STATE OF MINNESOTA
IN COURT OF APPEALS
A08-785

Douglas Moga,
Appellant,

vs.

Shorewater Advisors, LLC, et al.,
Respondents.

Filed April 14, 2009
Affirmed in part, reversed in part, and remanded
Ross, Judge

Hennepin County District Court
File No. 27-CV-07-6787

Craig D. Greenberg, Bruce N. Crawford, Huffman, Usem, Saboe, Crawford & Greenberg, P.A., 5101 Olson Memorial Highway, Suite 1000, Golden Valley, MN 55422 (for appellant)

Stephen F. Simon, Thomas B. Hatch, Robins, Kaplan, Miller & Ciresi, 800 LaSalle Avenue South, Suite 2800, Minneapolis, MN 55402-2015 (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Ross, Judge; and Johnson, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

When Douglas Moga's consulting relationship with Shorewater Advisors, L.L.C. ended in late 2006, he sued the company and the two men primarily responsible for the company's management, brothers Charles and Eugene Marais. Moga asserted twelve

claims, all relating to his employment and the compensation that he expected. The district court granted summary judgment against him, determining that no contract existed and dismissing all twelve claims. Because disputed material facts would support a finding that an enforceable contract exists and genuine issues remain about the terms of the contract and other claims asserted, we affirm in part, reverse in part, and remand.

FACTS

Shorewater Advisors, L.L.C. manages investment funds. Shorewater wanted to hire Moga, and its members began negotiating the terms of his consultancy in March 2006. On March 29, Shorewater principal Charles Marais electronically mailed Moga a letter representing an employment offer:

> Dear Doug
>
> Eugene and I would like to offer you the following opportunity with Shorewater Advisors, LLC
>
> Your role within the company will be as we discussed over the past few days, and will include marketing and the opportunity to develop our business by introducing new products, or expanding existing products when the opportunities arise.
>
> Until the end of 2006, we will guarantee you $12,500 per month. There may be additional distributions as follows:
>
> 1. Eugene and Charles will always own 10% of the profits—this will not be diluted.
>
> 2. Excluding this share, Eugene, Charles and Doug [Moga] will earn equal distributions.
>
> . . . .

> 5. You will participate in the SEP-IRA plan (details to be finalized with the accountants).
>
> If you leave the company, we will continue to compensate you for your contribution at an agreed rate, for an agreed time after you leave. This 'buy-out' formula will only come into effect after an agreed period of employment, and subject to the successful increasing of assets to an agreed level. This may sound complicated, but I am confident we can agree a [sic] simple, fair and effective formula.
>
> In order to avoid any confusion at a later date, I will construct a simple spreadsheet with proforma revenues and costs, with details on how distributions of profits will work.
>
> If there are any points that need clarification, please call me. If this is acceptable in principle, I will ask our attorney, Jay Simpson, to draw up a more formal document.
>
> We hope you will accept this offer, and look forward to working together!

That same day, Charles Marais sent an e-mail to his brother Eugene, to Shorewater's attorney, Jay Simpson, to Moga, and to Moga's attorney, expressly referring to an agreement on specific points:

> Hi Jay
>
> As I mentioned over the phone, we have been talking to Doug Moga, and have reached an agreement in principle where Doug will work as a consultant to Shorewater Advisors LLC. We would like to get a simple agreement in place, and get a document drawn up that will enable to [sic] process to start as soon as April 10th.
>
> Here are some of the points we agreed.
>
> 1. Both parties intend for this to be the start of a long-term business relationship.

> 2. On the first day of 'employment' (I don't know if employment is the correct word to use with a consultant), Doug will be paid $12,500.
>
> 3. For the first year of consulting, Doug will be paid $12,500 per month (pro rated for part of a month) on the last business day of each month.
>
> 4. Approximately 20 days after the end of each quarter, Doug will be paid 24% of the net profits of Shorewater Advisors LLC for the preceding quarter. If there is a loss, no profits will be distributed, and the loss will carry forward to the next quarter. All overheads and salaries paid during the quarter, as well as any bonuses paid to staff will be included in the calculations of net profit.
>
> 5. If Doug ceases his consulting relationship with Shorewater Advisors LLC, then he will continue to be paid a portion of fees generated by assets raised during his tenure. These payments will be made as long as the said assets remain in the fund, but for a maximum period of three years. The rate at which Doug will be paid (assuming no discounting of fees) will be 10% of the management fees paid by the investor to Shorewater Advisors LLC plus 20% of the performance fees.
>
> Jay, I know you will be away from [sic] tomorrow, but if we are able to get a draft agreement, that would be great. Doug's attorney, Ross Pazzol has been copied on this e-mail, and we can hopefully get something acceptable shortly.
>
> I have drafted this in a bit of a hurry, so if any of the recipients notes an obvious error, please reply ASAP.

