STATE OF MINNESOTA
IN COURT OF APPEALS
A11-137

Kelley Fuels, Inc.,
Appellant,

vs.

Bradd Mlaskoch, doing business as Banning Junction,
Respondent,

Dennis Herzog, et al., formerly doing business as Banning Junction,
Respondents.

Filed September 12, 2011
Affirmed
Bjorkman, Judge

Pine County District Court
File No. 58-CV-09-650

Loren Gross, Bloomington, Minnesota (for appellant)

Konstandinos Nicklow, Meshbesher & Spence, Ltd., Minneapolis, Minnesota (for respondent Bradd Mlaskoch)

Kevin A. Hofstad, Ledin & Hofstad, Ltd., Pine City, Minnesota (for respondents Dennis Herzog, et al.)

Considered and decided by Halbrooks, Presiding Judge; Minge, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant challenges the summary-judgment dismissal of its contract claim against three respondents, and the judgment after a bench trial on its implied-contract claim against the remaining respondent. We affirm.

FACTS

Respondents Dennis Herzog, Verne Jensen, and David Nyrud are former shareholders of a dissolved Minnesota corporation known as Pentagon Properties, Inc. Pentagon operated a convenience store and gas station under the assumed name Banning Junction.

On or about September 4, 2002, appellant Kelley Fuels, Inc. proposed that Banning Junction rebrand the fuel-sale portion of its business to sell Shell brand fuel. Herzog, Jensen, and Nyrud agreed, and all three signed the proposal contract on behalf of Banning Junction. The proposal lists various incentives that Shell Oil Products US and Kelley Fuels agreed to provide and various responsibilities that Banning Junction agreed to undertake. In relevant part, Banning Junction agreed to

> [a]bide by all provisions contained in the Shell-RVI Conversion Agreement Contract and Kelley Fuels Inc. Dealer Supply Contract Agreement and sign said contract which binds Banning Junction to Kelley Fuels with the same provisions found in the Shell Oil Products RVI Conversion Agreement that binds Kelley Fuels to Shell Oil Products US. This contract will remain in effect for ten years.

Banning Junction also agreed to "[p]ay back image and equipment money paid out by Kelley Fuels to convert this unit from Amoco to Shell, if debranding occurs before the

end of the tenth year of the ten year contract period according to the formula found in the Dealer Supply Contract." Finally, the proposal indicates that it is "subject to the approval of Shell Oil Products US." Based on this contract, Kelley Fuels rebranded Banning Junction, incurring costs of approximately $56,000.

In January 2004, before Shell had approved the rebranding, Pentagon sold Banning Junction. Respondent Bradd Mlaskoch purchased the real estate, and Mlaskoch's company, Northland Properties.Com Ltd., purchased the business and its assets. Pentagon formally dissolved later that year. Neither Mlaskoch nor Northland expressly agreed to assume Banning Junction's obligations under the proposal contract, but Northland took the name Banning Junction and continued to operate the business, including purchasing Shell products through Kelley Fuels for sale to the public. Banning Junction stopped buying and selling Shell products in July 2009. At no time did any of the parties enter into a dealer supply contract as referenced in the proposal contract.

Kelley Fuels subsequently initiated this action against Herzog, Jensen, and Nyrud, formerly d/b/a Banning Junction; and Mlaskoch, d/b/a Banning Junction. In its complaint, Kelley Fuels alleges that Herzog, Jensen, and Nyrud breached the proposal contract by not repaying the money Kelley Fuels spent on rebranding; Mlaskoch breached an implied contract to satisfy the obligations of Banning Junction under the proposal contract by not repaying the rebranding costs; and Mlaskoch breached an implied contract to pay for approximately $76,000 in fuel that Kelley Fuels delivered to Banning Junction shortly before Banning Junction abandoned the Shell brand. The district court granted partial summary judgment dismissing Kelley Fuels' claim against

Herzog, Jensen, and Nyrud, and, after a bench trial, dismissed Kelley Fuels' claims against Mlaskoch. This appeal follows.

D E C I S I O N

I. The district court did not err by granting summary judgment dismissing Kelley Fuels' contract claim against Herzog, Jensen, and Nyrud.

On an appeal from summary judgment, we ask whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We review de novo whether the district court erred in its application of the law and whether there were any genuine issues of material fact when the evidence is viewed in the light most favorable to the nonmoving party. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

Kelley Fuels argues that Herzog, Jensen, and Nyrud breached the proposal contract by not repaying the costs of rebranding after Banning Junction abandoned the Shell brand in July 2009. The construction and effect of a contract generally are questions of law for the court. *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn. 1979). "[A] court gives effect to the parties' intentions as expressed in the four corners of the instrument, and clear, plain, and unambiguous terms are conclusive of that intent." *Knudsen v. Transp. Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (Minn. App. 2003), *review denied* (Minn. Feb. 25, 2004).

