STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1547
A09-1727

Kevin Breyer Concrete, Inc.,
Respondent,

vs.

Dawn Lynn Beutel,
Defendant,

Douglas James Beutel,
Appellant.

Filed July 13, 2010
Affirmed
Ross, Judge

Washington County District Court
File No. 82-CV-07-1157

Michael C. Hager, Minneapolis, Minnesota; and

Edward Pardee, White Bear Lake, Minnesota (for respondent)

Kristin L. Kingsbury, Siegel, Brill, Greupner, Duffy & Foster, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Ross, Judge; and Harten, Judge.*

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

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

ROSS, Judge

This case concerns a construction company's attempt to collect a debt for work done on a couple's home before their divorce. Kevin Breyer Concrete, Inc. had made improvements to the property of Dawn and Douglas Beutel under oral agreements with Dawn Beutel. The Beutels divorced and sold their property before paying, and Breyer sued. We must decide whether the district court appropriately held Douglas Beutel to share in the liability even though he was not a party to the oral contracts. Because the district court's posttrial findings support an implied-in-fact contract, because an express contract does not bar relief against a nonparty, and because Douglas Beutel fails to identify any prejudice he suffered from Breyer's delay in seeking payment, we affirm.

FACTS

Kevin Breyer is the owner of Kevin Breyer Concrete, Inc. (collectively "Breyer"). Between 2002 and 2005, Breyer performed concrete work at Dawn and Douglas Beutel's home. Nonpayment for that work is the subject of a dispute resolved by the district court after a bench trial. The trial revealed the following facts.

Before the dispute arose, Dawn Beutel began work for Breyer doing bookkeeping as an independent contractor. She later also became a shareholder in the company.

Dawn Beutel asked Breyer in 2002 to perform concrete work at the Beutels' home. The two agreed that the work would be done "at cost," a term which they understood to include materials, labor, and "fixed expenses." Dawn Beutel and Breyer also understood that "fixed expenses" would be calculated by taking the sum of Breyer's projected

overhead (insurance, employee wages, office supplies, marketing, etc.) for a given year and dividing it by the number of projected workdays in that year.[1] Breyer agreed to complete the work without requiring immediate payment; Dawn Beutel promised to pay Breyer for the work when the Beutels' financial situation allowed it, such as on refinance or sale of their home. Breyer completed the work, which included extending the existing patio to support a hot tub, replacing the patio step, installing a sidewalk in front of the garage, and creating an apron in front of the third stall of the garage. There was no written contract or invoice.

In 2003, Dawn Beutel approached Breyer for more concrete work at her home. The terms of the resulting 2003 agreement were the same as the 2002 agreement. Breyer completed the agreed-upon work, which included removing the Beutels' asphalt driveway, replacing it with a concrete driveway, and cleaning up the garage. Once again no written contract or invoice memorialized the agreement or documented the cost.

In 2005, Dawn Beutel asked Breyer a third time to do concrete work at the home. He agreed and the terms were the same as before. Breyer completed the work, which included repairing the driveway, patio, garage floor, and apron. Again, there was no written contract or invoice.

Douglas Beutel never had any discussions with Breyer about Breyer's work. The parties disputed Douglas Beutel's understanding of the terms of the oral agreements

[1] Douglas Beutel argues that the district court clearly erred by finding that Breyer's projected workdays per year were 120. He argues that testimony established that 150 workdays was Breyer's goal. It is not clear how this alleged error would harm Beutel, since the district court did not hold him liable for fixed expenses.

between his wife and Breyer. Douglas Beutel testified that Dawn Beutel told him that she would be responsible for the cost of materials for all three jobs. But Dawn testified that she told Douglas that Breyer would be doing the work "at cost" but that she never explained the meaning of "at cost" to Douglas.