Still on March 29, Eugene Marais sent a draft Agreement for Services to the same individuals. He noted that it was "incomplete in a number of respects," and he suggested that Moga and his attorney "do some work" on it while Shorewater's attorney was out of town.

The draft agreement incorporated an exhibit purporting to set forth Moga's compensation. The exhibit represents one of the respects in which the agreement was incomplete. It described a monthly salary of $12,500 and a $12,500 payment on the first day of employment contingent on Moga agreeing to a noncompete provision, and it provided for a quarterly commission based on Shorewater's net profits. The exhibit expressly indicated that "Net Profit" for purposes of the commission calculation, and other terms and calculations pertaining to Moga's compensation, remained to be defined.

The next day, Charles Marais sent two e-mails to Moga. In the first e-mail, Marais wrote that he continued to work on the incomplete agreement, particularly on the commission formula. Marais attached a spreadsheet to the second e-mail. He wrote concerning the spreadsheet, "I think this represents what we spoke about. You can adjust the revenue and costs and the discretionary bonuses, and I think you will come up with the correct answers." The spreadsheet appeared as follows:

	A	B	C	D
1	Hypothetical revenues and expenses			
2				
3	Revenue	$1,000,000		
4	Costs	$500,000		Including Craig's salary, Beth's salary, Lisa's salary and every other expense that the LLC pays
5				Excluding any salary or other remuneration money paid to Eugene, Charles, Doug and Johan
6				Excluding any bonus paid to Craig, Beth and Lisa
7				
8				
9	Discretionary bonuses		$40,000	Total amounts paid to Craig, Beth and Lisa
10				
11				
12				
13				
14			Earnings	
15	Johan	18%	$82,800	
16	Doug	24%	$150,000	
17	Eugene	29%	$113,600	
18	Charles	29%	$113,600	

Cell C16 contained the formula "=MAX(B16*(B3-B4-C9),150000)." According to Shorewater, the formula causes the cell to display either 24% of profits, calculated as revenue minus costs, or $150,000, *whichever is greater*. Moga does not dispute Shorewater's characterization of the formula, though he disputes its significance. After Moga received the spreadsheet, he replied to Charles Marais, "[T]he spread sheet looks fine."

The morning of March 31, one of Shorewater's investors sought to redeem a significant portion of Shorewater's assets. The redemption threatened to derail the negotiations between Moga and Shorewater. Charles Marais called Moga in the morning, and Moga asked whether they still had an agreement. Marais demurred, but he told Moga he would have an answer later. The answer came that evening; Charles Marais told Moga that Shorewater still wanted to hire him and that he should start on April 10.

Moga started work on April 10. Shorewater gave Moga a $12,500 check dated April 10, the amount that corresponds to the signing bonus referred to in the parties' communications and the draft Agreement for Services. But negotiations over the terms of the arrangement did not end; they continued throughout Moga's 8-month employment. The parties' positions drifted farther apart as they prepared successive drafts of the Agreement for Services. Moga continued work until early December 2006, when Shorewater finally discharged him.

Moga sued. He brought claims for breach of contract, fraudulent inducement of contract, fraudulent misrepresentation, equitable estoppel, promissory estoppel, unjust enrichment, quantum meruit, quasi contract, declaratory judgment, failure to make timely

payment of compensation, breach of fiduciary duty, and breach of covenant of good faith and fair dealing. The district court concluded that because the parties "intended [but failed to enter into] a final written agreement to govern their relationship," no employment contract existed between them. The district court entered summary judgment for Shorewater and the Marais brothers on all twelve of Moga's claims, and Shorewater voluntarily dismissed its counterclaim without prejudice. The district court also denied Moga's request to amend his complaint. This appeal follows.

D E C I S I O N

Moga challenges the district court's grant of summary judgment in favor of Shorewater and the Marais brothers. This court reviews a district court's entry of summary judgment for whether genuine issues of material fact remain, and for whether the district court erred in its application of the law. *Gresser v. Hotzler*, 604 N.W.2d 379, 382 (Minn. App. 2000). We review the evidence in the light most favorable to the party resisting summary judgment. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

We first address Moga's claims that rely on the existence of a contract, then the remaining claims in the complaint, and finally, the district court's discretionary denial of Moga's request for permission to amend his complaint.