The critical provision of the proposal contract is Banning Junction's agreement to "[p]ay back image and equipment money paid out by Kelley Fuels to convert this unit

from Amoco to Shell, if debranding occurs before the end of the tenth year of the ten year contract period according to the formula found in the Dealer Supply Contract." Kelley Fuels asserts that this provision obligates Herzog, Jensen, and Nyrud to repay the rebranding costs because Banning Junction did not continue selling Shell products for ten years. We disagree. The "ten year contract period" is not the term of the proposal contract but of the dealer supply contract that Banning Junction agreed to sign upon Shell's approval of the rebranding. It is undisputed that Herzog, Jensen, and Nyrud never executed a supply contract, individually or as representatives of Pentagon or Banning Junction. Without a supply contract, the repayment provision has no effect. Accordingly, we conclude that the district court did not err by granting summary judgment on Kelley Fuels' claim against Herzog, Jensen, and Nyrud.

II. The district court did not clearly err in finding that Mlaskoch did not have an implied contract with Kelley Fuels.

"A contract implied in fact is in all respects a true contract. It requires a meeting of the minds the same as an express contract." *Roberge v. Cambridge Coop. Creamery*, 248 Minn. 184, 188, 79 N.W.2d 142, 145-46 (1956). "Whether a contract is to be implied in fact is usually a question to be determined by the trier of fact as an inference of facts to be drawn from the conduct and statements of the parties." *Bergstedt, Wahlberg, Berquist Assocs. v. Rothchild*, 302 Minn. 476, 479-80, 225 N.W.2d 261, 263 (1975). We will not disturb the district court's factual findings unless they are clearly erroneous. Minn. R. Civ. P. 52.01.

Kelley Fuels argues that the district court erred by finding that Mlaskoch did not personally enter into an implied contract with Kelley Fuels.[1] We disagree. First, there is no evidence of a contract for fuel delivery between Kelley Fuels and Mlaskoch. All fuel orders were placed and paid for by Banning Junction, Northland's assumed name, by Banning Junction employees, not Mlaskoch. Kelley Fuels' written communications were directed to Northland and Banning Junction. The dealer supply contracts that Kelley Fuels sought to have signed uniformly indicate that the proposed contract was "between Northland Properties.Com Ltd. dba Banning Junction . . . and Kelley Fuels, Inc." And the fact that Kelley Fuels repeatedly asked Mlaskoch to sign a personal guaranty further demonstrates Kelley Fuels' knowledge that Mlaskoch was not personally a party to any contract. In other words, Kelley Fuels knew that Mlaskoch interacted with Kelley Fuels only as an agent for Northland/Banning Junction. *See Haas v. Harris*, 347 N.W.2d 838, 839-40 (Minn. App. 1984) (stating that a corporate officer generally is not liable for corporate debts because, as an agent for a disclosed principal, he or she is not a party to contracts between the corporation and its creditors). Accordingly, the district court did not clearly err in finding that there was no implied contract between Kelley Fuels and Mlaskoch for fuel delivery.

Second, Mlaskoch did not impliedly assume personal responsibility for the debts of his company. There is no evidence that Mlaskoch intended to assume personal

[1] Although Kelley Fuels' complaint also alleges that Mlaskoch impliedly assumed the responsibilities of Banning Junction under the proposal contract and breached the obligation to repay the rebranding costs, Kelley Fuels does not challenge the district court's dismissal of this claim.

responsibility for Northland's debts or that he led Kelley Fuels to believe that he would. Kelley Fuels argues that there must be an implied guaranty contract because its repeated requests for a personal guaranty from Mlaskoch demonstrate that it was not willing to do business without such a guaranty. We are not persuaded. Kelley Fuels asked Mlaskoch to execute a personal guaranty with respect to Northland's obligations. Mlaskoch refused to do so. The fact that Kelley Fuels made numerous requests does not, in and of itself, provide a basis for implying a contract. *See Cargill Inc. v. Jorgenson Farms*, 719 N.W.2d 226, 233 (Minn. App. 2006) (stating that silence ordinarily does not amount to acceptance of a contract offer, particularly if the offer is a written contract that expressly requires a signature). Moreover, Kelley Fuels' continued delivery of fuel to Banning Junction despite the absence of a guaranty belies its claim that a guaranty was critical. On this record, we conclude that the district court did not clearly err in finding that Mlaskoch did not impliedly contract with Kelley Fuels to be personally responsible for Northland's debts.

Affirmed.