This opinion is nonprecedential except as provided by Minn.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
A24-0690

Timothy Michaels,
Respondent,

vs.

Fresh Vine Wine, Inc.,
Appellant.

Filed February 10, 2025
Affirmed
Cochran, Judge

Hennepin County District Court
File No. 27-CV-22-8518

Christopher W. Boline, Zachary A. Alter, Felhaber Larson, Minneapolis, Minnesota (for respondent)

Jevon C. Bindman, Carmen-Marie Carballo, Maslon, LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Ross, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

This appeal involves the district court's denial of appellant's motion for judgment as a matter of law following a jury verdict finding that appellant breached a collateral contract with respondent. Appellant argues that the district court erred in denying the motion by (1) relying on parol evidence to support its decision to deny the motion;

(2) determining the evidence is legally sufficient to support the existence of a collateral contract separate from the parties' employment-separation contract; and (3) determining that a reasonable jury could find that the implied collateral contract was supported by consideration. Because the district court's order is not contrary to law and has reasonable evidentiary support, we affirm.

FACTS

This case arises out of post termination contract negotiations between appellant Fresh Vine Wine, Inc. and its former chief operating officer (COO), respondent Timothy Michaels.[1] Before being named as Fresh Vine's COO, Michaels was the chief executive officer of Fresh Grapes LLC, a predecessor of Fresh Vine.

On December 13, 2021, Fresh Vine conducted an initial public offering (IPO) of its common stock. Prior to the IPO, the company contracted with Oak Ridge Financial Services Group Inc. to serve as its underwriter. The underwriting agreement required that Fresh Vine's directors, officers, and investors enter into a lock-up agreement with Oak Ridge Financial. The lock-up agreement prohibited the sale of any security in Fresh Vine for 180 days from the date of the final prospectus used to sell common stock in the IPO, which was June 10, 2022. The underwriting agreement between Oak Ridge Financial and Fresh Vine gave Oak Ridge Financial "sole discretion . . . to release or waive the restrictions set forth in a lock-up agreement." On or about November 30, 2021, when

[1] Because this appeal concerns the denial of Fresh Vine's motion for judgement as a matter of law, the following facts are taken from the evidence presented at trial viewed in the light most favorable to the nonmoving party, Michaels. *Galaxy Wireless, LLC v. W. Nat'l Mut. Ins. Co.*, 8 N.W.3d 698, 705 (Minn. App. 2024).

Michaels was still serving as Fresh Vine's COO, he entered into the lock-up agreement with Oak Ridge Financial.

On December 17, 2021, Fresh Vine issued 251,851 restricted stock units (RSUs) to Michaels through an RSU agreement between Michaels and Fresh Vine. The RSU agreement was part of Michaels's compensation package as COO. Each RSU represented the right to receive one share of common stock in Fresh Vine. The RSU agreement provided that each RSU would vest 180 days after the date of the final prospectus used to sell shares of common stock in the IPO. The agreement further provided that Fresh Vine was to issue Michaels one share per RSU as soon as was administratively practicable following the vesting date. Michaels signed the RSU agreement with Fresh Vine in December 2021. Under the agreement, Michaels would forfeit any unvested RSUs if Michaels was to resign or be terminated for cause prior to the vesting date.

Fresh Vine terminated Michaels on February 7, 2022, and the parties immediately began negotiating a separation agreement through counsel. During negotiations, Michaels stated that he sought "immediate liquidity" in any compensation that he would receive through the separation agreement—meaning cash or stock that could be sold immediately. During the negotiations, Fresh Vine agreed to allow Michaels to keep his unvested RSUs and to amend his RSU agreement to accelerate the vesting date of the RSUs and delivery of his shares. However, Fresh Vine communicated to Michaels that it could not be involved in waiving the lock-up agreement that prohibited Michaels from selling any Fresh Vine stock until after June 10, 2022, because that agreement was a separate agreement between Michaels and Oak Ridge Financial. Michaels communicated to Fresh Vine on February 16, 2022, that he believed that he would be able to obtain a waiver from Oak Ridge Financial, and Fresh Vine responded that if Michaels was "able to obtain a waiver of the lock-up agreement, [Fresh Vine] remains fine with vesting as soon as possible." The next day, the parties' attorneys agreed in an email exchange that the parties had a deal regarding the material terms of the separation agreement. Those terms included a lump-sum payment to Michaels and issuance of the shares in his RSU agreement with an accelerated vesting date.