I

Moga argues that the district court erred when it concluded that no bilateral contract existed, and he further asserts that the district court failed to consider his alternative theory that a unilateral contract arose between the parties. Moga needed to establish that a contract existed to prevail on his claim for breach of contract and his

contract-related claims for fraudulent inducement of contract, declaratory judgment, and breach of covenant of good faith and fair dealing. *See, e.g.*, *Cargill Inc. v. Jorgenson Farms*, 719 N.W.2d 226, 232 (Minn. App. 2006) (providing that "[t]o prevail on a breach of contract claim, a plaintiff must show that a contract has been formed"). The existence of a contract is an issue of fact. *Id.* The district court may not weigh evidence or resolve factual disputes on summary judgment. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997). But when the entire record cannot permit the factfinder to rationally find in favor of the nonmoving party, summary judgment is appropriate. *Gresser*, 604 N.W.2d at 382. Because Moga resists summary judgment and asserts the existence of a contract, the district court can be affirmed only if the record allows no rational conclusion that a contract existed.

The formation of a bilateral contract requires a "specific and definite offer, [an] acceptance, and consideration." *Thomas B. Olson & Assoc., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008). Whether a contract arose depends on an objective evaluation of the parties' actions and words, not on the parties' subjective intent. *Id.* Not only are the words and actions of the parties relevant, but "the surrounding facts and circumstances in the context of the entire transaction, including the purpose, subject matter, and nature of it" may also be considered. *Morrisette v. Harrison Intl. Corp.*, 486 N.W.2d 424, 427 (Minn. 1992) (quotation omitted). We first decide whether the record requires a holding that no contract existed.

Lack of Formal Agreement

The district court concluded that no contract existed because "both parties intended a final written agreement to govern their relationship, and no such agreement was completed." Contracts not governed by the statute of frauds need not take the form of a formal, signed document. *Riley Bros. Constr. v. Shuck*, 704 N.W.2d 197, 203 (Minn. App. 2005). But parties may by agreement require that a written document is a precondition to an enforceable contract. *Id.* When both parties have "clearly indicated an intent not to be bound" until they execute a formal document, no contract exists. *Hansen v. Phillips Beverage Co.*, 487 N.W.2d 925, 927 (Minn. App. 1992). And if even one party has "intended and expressed the intention from the start not to be bound at all until the execution of the formal contract," there is no contract until the condition is fulfilled. *Massee v. Gibbs*, 169 Minn. 100, 105, 210 N.W. 872, 874 (1926).

An unwritten contract may exist if neither party has clearly expressed the intent to be bound only by a formalized written agreement, even if both parties intended that the agreement eventually would be reduced to writing. "[W]here the parties have assented to all the essential terms of the contract and proceed to perform in reliance upon it, the mere reference to a future contract in writing will not negat[e] the existence of the present, binding contract." *Asbestos Prods., Inc. v. Healy Mech. Contractors, Inc.*, 306 Minn. 74, 78, 235 N.W.2d 807, 809 (1975); *see Massee*, 169 Minn. at 105, 210 N.W.2d at 874 ("'[T]he expressed contemplation of a more formal document did not prevent the [parties' correspondence] from having the effect that otherwise [it] would have had.'" (quoting *Am. Smelting & Refining Co. v. United States*, 259 U.S. 75, 78, 42 S. Ct. 420,

421 (1922))). Parties may be contractually bound even when they contemplate and express a desire for a future memorialization of their agreement, unless one of the parties objectively manifests an intention that an executed document is a condition precedent to the contract. Restatement (Second) of Contracts §§ 21, 27. Mere statements that such a document should or will be created do not satisfy the requirement for an objectively expressed intent to create a precondition. *See* Restatement (Second) of Contracts § 17 cmt. c ("[A] mental reservation of a party to a bargain does not impair the obligation he purports to undertake.").

Nothing in the record establishes that either Moga or the Marais brothers expressed the intention not to be bound until a formal document was prepared and executed. Charles Marais's March 29 e-mail to Moga does not establish this intent. Marais wrote, "If this [agreement] is acceptable in principle, I will ask our attorney, Jay Simpson, to draw up a more formal document." This statement contemplates a future document, but it does not objectively convey that execution of the document is a precondition to a binding agreement.

