

*This opinion is nonprecedential except as provided by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**

A25-0804

A25-1555

Maple Grove NBC, LLC,
Appellant,

vs.

Cake Gals Inc.,
Respondent.

Filed March 9, 2026

Affirmed

Schmidt, Judge

Hennepin County District Court
File No. 27-CV-24-11367

Michael L. Gust, ABST Law, P.C., Fargo, North Dakota (for appellant)

Steven J. Weintraut, Siegel Brill, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Larson, Presiding Judge; Schmidt, Judge; and Florey,
Judge.*

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

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant Maple Grove NBC, LLC challenges the district court's orders granting respondent Cake Gals Inc. summary judgment and attorney fees. We affirm.

FACTS

Maple Grove and Cake Gals executed an Asset Purchase Agreement (the purchase agreement). The purchase agreement includes the following terms:

Seller desires to sell certain tangible assets that are used in operating the Bakery as set forth in **Exhibit "A"** hereto (the "Assets") to Buyer[.]

....

2. Sale of Assets. Seller shall sell, assign and transfer to Buyer, and Buyer shall purchase all of Seller's right, title and interest, legal and beneficial, in and to all of the Assets, including, but not limited to, all of the goodwill, equipment, furniture, and fixtures at the Bakery, including those Assets listed in Exhibit A. Seller shall convey good and marketable title to the Assets to Buyer. Notwithstanding the foregoing, the following items shall be excluded and not considered Assets: (a) cash on hand and on account as of the close of business on the day preceding the Closing Date (defined below); and (b) any and all personal computers and any of the Sellers personal items located at the Bakery.

....

3. Assumption of Liabilities and Delegation of Duties Under Leases/Utilities.

....

c. No Assumption of Liabilities[.] . . . Buyer shall not be liable for: 1) any federal, state, or local taxes due and owing from Seller to any governmental agency[.]

....

6. Representations, Warranties and Covenants of Seller.

....

f. Conduct of Business. Since June 10, 2022, and until [July 25, 2022], Seller has not and will not have:

- i) Incurred liabilities or obligations (absolute and contingent), except for liabilities and obligations disclosed herein, except for such liabilities and obligations as have arisen in the ordinary course of business of Seller[.]

....

7. Representations, Warranties and Covenants of Buyer.

....

e. Access to Books and Records. Buyer has been provided access to the books and records of the Seller for the business, has been furnished such information as has been required concerning the Seller and the business, and is satisfied with regard to the foregoing information.

Exhibit A sets forth a Schedule of Assets:

The sellers will transfer the bakery and all its assets in its current functioning state to include:

- a. All fixtures, furniture & equipment
- b. All baked items (i.e. cakes in chiller and refrigerator)
- c. All cake decorations, paper products and labels
- d. All dry & fresh ingredients at typical operating levels (par levels of all ingredients and 2 weeks' worth of materials, boxes, cake boards etc.) All kitchen & store supplies
- e. All retail items for resale
- f. All employment records and personnel files maintained by Seller for the last three (3) years in the ordinary course of business.

- g. All business records and files customarily kept in the operation of Seller's business, including, but not limited to, any and all client lists.
- h. To the extent that Seller maintains Facebook, Instagram, or other social media sites, those websites/pages/accounts shall be transferred to Buyer. At the date of Closing, Seller shall provide all logins and passwords for any and all social media accounts.

After closing, Maple Grove requested that Cake Gals provide past financial records, inquired about Employee Retention Credit (ERC)¹ funds, and requested Cake Gals' federal tax-identification number. Cake Gals provided the requested information.

Maple Grove then applied for ERC funds by filing adjusted 2020 and 2021 federal tax returns using Cake Gals' name and tax-identification number. Based upon the amended tax returns, the IRS sent Cake Gals ERC checks totaling \$276,000. Maple Grove demanded that Cake Gals transfer the funds to Maple Grove. Cake Gals refused.

Maple Grove also learned that Cake Gals had \$7,597.98 of outstanding customer store credit.² None of the store credits arose during the time that Cake Gals had committed to Maple Grove that it would not incur any non-ordinary business debt.

Maple Grove sued Cake Gals, alleging: (1) breach of contract for failing to turn over the ERC funds and failing to disclose the store credits; and (2) conversion for failing to give Maple Grove the ERC funds. Both parties moved for summary judgment. The district court granted Cake Gals' motion and denied Maple Grove's motion.

¹ ERCs are pandemic-era tax credits for employers that continued to pay their employees during the COVID-19 shutdowns in 2020 and 2021.

² Store credits arise for various reasons, including "missing items, hair found in food items, receiving the wrong order, incorrect orders, and customer unhappiness with an order."

Cake Gals moved for attorney fees under a term in the purchase agreement that provided that in the event of litigation, the prevailing party is entitled to fees and costs from the non-prevailing party. The district court granted the motion and awarded fees.