On February 18, 2022, Michaels called Fresh Vine's securities-law attorney directly without his counsel and asked a few follow-up questions about the lock-up agreement. Fresh Vine's attorney talked with Michaels only after receiving permission from Michaels's attorney. Fresh Vine's attorney memorialized his conversation with Michaels in an email to Michaels's attorney and Michaels. The email stated that Michaels asked if the lock-up agreement "could be waived solely by the underwriter, or whether [Fresh Vine] had to consent." The attorney responded, "The answer is the former. [Fresh Vine] would not be involved."

On February 21, 2022, Michaels told Fresh Vine that he had not obtained the waiver from Oak Ridge Financial but wished to go forward with the deal. The next day, Oak Ridge Financial sent Michaels an executed waiver for the lock-up agreement. Michaels did not initially inform Fresh Vine that he had obtained the waiver.

On February 25, 2022, the parties executed a separation agreement. The agreement included, among other terms, a provision that required Fresh Vine and Michaels to enter into an amendment to the RSU agreement wherein Michaels would retain his RSUs, the company would accelerate vesting of his RSUs upon execution of the separation agreement, and Fresh Vine would deliver to Michaels his shares as soon as administratively practicable following vesting. The separation agreement also included an integration clause providing the separation agreement represented the entire agreement between the parties "with respect to the subject matters provided for herein." The separation agreement did not discuss or incorporate by reference the lock-up agreement between Michaels and Oak Ridge Financial.

On March 4, 2022, Michaels received his shares in Fresh Vine through an intermediary company, Computershare Trust Company, N.A. The shares, however, included a restrictive legend or "lock-up" legend reflecting the terms of the lock-up agreement, which prevented Michaels from selling the shares until after June 10, 2022. After receiving the shares and seeing the lock-up legend, Michaels contacted Computershare and provided Computershare with a copy of the waiver of the lock-up agreement that he received from Oak Ridge Financial. Computershare responded that it would not remove the lock-up legend without instructions from Fresh Vine.

Michaels then contacted Fresh Vine about the situation. At the company's request, he provided a copy of the lock-up waiver to Fresh Vine's chief financial officer (CFO) and to its attorney. On March 7, 2022, Fresh Vine's attorney initially communicated to Michaels that the company was willing to send instructions to Computershare to remove the lock-up legend and that it would prepare a letter to that effect. However, later that day, the chairman of Fresh Vine's board sent an email to the CFO questioning whether Fresh Vine should provide such an instruction:

> [Michaels] will be behind us one way or another. Here are my candid thoughts on the matter . . . . [T]he only thing that scares me is giving [Michaels] a million dollars only to break his separation agreement if he always intended to do. Broke [Michaels] or [Michaels] w/ $160k can only do so much. Seven lawyer [Michaels] can do more . . . [.] I honestly don't think he will rescind the agreement, but if it really looks like he will I'm fine with releasing his restriction if you want to . . . . I would suggest that we negotiate with [Michaels] if you decide to go down this direction. Allow him to sell enough for taxes, but agree he cannot dump the rest immediately, but over a mutually agreed upon schedule. Again I don't feel we should lift the restrictions but could be convinced. The opposite position….if we could manage his disposition it might not be a bad position as long as he kept to his [word] . . . . We will WILL [get] past him!

Fresh Vine thereafter decided not to instruct Computershare to remove the lock-up legend. As a result, the lock-up legend remained on Michaels's shares, preventing him from selling his shares until after June 10, 2022.