Charles Marais's second e-mail of March 29, which he sent to Moga and the parties' attorneys, also fails to establish the intent not to be bound. It announced, "We would like to get a simple agreement in place, and get a document drawn up that will enable to [sic] process to start as soon as April 10th." This statement is ambiguous about the necessary intent. Its structure clearly separates the ideas of coming to a "simple agreement" and drawing up a document. It indicates that a document is a precondition to some "process" starting the same day Moga started working for Shorewater. Because the

statement is ambiguous, it does not objectively convey the necessary intent not to be bound before execution of a formal document.

Later that same day, the parties began editing the draft Agreement for Services, a process that continued beyond Moga's last day of work with Shorewater. But between March 30, when Moga told Charles Marais that "the spread sheet looks fine," and April 10, when Moga began work, no discussions took place regarding the substance of the agreement. The record does not support the district court's legal conclusion that a formal written agreement was a precondition to a contract between Moga and Shorewater.

Remaining Barriers to Contract Formation

Because the lack of a formal agreement does not bar contract formation, we consider Shorewater's argument that other barriers prevented the formation of a bilateral contract. Shorewater contends that the parties never reached a meeting of the minds about the material terms of the agreement and that they never completed their negotiations.

Undisputed facts concerning whether the parties agreed to material terms prevent summary judgment against Moga. "When the parties know that an essential term of their intended transaction has not yet been agreed upon, there is no contract." *Malevich v. Hakola*, 278 N.W.2d 541, 544 (Minn. 1979). This rule does not require, however, that the parties agree on *every* term. The law requires only that the *fundamental* terms be reasonably ascertainable. *Anderson v. Sommer*, 381 N.W.2d 22, 24 (Minn. App. 1986) (citing *Hill v. Okay Constr. Co.*, 312 Minn. 324, 332, 252 N.W.2d 107, 114 (1977)). Minnesota courts determine the existence of a contract using strictly objective measures.

Hill, 312 Minn. at 332, 252 N.W.2d at 114; *Holt v. Swenson*, 252 Minn. 510, 516, 90 N.W.2d 724, 728–29 (1958). The supreme court highlights the overlap between proof of contract formation and evidence of terms rendering an existing contract enforceable: "[W]here substantial and necessary terms are specifically left open for future negotiation, the purported contract is fatally defective. On the other hand, the law does not favor the destruction of contracts because of indefiniteness, and if the terms can be reasonably ascertained . . . , the contract will be enforced." *King v. Dalton Motors, Inc.*, 260 Minn. 124, 126, 109 N.W.2d 51, 52–53 (1961). We look to the parties' words and actions, along with the facts and circumstances surrounding the transaction, to determine whether we can ascertain with reasonable certainty the essential terms of the contract.

Essential terms of an employment contract include compensation and the start and duration of employment. *See Morrison v. Arons*, 65 Minn. 321, 323–24, 68 N.W 33, 34 (1896) (describing the essential terms of an employment contract, including terms of duration and compensation); *see also Durso v. Baisch*, 37 A.D.3d 646, 647 (N.Y. App. Div. 2007) (stating that the essential elements of an employment contract are "the identity of the parties, the terms of employment, which include the commencement date, the duration of the contract and the salary" (quotation omitted)). Because the essential terms of Moga's employment contract can be reasonably ascertained, Shorewater's argument that the parties did not agree on the material terms fails.

According to Moga, Charles Marais offered employment to Moga, and Moga accepted the offer, during a phone conversation on March 31, 2006. Again according to Moga, during that phone call, Charles Marais told Moga that Shorewater still wanted to

hire Moga according to the terms they had already agreed to and that Moga should start work on April 10. The terms they had agreed to are those described in the e-mails between the parties, including the spreadsheet that described Moga's compensation. Charles Marais's March 29 e-mail established the term of employment to be "until the end of 2006," for a minimum salary of $12,500 per month. The testimony of both parties establishes their mutual understanding. In his deposition, Charles Marais stated that "Moga and I agreed on the amount of money that he would be paid each month and on that basis he came to work" and that "we had an agreement on the content of the spreadsheet." Moga, for his part, said that the spreadsheet "looks fine" and went to work for Shorewater on that basis.

The facts construed favorably to Moga preclude a holding that a contract does not exist. These facts, if proven, would support a holding that a contract arose during the March 31 phone call and that the contract's terms are governed by the writings and other communications contemplated by the parties at that time. The writings include the spreadsheet that describes Moga's compensation. We reverse the district court's entry of summary judgment on Moga's contract-related claims. Moga did not move for summary judgment for a determination that a contract exists. Additional proceedings will decide the existence of a contract and its interpretation, including the precise method of calculating Moga's compensation and whether the parties had agreed to any additional terms.