Maple Grove appealed.

DECISION

I. The district court properly granted summary judgment to Cake Gals.

We review Maple Grove’s challenges to the summary judgment rulings de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). In reviewing an order granting summary judgment, we determine whether the court properly applied the law and whether genuine issues of material fact exist that preclude summary judgment. *Id.* We must view the evidence in the light most favorable to the nonmoving party. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 345 (Minn. 2003).

Maple Grove argues that the district court erred by granting summary judgment on its breach of contract claims and its conversion claims. We address each argument in turn.

A. The district court properly granted summary judgment on Maple Grove’s breach-of-contract claims.

Maple Grove first challenges the district court’s breach-of-contract ruling. We review challenges to the construction of a contract de novo. *Id.* Our “primary goal of contract interpretation is to determine and enforce the intent of the parties.” *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323 (Minn. 2003).

1. ERC Funds

Maple Grove argues that the district court erred in granting summary judgment because Cake Gals breached the purchase agreement by failing to give the ERC funds to Maple Grove. But the plain language of the purchase agreement states that Cake Gals sought “to sell certain tangible assets.” The right to apply for ERC funds is not a tangible asset that the parties contemplated in the purchase agreement.

In addition, the purchase agreement contemplated an intent that Cake Gals be responsible for tax-related obligations before the closing date and that Maple Grove would assume responsibility for tax obligations after closing. The right to seek ERC funds undisputedly occurred before closing, which demonstrates that the ERC rights belonged to Cake Gals. The district court properly ruled that Cake Gals was entitled to the ERC funds.

2. Store Credits

Maple Grove also argues that Cake Gals breached the purchase agreement by failing to disclose the cash equivalent of the outstanding store credits. But the undisputed facts showed that the store credits reflected “regular business practice[s]” and were incurred and recorded before closing. Maple Grove does not contest that it had the opportunity to review Cake Gals’ financial ledgers—which included store-credit information—before it executed the contract. Store credits were reviewable and knowable before the date of purchase. The district court properly granted Cake Gals’ motion for summary judgment as to Maple Grove’s breach-of-contract claim related to the store credits.

B. The district court properly granted summary judgment on Maple Grove's ERC conversion claim.

Maple Grove challenges the district court's summary judgment ruling on its ERC conversion claim. A common-law-conversion claim has two elements: "(1) plaintiff holds a property interest; and (2) defendant deprives plaintiff of that interest." *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 896 N.W.2d 115, 125 (Minn. App. 2017) (quotation omitted), *aff'd*, 913 N.W.2d 687 (Minn. 2018). "Wrongfully refusing to deliver property on demand by the owner constitutes conversion." *Id.* (quotation omitted).

Maple Grove failed to demonstrate that it has a property interest in the ERC funds, because, as analyzed above, the right to apply for ERC funds was not a tangible asset that was sold through the purchase agreement. Because Maple Grove cannot establish the first element of conversion, Maple Grove's claim fails. The district court properly granted Cake Gals' motion for summary judgment on Maple Grove's conversion claim.

II. The court did not abuse its discretion in awarding attorney fees to Cake Gals.

Maple Grove argues that the district court abused its discretion in awarding attorney fees to Cake Gals. We review a district court's decision granting fees for an abuse of discretion, *Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 331 (Minn. App. 2007), *rev. denied* (Minn. Aug. 21, 2007), and its finding on the amount awarded for clear error. *Amerman v. Lakeland Dev. Corp.*, 203 N.W.2d 400, 400-01 (Minn. 1973).

On appeal, Maple Grove challenges the district court's decision to discount the fees by only 11.6% instead of the 30% reduction that Maple Grove requested due to Cake Gals use of block billing. We are not persuaded.

Maple Grove cites no authority in support of its argument that a district court abuses its discretion by awarding fees calculated on block-billing time entries.³ Our persuasive authority provides that a district court may, within its discretion, base an award of attorney fees on work documented in block-billing totals with descriptions for the work performed. *See, e.g., McGrath v. MICO, Inc.*, No. A11-1087, 2012 WL 6097116, at *15 (Minn. App. Dec. 10, 2012) (holding that the district court did not abuse its discretion by awarding fees based on block-billing time entries and descriptions), *rev. denied* (Feb. 19, 2013); *see also Lashinski v. Lashinski*, No. C8-94-1536, 1994 WL 664940, at *3 (Minn. App. Nov. 29, 1994) (“In its calculation, the court expressly addressed appellant’s concerns about excessive rates and block-billing by reducing the fees by fifteen percent. On this record, we find no abuse of discretion.” (citation omitted)).⁴ We discern no abuse of discretion in the district court’s award of fees or any clear error in the amount awarded.

Affirmed.

³ Instead, Maple Grove cites general caselaw about awarding attorney fees and references nonbinding cases from Ohio and Maryland.

⁴ We cite these nonprecedential opinions for their persuasive value. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).