Michaels filed suit against Fresh Vine for, among other claims, breach of contract, arguing that Fresh Vine's inclusion of a lock-up legend and its refusal to direct Computershare to remove the lock-up legend constituted a breach of contract resulting in damages to Michaels. Fresh Vine moved for summary judgment on the breach-of-contract claim at the conclusion of discovery. Michaels responded that Fresh Vine "breached its implied contractual obligation not to interfere with or impede the release of the lock-up restrictions from Michaels's shares." The district court denied the motion, concluding that there was a genuine issue of material fact regarding whether such an implied contract was formed. Further, the district court determined that the integration clause in the separation agreement did not bar the admission of parol evidence regarding the existence of any such collateral contract.

The case proceeded to a jury trial on the issue of whether there was a valid collateral contract between Michaels and Fresh Vine and, if so, whether Fresh Vine breached the contract. The jury heard testimony from Michaels, Michaels's counsel who negotiated the separation agreement, and a Fresh Vine board member. The district court also received a number of exhibits including the lock-up agreement, the waiver of the lock-up agreement, the separation agreement, and other relevant documents.

Michaels testified to his experiences negotiating the separation agreement, efforts in obtaining the waiver of the lock-up agreement, and efforts in getting the lock-up legend removed from his shares, as described above. Michaels further testified that when he sold his shares in Fresh Vine after the lock-up legend expired, he made $433,520.43 after commissions and charges. Michaels estimated, based on Fresh Vine's stock price, that had he been able to sell his stock in March 2022, he would have made $1,019,496.68; a difference of $585,976.25.

Michaels's counsel testified to the process of negotiating Michaels's separation agreement with Fresh Vine, as recounted above. His testimony included that Fresh Vine communicated to him that Michaels would be responsible for obtaining a waiver to the lock-up agreement from Oak Ridge Financial and that "no company approval was needed" for a waiver. He also discussed the work he did to obtain a waiver of the lock-up agreement from Oak Ridge Financial.

The Fresh Vine board member testified that the board approved Michaels's separation agreement. He testified that the board received and approved Michaels's separation agreement before any issue came up with the lock-up agreement. The board member stated that he became aware of the waiver of the lock-up agreement that Michaels received from Oak Ridge Financial. He further testified that the board decided not to approve removal of the restrictions on Michaels's shares because the board was concerned about the potential impact to the company's stock price if Michaels sold his shares prior to the end of the lock-up period.

At the conclusion of Michaels's case-in-chief, Fresh Vine moved for judgment as a matter of law, arguing the existence of a collateral contract was precluded by the parol-evidence rule, the separation agreement's integration clause, and the lack of consideration. The district court orally denied Fresh Vine's motion from the bench. The district court ruled that the parol-evidence rule did not bar the existence of a collateral contract distinct from the separation agreement because the evidence suggested that the lock-up agreement was not a part of the separation agreement. The district court also rejected Fresh Vine's argument that the integration clause in the separation agreement precluded the collateral contract. Finally, the district court concluded that a jury could reasonably find that there was consideration to support the collateral contract in the form of Fresh Vine avoiding future legal disputes and "getting [Michaels] out of their hair."

The jury returned a verdict in favor of Michaels in the amount of $585,976.25. Following the verdict, Fresh Vine renewed its motion for judgment as a matter of law, making the same arguments as it did in its initial motion. The district court denied Fresh

Vine's motion, determining that it was "nearly identical" to Fresh Vine's motion at trial. In denying the post-trial motion, the district court adopted its reasoning from the previous denial.

Fresh Vine appeals.

DECISION

Fresh Vine challenges the district court's denial of its motion for judgment as a matter of law against Michaels. A district court may grant a motion for judgment as a matter of law against a party only if "there is no legally sufficient evidentiary basis for a reasonable jury to find for that party" on the issue in question. Minn. R. Civ. P. 50.01(a). Such a motion may be made at any time before submission of the case to the jury and may be renewed after trial if, as was the case here, the initial motion is denied. Minn. R. Civ. P. 50.01(b), 50.02.