II

Moga challenges the district court's grant of summary judgment on the eight counts in his complaint that do not rest directly on the existence of a contract. Those counts are for fraudulent misrepresentation, equitable estoppel, promissory estoppel, unjust enrichment, quantum meruit, quasi contract, failure to make timely payment of compensation, and breach of fiduciary duty. The district court concluded that Moga was unable to establish an essential element for each claim.

Fraudulent Misrepresentation, Equitable Estoppel, and Promissory Estoppel

The district court concluded that no record evidence establishes that Moga detrimentally relied on a representation by Shorewater. Detrimental reliance is a necessary element of a claim for fraudulent misrepresentation. *Hoyt Props. Inc., v. Prod. Res. Group, L.L.C.*, 736 N.W.2d 313, 318 (Minn. 2007). A plaintiff must allege specific, affirmative evidence and may not rely on unsupported allegations of fact. *Musicland Group, Inc. v. Ceridian Corp.*, 508 N.W.2d 524, 531 (Minn. App. 1993), *review denied* (Minn. Jan. 27, 1994). The district court accurately points out that Moga's evidence of detrimental reliance amounts to unsupported claims that he passed up other, more concrete offers to work elsewhere. Moga's counsel acknowledged that the only record evidence supporting Moga's foregone opportunities was his assertion that he turned down a job offer from Merrill Lynch. He pointed to no record evidence of the value of that alleged offer, and his brief only highlights general comments Moga made while negotiating with Shorewater about other work Moga might have taken. *See Faimon v. Winona State Univ.*, 540 N.W.2d 879, 885 (Minn. App. 1995) (affirming dismissal of

fraudulent misrepresentation claim, requiring more than speculative evidence of damages), *review denied* (Minn. Feb. 9, 1996). Because Moga did not establish the nature of his foregone opportunity with any support or specificity, the district court appropriately dismissed this claim.

Moga's claims for equitable and promissory estoppel likewise fail. A plaintiff must establish detrimental reliance to prevail on claims for equitable and promissory estoppel. *N. States Power Co. v. City of Mendota Heights*, 646 N.W.2d 919, 925 (Minn. App. 2002) (equitable); *Brenner v. Nordby*, 306 N.W.2d 126, 127 (Minn. 1981) (promissory). Because Moga failed to establish detrimental reliance, the district court did not err when it dismissed these claims.

Unjust Enrichment, Quasi Contract, and Quantum Meruit

Moga argues that the district court erred when it granted summary judgment on his unjust enrichment, quantum meruit, and quasi-contract claims. The district court concluded that no disputed issues of fact prevented it from entering judgment on the claims. Moga asserts that although he received a salary, he was entitled to more. Shorewater acknowledges that Moga received a salary and that Moga believes he was underpaid. We conclude that because a factual dispute exists concerning the value of the services Moga provided to Shorewater, summary judgment in favor of Shorewater on these claims was premature.

The district court concluded that Shorewater was not unjustly enriched because Shorewater paid Moga a $12,500 monthly base salary. But Moga counters, urging that his services were worth more. His affidavit represents why he believes his efforts were

worth more to Shorewater than $12,500 monthly: "An executive who agrees to go to work for a company that is experiencing financial difficulty is taking on great risk. The company may close and you may be out of a job in short order. On the other hand, if you are successful," a compensation package including a base salary, a percentage of profits, a severance package, and equity in the business "is appropriate for the risk involved." We recognize that Moga's subjective description of personal risk is not the primary benchmark for determining the equitable value of his services. *See Instrumentation Servs., Inc. v. General Res. Corp.*, 283 N.W.2d 902, 909 (Minn. 1979) (damages in quantum meruit measured by value of benefit conferred); *Anderson v. DeLisle*, 352 N.W.2d 794, 796 (Minn. App. 1984) (damages for unjust enrichment measured by value of benefit received), *review denied* (Minn. Nov. 8, 1984). But the parties offer competing facts concerning whether the monthly base salary accurately represents the value of Moga's services, and we therefore reverse summary judgment on this claim.

The district court concluded that Moga's quasi-contract claim fails for the same reason that Moga's unjust enrichment claim failed. Moga and Shorewater agree that this claim succeeds or fails on the same basis as the unjust enrichment claim. "No recovery can be had in quasi contract against one not shown to have been wrongfully enriched at the plaintiff's expense." *Marking v. Marking*, 366 N.W.2d 386, 387 (Minn. App. 1985). We reverse summary judgment of this claim.