In October 2005, the Beutels filed for marriage dissolution and placed their house on the market. During the dissolution proceedings, Douglas Beutel sought information about Dawn Beutel's ownership interest in Breyer's corporation. Breyer threatened to terminate Dawn Beutel's employment if Douglas Beutel requested this information through discovery. Douglas Beutel made a formal discovery request despite Breyer's threat, and Breyer came to the Beutels' home to terminate Dawn's employment and to retrieve corporate equipment and files. Breyer and Douglas Beutel argued, and Breyer informed him that he would be issuing an invoice for his work on the property.

The Beutels soon received an invoice for $28,198.61 for all the work Breyer performed. Breyer created the invoice in February 2006 from handwritten notes and running totals kept since 2002. Breyer later issued a corrected invoice reducing the charge to $25,398.61 because he had performed some services for the Beutels gratis, as a friend. The invoiced amount included all of the costs that Dawn Beutel and Breyer had intended by the term "at cost" in their oral agreements. Douglas and Dawn Beutel sold their house in October 2006, and their marriage was dissolved in November. In December, Breyer sued them to collect the amount listed on his corrected invoice.

After the bench trial, the district court found Dawn Beutel liable for the total invoice amount based on her express oral agreements with Breyer. Douglas Beutel's

liability was a different matter. Because he had not been a party to the agreements with Breyer, he could not be liable by express contract. But the district court concluded that he was liable based on an implied-in-fact contract or, alternatively, under a quasi-contract theory. The district court found that it would be reasonable for Douglas Beutel to conclude that "at cost" includes the cost of materials and labor, but not fixed expenses, which were part of the business's overhead. The court found that $11,900 of the total invoice was attributable to fixed expenses and concluded that Douglas Beutel was liable for the difference between the total invoice and the fixed expenses, or $13,498.61. It rejected Douglas Beutel's abuse-of-process and laches defenses.

Douglas Beutel moved the district court to amend its fact findings and conclusions of law and for a new trial. The district court amended several findings and one legal conclusion. It found that Breyer's invoice included repairs to the company's previous work. The court therefore deducted $2,000 from both Dawn Beutel and Douglas Beutel's liabilities, reducing Dawn's to $23,398.61 and Douglas's to $11,498.61. The court then subtracted Douglas's liability from Dawn's to arrive at $11,900 in liability for Dawn.

Procedural anomalies resulted in two judgments and two appeals by Douglas Beutel. This court granted his motion to consolidate the two appeals, which we now address.

D E C I S I O N

Douglas Beutel appeals from the district court's judgments arising from its amended fact findings and decision not to order a new trial. A district court may amend its fact findings or make additional findings, and, if judgment has been entered, amend

the judgment accordingly. Minn. R. Civ. P. 52.02. On appeal, the scope of review is limited to deciding whether the district court's findings are clearly erroneous and whether the court erred in its legal conclusions. *Foster v. Bergstrom*, 515 N.W.2d 581, 585 (Minn. App. 1994). We will apply the district court's findings unless we are left with a definite and firm conviction that a mistake has been made. *Snesrud v. Instant Web, Inc.*, 484 N.W.2d 423, 428 (Minn. App. 1992), *review denied* (Minn. June 17, 1992). The district court also has the discretion whether to grant a new trial, and we will not disturb the decision absent an abuse of that discretion. *Stoebe v. Merastar Ins. Co.*, 554 N.W.2d 733, 735 (Minn. 1996). But we review de novo a district court's decision on a legal issue. *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984).

I

Douglas Beutel argues that the district court's findings do not support its conclusion that an implied-in-fact contract existed between him and Breyer. We conclude otherwise. An agreement forming a contract "may be implied from circumstances that clearly and unequivocally indicate the intention of the parties to enter into a contract." *Webb Bus. Promotions, Inc. v. Am. Elecs. & Entm't Corp.*, 617 N.W.2d 67, 75 (Minn. 2000). The claimant must establish all essential contract elements. *Gryc v. Lewis*, 410 N.W.2d 888, 891 (Minn. App. 1987). "The trier of fact ordinarily determines whether the evidence in the form of conduct and statements of the parties supports a finding of contract implied in fact." *In re Estate of Beecham*, 378 N.W.2d 800, 803−04 (Minn. 1985).