"We review the district court's denial of a motion for judgment as a matter of law de novo, viewing the evidence in the light most favorable to" the nonmoving party. *Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 618 (Minn. 2022). We will "affirm the denial of a motion for judgment as a matter of law unless no reasonable theory supports the verdict," which "means that to reverse, the evidence must be so overwhelming on one side that reasonable minds cannot differ as to the proper outcome." *Id.* at 618-19 (quotation omitted).

Fresh Vine argues that the district court erred in denying its motion for judgment as a matter of law because the district court (1) considered parol evidence, (2) concluded that a reasonable jury could find that a collateral contract existed that is separate and distinct from the separation agreement, and (3) concluded that a reasonable jury could find that the collateral contract was supported by consideration.[2] We consider each argument in turn and conclude that none are availing.

I. The district court did not err when it considered parol evidence presented at trial regarding the existence of a collateral contract.

The parol-evidence rule generally prohibits the admission of extrinsic evidence of prior or contemporaneous oral agreements, or prior written agreements, that explain, vary, contradict, or alter an unambiguous integrated writing. *Alpha Real Est. Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 312 (Minn 2003). As a result, the district court cannot consider parol evidence of an oral agreement that contradicts the terms of an integrated written agreement. *Material Movers, Inc. v. Hill*, 316 N.W.2d 13, 17 (Minn. 1982). But "[i]f it appears from the circumstances surrounding the case that the parties did not intend the agreement to be a complete integration, then parol evidence can be used to prove the existence of a separate consistent oral agreement." *Alpha Real Est.*, 664 N.W.2d at 312. To do so, the separate agreement must (1) be collateral in form; (2) not

[2] Fresh Vine also argues that the district court impermissibly raised the theory of an implied collateral contract sua sponte when the district court denied Fresh Vine's motion for summary judgment. However, following the district court's decision denying summary judgment, Fresh Vine did not make this argument before the district court through a motion for reconsideration or otherwise. And, when Fresh Vine moved for judgment as a matter of law, it alleged that the district court raised this theory sua sponte but did not specifically assign error to the action. As a result, the district court did not consider this argument. Furthermore, Fresh Vine cites no legal authority to support this argument. Consequently, we consider the argument forfeited. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding appellate courts do not consider arguments not "presented and considered by the [district] court" (quotation omitted)), *State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017) (explaining that an argument is forfeited if a party does not cite to, and analyze, applicable law).

contradict any terms of the written contract, expressed or implied; and (3) be an agreement that would not normally be expected to be included in the written agreement. *Apple Valley Red-E-Mix, Inc. v. Mills-Winfield Eng'g Sales, Inc.*, 436 N.W.2d 121, 124 (Minn. App. 1989) (quoting *Taylor v. More*, 263 N.W. 537, 539 (Minn. 1935)), *rev. denied* (Minn. Apr. 26, 1989). Whether a contract is fully integrated, barring the admission of parol evidence, is a question of law. *Maday v. Grathwohl*, 805 N.W.2d 285, 287 (Minn. App. 2011).

Fresh Vine argues that the district court erred by considering parol evidence regarding the existence of a separate collateral agreement between Michaels and Fresh Vine because the separation agreement contains an unambiguous integration clause. The separation agreement, Fresh Vine argues, is therefore a fully integrated contract and parol evidence cannot be considered to prove the existence of a collateral contract.

The integration clause in the separation agreement states,

> This agreement constitutes the sole understanding of [Michaels] and [Fresh Vine] *with respect to the subject matters provided for herein*. No other agreements, covenants, representations or warranties, expressed or implied, oral or written, have been made by any party hereto to any other party concerning *the subject matters hereof*. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties concerning *the subject matters hereof* are merged herein. This agreement may not be modified, altered, or changed in any way except by written agreement signed by [Michaels] and [Fresh Vine's] duly authorized representative.

(Emphasis added.)