The district court also concluded that no disputed issues of material fact prevent its entry of summary judgment on Moga's request for relief in quantum meruit. Moga argues that the district court reached an erroneous conclusion of fact when it wrote that

Moga knew his salary would be $12,500 per month. Other facts in the documentary record indicate that Moga anticipated earning additional compensation, and the use of the term "*base* salary" supports his contention that the parties initially anticipated that the value of his services would exceed that amount. Again, a district court may not weigh the evidence or make factual determinations on summary judgment. The district court apparently concluded that $12,500 per month constituted the reasonable value of Moga's services to Shorewater, but the issue remains in dispute. We reverse summary judgment on this claim.

Failure to Make Timely Payment of Compensation

Moga claimed that Shorewater failed to promptly pay unpaid wages or commissions earned by an employee as required by Minnesota Statutes section 181.14 (2006). He argues that because Shorewater failed to pay him any bonus, the district court's grant of summary judgment on this claim was error. It is undisputed that Shorewater failed to pay him a bonus. But whether Moga was entitled to bonus payments as a matter of law depends on whether a contract arose between him and Shorewater and whether a bonus was a term of that contract. Because we reverse the district court's legal conclusion that the facts preclude a finding of a contract, we also reverse the judgment as to this claim.

Breach of Fiduciary Duty

Moga argues finally that his claim for breach of fiduciary duty also should survive Shorewater's summary judgment motion. He rests this contention primarily on his assertion that Charles and Eugene Marais made him a partner in Shorewater. The

existence of a fiduciary relationship is a question of fact. *Toombs v. Daniels*, 361 N.W.2d 801, 809 (Minn. 1985).

The district court concluded that there were no disputed issues of material fact and that the Marais brothers did not owe Moga a fiduciary duty. The district court's conclusion is well supported. The district court explained that "[Moga] was acting purely in the role of a consultant/employee" for Shorewater and that "[Moga] was not functioning as a partner and no evidence exists to indicate that Plaintiff was a shareholder of Shorewater." Business partners, and shareholders in a closely-held business organization, owe a fiduciary duty to one another, but not to employees. *Harris v. Mardan Business Sys., Inc.*, 421 N.W.2d 350, 353 (Minn. App. 1988), *review denied* (Minn. May 18, 1988).

The facts do not support Moga's claim that the Marais brothers "made [Moga] a partner in a closely held LLC." A partnership is "an association of two or more persons to carry on as co-owners a business for profit." Minn. Stat. § 323A.0101(8) (2008). And the Uniform Partnership Act provides that a "person" may be an individual or a "corporation, business trust, estate, trust, partnership, association . . . or any other legal or commercial entity." Minn. Stat. § 383A.0101(12). Whether a partnership exists is a question of fact. *Hansen v. Adent*, 238 Minn. 540, 545, 57 N.W.2d 681, 684 (1953). The district court concluded that Moga was not a shareholding member of Shorewater. Moga does not dispute this conclusion, and he responds that he was Shorewater's *partner*.

We reject Moga's claim to partnership with Shorewater. Shorewater never expressed through its principals any intent to partner with Moga. It is true that a

partnership might be formed even if a person does not intend to enter a partnership. Minn. Stat. § 323A.0202(a). But to support a claim of partnership on Moga's theory, "the evidence must show that the parties have entered into a contractual relation by which they have combined their property, labor, and skill in an enterprise or business as principals for the purpose of joint profit." *Hamilton v. Boyce*, 234 Minn. 290, 291, 48 N.W.2d 172, 173 (1951). Moga has not established that any contract between him and Shorewater joins them as principals in the enterprise. The language of the parties consistently refers to Moga as an employee of or consultant to Shorewater. The district court addressed this claim appropriately.

III

The district court refused to allow Moga to amend his complaint to include a claim for punitive damages and to seek additional relief. A district court has broad discretion to grant or deny leave to amend a complaint. *Fabio*, 504 N.W.2d at 761. Reversal would be warranted if the district court abused its discretion. *Id.* Moga does not expressly identify how the district court abused its discretion, asserting only that "for the reasons set forth in [his] motion [before the district court]" he should have been allowed to amend. Because Moga does not explain how the district court's denial constituted an abuse of discretion, we have no basis to reverse on this issue.

Affirmed in part, reversed in part, and remanded.