Douglas Beutel argues that the circumstances cannot establish his assent to a contract while Breyer maintains that the circumstances created a duty for Beutel to object if he did not want the work done. The only term in dispute here is the price, and the district court credited Dawn Beutel's testimony that she told Douglas Beutel that the couple would be paying Breyer to do the work "at cost." Although Douglas Beutel disputes that Dawn Beutel told him they both would be responsible for paying Breyer, the district court resolved this issue against him and this court defers to the district court's credibility determinations. *See* Minn. R. Civ. P. 52.01.

Douglas Beutel argues that his failure to object to the concrete work does not amount to assent to a contract. He is wrong. *Gryc* is instructive. In that case, neighboring property owners wished to plat their respective properties and acknowledged that additional street access would be necessary to do so. 410 N.W.2d at 889. The neighbors had a discussion in which one of them proposed that anyone who lost property to street construction would be compensated by the others. *Id.* at 892. The defendant property owners did not object to the proposal, and the district court held them liable under an implied-in-fact contract. *Id.* at 890. We affirmed, reasoning that although mere silence does not constitute acceptance, "when the relationship between the parties is such that an offeror is justified in expecting a reply or the offeree is under a duty to respond, silence will be deemed an acceptance." *Id.* at 892. Similarly, if Douglas Beutel did not wish to be obligated for the concrete work, he had a duty to object after his discussion with Dawn about the couple's liability. The district court's implicit finding that Douglas Beutel assented to an implied contract is not clearly erroneous.

Beutel also challenges the district court's alternative holding that he is liable under quasi-contract principles, but we do not address this argument since we affirm the district court's holding that he is liable under an implied-in-fact contract.

II

Douglas Beutel argues that the oral agreements between Breyer and Dawn Beutel preclude simultaneous recovery from him under an implied-in-fact contract. "A party may not have equitable relief where there is an adequate remedy at law available." *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 305 (Minn. 1996). Because "[p]arties to an express contract are entitled to have their rights and obligations with respect to its subject matter determined exclusively by its terms[,] . . . where there is an express contract, there can be no contract implied in fact or quasi-contractual liability with respect to the same subject matter." *Schimmelpfennig v. Gaedke*, 223 Minn. 542, 548, 27 N.W.2d 416, 420−21 (1947). The district court's determination whether an adequate legal remedy exists resolves a legal issue and is reviewed de novo. *ServiceMaster*, 544 N.W.2d at 305.

Douglas Beutel's argument fails because he was not a party to the contracts that allegedly bar equitable relief. *See Schimmelpfennig*, 223 Minn. at 548, 27 N.W.2d at 420−21 (stating that *contract parties* are entitled to have their obligations determined by contract's terms); *see also Leasepartners Corp. v. Robert L. Brooks Trust*, 942 P.2d 182, 187 (Nev. 1997) (holding that express contract did not bar unjust enrichment claim against nonparty). Because he was not a party to the oral contracts, Douglas Beutel is not

in a position to invoke the rule that Breyer's contract with his former wife bars equitable relief against him.

Douglas Beutel supports his position with a case in which subcontractors had statutory mechanics' liens and a breach-of-contract claim against a general contractor, barring their unjust enrichment suit against the project's financier. In *Southtown Plumbing, Inc. v. Har-Ned Lumber Co., Inc.*, 493 N.W.2d 137 (Minn. App. 1992), a general contractor entered into an agreement with a lumber company under which the lumber company would lend the contractor money to build a house, secured by a mortgage on the property. *Id.* at 138−39. The general contractor hired subcontractors and paid them directly by making draw requests to the lumber company. *Id.* at 139. The lumber company refused to grant the general contractor's final draw request because the contractor had violated certain terms of the loan agreement. *Id.* The subcontractors sued the lumber company for unjust enrichment, and the trial court granted the lumber company a directed verdict. *Id.* at 139–40. The subcontractors appealed, and this court held that they had an adequate legal remedy in the form of mechanics' liens or a breach-of-contract suit against the general contractor, barring their unjust enrichment suit. *Id.* at 140.