The district court determined that the integration clause did not bar consideration of parol evidence to prove the existence of a collateral contract regarding waiver of the lock-up agreement because the integration clause applies only to the subject matter of the separation agreement and the separation agreement does "not mention the lock-up agreement." A plain reading of the integration clause supports the district court's determination. The integration clause states that this is a complete agreement "with respect to the subject matters provided for herein." And, as the district court noted, the lock-up agreement is not one of the "subject matters provided for herein" because the separation agreement does not mention the lock-up agreement between Michaels and Oak Ridge Financial. Consequently, a collateral contract regarding the lock-up agreement under which Fresh Vine agreed not to interfere with a waiver from Oak Ridge Financial would not contradict the unambiguous terms of the separation agreement and the district court could therefore consider parol evidence to prove the existence of such a collateral agreement. *See Material Movers*, 316 N.W.2d at 17 (explaining that the district court cannot consider parol evidence that contradicts the terms of an integrated written agreement).

In the alternative, Fresh Vine argues that if the separation agreement's integration clause is ambiguous, the evidence at trial shows that the parties intended the separation agreement to be fully integrated as to issues related to the lock-up agreement. Fresh Vine asserts that the fact that the lock-up agreement repeatedly came up during negotiations about the separation agreement and that the separation agreement and the lock-up agreement both deal with "the Shares" demonstrates that the parties intended the separation agreement to cover issues relating to the lock-up agreement. But viewing the facts in the light most favorable to Michaels, even if the integration clause were ambiguous, the parties' intention to treat the separation agreement and lock-up agreement as separate matters is demonstrated by the parties' willingness to move forward with the separation agreement without a waiver to the lock-up agreement as well as by the fact that Fresh Vine was not a party to the lock-up agreement. This conclusion is supported by Fresh Vine's position during negotiation of the separation agreement that it had "no control over" the lock-up agreement and that it would not be involved in Michaels's efforts to obtain a waiver of the lock-up agreement. As a result, the evidence supports the district court's conclusion that the parties' integration clause did not extend to the lock-up agreement or related issues. Therefore, the district court did not err in considering parol evidence regarding the existence of a collateral contract under which Fresh Vine agreed to not interfere with or impede the release of the lock-up restrictions on Michaels's shares.

II. The district court did not err when it concluded that the evidence supported the existence of a collateral contract.

Fresh Vine next challenges the district courts determination that the evidence supported the existence of a collateral contract—one that is distinct from the separation agreement. An enforceable collateral contract exists when the parties to a contract agree to a separate contract that (1) is collateral in form, (2) does not contradict express or implied provisions of the principal contract, and (3) is "one that [the] parties would not ordinarily be expected to embody in the writing or . . . must not be so clearly connected with the principal transaction as to be part and parcel of it." *Apple Valley Red-E-Mix*, 436 N.W.2d at 124 (quotation omitted). A collateral contract is "one requiring the performance of a collateral act having no necessary relation to the main subject of the agreement." *Bruggeman v. Jerry's Enters., Inc.*, 583 N.W.2d 299, 302 (Minn. App. 1998) (quoting *Black's Law Dictionary* 294 (6th ed. 1994)), *aff'd* 591 N.W.2d 705 (Minn. 1999).

Fresh Vine argues that the third requirement for a collateral-contract test is not met because the collateral contract found by the jury is too closely related to the separation agreement. *See Apple Valley Red-E-Mix*, 436 N.W.2d at 124. We disagree.

Viewing the evidence in the light most favorable to Michaels, as we must, the evidence supports that the parties entered into a collateral contract regarding the lock-up agreement that is not so clearly connected to the separation agreement as to be part and parcel of it. We reach this conclusion for the following reasons. First, the evidence shows that the parties agreed to move forward with the separation agreement without regard to whether Michaels had obtained a waiver to the lock-up agreement, suggesting that obtaining a waiver to the lock-up agreement had "no necessary relation to the main subject" of the separation agreement. *Bruggeman*, 583 N.W.2d at 302 (quotation omitted). Second, the separation agreement does not mention the lock-up agreement. Third, Fresh Vine was not a party to the lock-up agreement. And both Fresh Vine and Michaels agreed that the lock-up agreement could be waived only by Oak Ridge Financial. Fourth, Fresh Vine told Michaels on more than one occasion that it could not be involved in Oak Ridge Financial's decision to waive the lock-up agreement, demonstrating that Fresh Vine did not see a provision regarding the lock-up agreement as appropriate or necessary to the separation agreement. Together, this evidence supports the conclusion that the collateral agreement found by the jury regarding waiver of the lock-up agreement is not one that would ordinarily be included in the separation agreement between Fresh Vine and Michaels.

