state in connection with rejection a particular defect *which is ascertainable by reasonable inspection precludes the buyer from relying on the unstated defect* to justify rejection or to establish breach” that “the seller could have cured if stated seasonably.” (Emphasis added.) The district court found that the printline defect “was not latent and could have been discovered after reasonable examination of the product.”

Second, the district court’s finding that any printline defect was reasonably discoverable on delivery supports its legal conclusion that “VW Connect is precluded from asserting” a printline defect as a “basis for rejection” because VW Connect did not raise the printline defect for over a year after delivery. The district court’s reasoning tracks the statutory language and is supported by its factual findings. *See* Minn. Stat. § 336.2-605(1)(a).

VW Connect also argues that “the more obvious perceived defect (absence of bell ends on the delivered product) rendered the print-line issue irrelevant.” VW Connect cites no legal authority to support this argument. Thus, we need not consider it. *See Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919-20 n.1 (Minn. App. 1994) (stating that this court declines to address allegations unsupported by legal analysis or citation). Even so, the UCC contemplates multiple defects and reasons for rejection and imposes the burden on the buyer to seasonably notify the seller of nonconformities that are “ascertainable upon reasonable inspection.” Minn. Stat. § 336.2-605(1)(a). Thus, the district court did not

clearly err by determining that VW Connect did not seasonably notify Groebner of any printline defect.

We therefore affirm the district court's determination that VW Connect did not seasonably notify Groebner of any printline defect as a basis for rejection of the Sleeve-It gas piping. Accordingly, we need not address VW Connect's other nonconformity argument that the district court erred by determining that "there is no credible evidence that the printline was defective on any of the gas sleeve at the time it was delivered."

Affirmed.