Douglas Beutel argues that *Southtown* stands for the proposition that the availability of an adequate legal remedy prevents Breyer from recovering equitable relief from *any* source. But *Southtown* does not state such a broad rule. *Cf. TCF Banking & Sav., F.A. v. Loft Homes, Inc.*, 439 N.W.2d 735, 740 (Minn. App. 1989) (permitting equitable remedy of rescission of foreclosure sale after a low bid was erroneously

accepted even though legal relief was available against another party), *review denied* (Minn. June 21 and July 21, 1989). And *Southtown* is too distinguishable to control here. In *Southtown* the party against whom equitable relief was sought was a remote lender; but here, Douglas Beutel lived on the property being improved. He could observe the work as it was being done and could have objected to particular components or the entire project.

Douglas Beutel also argues that Minnesota Statutes section 519.05(a) (2008) prevents him from being liable for Dawn Beutel's debts. The statute provides, "A spouse is not liable to a creditor for any debts of the other spouse." But the district court did not find Beutel liable for his wife's debt to Breyer; rather, it found him to be independently liable for the work. The statute is inapplicable.

Douglas Beutel next argues that the district court improperly offset Dawn Beutel's liability for the full contract price by subtracting his equitable liability. Although the district court's method of apportioning damages seems uncustomary, we are aware of no authority establishing that it was inappropriate, and Douglas Beutel presented none. "[T]he appropriate measure of damages for breach of contract is that amount which will place the plaintiff in the same situation as if the contract had been performed." *Peters v. Mutual Benefit Life Ins. Co.*, 420 N.W.2d 908, 915 (Minn. App. 1988). Furthermore, an appellate court will not interfere with a damages award unless failure to do so would result in plain injustice. *Hughes v. Sinclair Mktg., Inc.*, 389 N.W.2d 194, 199 (Minn. 1986). The damages award in this case put Breyer in the same situation he would have

been in had the Beutels performed their obligations, and it left Douglas and Dawn with roughly equal liability for the work.

III

Douglas Beutel argues that the district court erred by failing to apply the doctrine of laches to prevent Breyer from asserting his claims. "The purpose of laches is to prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay." *Klapmeier v. Town of Center*, 346 N.W.2d 133, 137 (Minn. 1984) (quotation omitted). "The basic question is whether there has been such an unreasonable delay in asserting a known right, resulting in prejudice to others, as would make it inequitable to grant the relief prayed for." *Id.* (quotation omitted). We review the district court's decision whether to apply the doctrine of laches for an abuse of discretion. *In re Marriage of Opp*, 516 N.W.2d 193, 196 (Minn. App. 1994), *review denied* (Minn. Aug. 24, 1994).

Douglas Beutel relies mainly on the fact that Breyer issued no invoice for the work until February 2006. He argues that this failure prejudiced him because he was not aware of the accumulating debt. But he was of course aware that Breyer was working at his home between 2002 and 2005 and that the work was being done "at cost." He also had at least a general familiarity with the cost of concrete work because Breyer had engaged in paid work for the Beutels before 2002. Given the equitable nature of the laches defense, we have no difficulty affirming the district court's assessment that Douglas Beutel, having had knowledge that the work was being done for a price, cannot now successfully claim that the delay in invoicing prevented him from being aware that substantial debt

was accumulating. The district court did not abuse its discretion by concluding that "Mr. Beutel fails to identify any prejudice he suffers from any alleged delay in [Breyer's] legal assertions."

Affirmed.