In sum, the district court did not err when it concluded that the evidence supports the existence of a collateral contract in which Fresh Vine agreed not to interfere with Michaels removing the restrictions on his shares put in place by the lock-up agreement.

III. The district court did not err when it determined that the jury could reasonably find there was consideration to support the existence of an implied contract.

Finally, Fresh Vine argues that the district court erred in determining that a jury could reasonably find that there was consideration to support the existence of an implied collateral contract. Fresh Vine argues (1) there is no consideration, separate from the separation agreement, to support the existence of an implied collateral contract and, in the alternative, (2) any benefit it may have received was not bargained for. Michaels responds that the evidence, when viewed in the light most favorable to Michaels, supports the district court's conclusion that Fresh Vine received the benefit of avoiding future legal claims and concluding its relationship with Michaels.

All contracts require consideration to be binding. *Cityscapes Dev., LLC v. Scheffler*, 866 N.W.2d 66, 71 (Minn. App. 2015). "Consideration is something of value given in return for a performance or promise of performance that is bargained for . . . ." *Deli v. Hasselmo*, 542 N.W.2d 649, 656 (Minn. App. 1996), *rev. denied* (Minn. Apr. 16, 1996). We do not examine the sufficiency of consideration "as long as something of value has passed between the parties." *Cityscapes* 866 N.W.2d at 71 (quotation omitted). An implied contract has the same essential terms as an express contract, but "it is not expected that the elements of a[n implied] contract will be as vividly portrayed by the evidence as [that of] an express contract." *Gryc v. Lewis*, 410 N.W.2d 888, 891 (Minn. App. 1987) (quoting *High v. Supreme Lodge of World, Loyal Ord. of Moose*, 298 N.W. 723, 725 (Minn. 1941)). However, "the simple fact of benefit without more does not impose contractual liability." *Id.* at 891-92 (emphasis omitted) (quotation omitted). Whether an implied contract exists, including its terms and construction, "is a question for the trier of fact." *Stubbs v. N. Mem'l Med. Ctr.*, 448 N.W.2d 78, 82 (Minn. App. 1989), *rev. denied* (Minn. Jan. 12, 1990).

The district court determined that a jury could reasonably find that there was consideration to support the existence of an implied collateral contract between Fresh Vine and Michaels wherein Fresh Vine agreed not to interfere with Michaels obtaining a wavier to the lock-up agreement. To support this conclusion, the district court highlighted the email between the chairman of Fresh Vine's board to the CFO discussing the potential benefits of not interfering with Michaels obtaining a waiver to the lock-up agreement. Based on this email, the district court determined that there was evidence to support that Fresh Vine would receive the benefit of "avoiding future legal disputes" and "being done with [Michaels]" if it did not interfere with Michaels obtaining a waiver to the lock-up agreement.[3] Thus, the district court concluded there was evidence to support the presence of consideration for the implied collateral contract between Fresh Vine and Michaels.

---

[3] Fresh Vine argues that the email recognizing these benefits is irrelevant because it was made after the implied collateral contract was formed, but a reasonable juror could conclude that the email is indicative of Fresh Vine's thinking prior to the formation of the implied collateral contract.

Fresh Vine argues that the district court erred in concluding that there was consideration for the collateral contract because the consideration identified by the district court is not separate from the consideration for the separation agreement. *See Deli*, 542 N.W.2d at 656 (explaining that "[a] promise to do something that one is already legally obligated to do does not constitute consideration"). Fresh Vine notes that the separation agreement waives all legal claims and ends their relationship with Michaels, such that district court erred in determining that those benefits could act as consideration for a collateral contract. This argument is unconvincing.

While the separation agreement waived all legal claims Michaels may have had, it also included a 15-day recission period during which Michaels could rescind certain aspects of the separation agreement. This recission period had not lapsed when Michaels requested that Fresh Vine remove the lock-up legend. Avoiding the rescission of the separation agreement was identified as a benefit to cooperating with the waiver of the lock-up agreement by the chairman of Fresh Vine's board. Thus, a jury could reasonably conclude that Fresh Vine acknowledged that by not interfering with the lock-up agreement they would receive the benefit of avoiding the recission of the contract and, consequently, future legal disputes. Furthermore, while the separation agreement may have ended Michaels's employment relationship with Fresh Vine, it did not end their relationship altogether as Michaels still owned 251,851 shares of Fresh Vine stock. The removal of the lock-up agreement would accelerate Michaels's ability to sell his shares and conclude the relationship, as desired by Fresh Vine. As a result, the district court did not err when it concluded there was evidence of consideration for a collateral contract, separate from the separation agreement.

In the alternative, Fresh Vine argues that the district court erred in determining that there was adequate consideration because, according to Fresh Vine, there is no evidence that any benefit received by Fresh Vine was the result of a bargained for promise between the parties sufficient to support an implied contract. Our decision in *Gryc* is instructive in addressing this argument. 410 N.W.2d 888. In *Gryc*, the district court found that an implied contract existed that required appellants to compensate respondent for land owned by respondent that would be lost as the result of construction of a cul-de-sac that benefitted appellants' property. *Id.* at 890. Appellants contended that, although they benefitted from the construction of the cul-de-sac, the evidence did not support that an implied contract was formed. *Id.* at 891. We agreed with appellants that a benefit alone was not sufficient to impose a contractual obligation but concluded that there was sufficient evidence, beyond the benefit to appellants, to demonstrate the existence of an implied contract. *Id.* at 892. This evidence included that appellants were present for a discussion of the plan to compensate respondent and did not object to the plan. *Id.* As a result, we held that an implied contract existed, despite the absence of appellants' express assent. *Id.* In reaching this conclusion, we explained that "[w]hen an implied contract is relied upon as the basis for legal relief and thus deduced from the circumstances, relationship and conduct of the parties, it is not expected that the elements of a contract will be as vividly portrayed by the evidence as by evidence of an express contract." *Id.* at 891 (quotation omitted).

Like in *Gryc*, the record here does not reflect express consent to the collateral contract at issue. But viewed in the light most favorable to Michaels, there is sufficient evidence for a reasonable jury to find an implied contract regarding the release of the lock-up restrictions from Michaels's shares if Michaels could obtain a waiver from Oak Ridge Financial. The record reflects that Fresh Vine knew that Michaels sought to be relieved from the lock-up agreement and did not object. Fresh Vine communicated to Michaels that it had no control over his lock-up agreement with Oak Ridge Financial. And Fresh Vine told Michaels that if Michaels was "able to obtain a waiver of the lock-up agreement, [Fresh Vine was] fine with vesting [the RSUs] as soon as possible." When Michaels provided the waiver of the lock-up agreement, Fresh Vine initially communicated it would remove the lock-up legend from Michaels's shares, suggesting it recognized that it had agreed not to interfere with the release of the lock-up restrictions. Thus, like the appellants in *Gryc*, the record supports that there was implied assent by the appellant here—Fresh Vine. *See id.* at 891-92. And based on the benefits discussed above that Fresh Vine would have received from not interfering, a jury could reasonably deduce that this assent evinced an implied contract. *See id.* at 891 (explaining that an implied contract is "deduced from the circumstances, relationship and conduct of the parties"). Therefore, the district court did not err in determining that the evidence reasonably supported the existence of consideration to support an implied collateral contract between Michaels and Fresh Vine.

In sum, we conclude that the district court did not err in considering parol evidence or by determine that any contract regarding the lock-up agreement was collateral to the separation agreement. We further conclude that the jury could reasonably have found that there was consideration to support the existence of an implied collateral contract between Michaels and Fresh Vine. Therefore, the district court did not err in denying Fresh Vine's motion for judgment as a matter of law.

Affirmed.