Filed in District Court

State of Minnesota

September 8, 2020

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF OTTER TAIL SEVENTH JUDICIAL DISTRICT

Cecilie Schumacher-Cookman,
DuWayne Cookman,

Plaintiffs,

vs.

Lorene Schumacher,

Defendant.

ORDER AND MEMORANDUM GRANTING IN PART AND DENYING IN PART MOTION FOR SUMMARY JUDGMENT

Court File No. 56-CV-18-1954

On June 19, 2020, the above-entitled matter came on for hearing before the undersigned Judge of District Court, at the Otter Tail County Courthouse in Fergus Falls, Minnesota, via remote technology, on Defendants' Motion for Summary Judgment. Attorney Ryan Fullerton appeared on behalf of Plaintiffs. Attorney Brian Toay appeared on behalf of Defendant. The parties each submitted briefs and affidavits to support their arguments. The parties also orally argued their positions at the hearing.

Based upon the entire file, the applicable law, the arguments of the parties, and for the reasoning set forth in the attached Memorandum, IT IS HEREBY ORDERED THAT:

1. Defendants' Motion for Summary Judgment is **GRANTED** in part and **DENIED** in part.
2. Defendant's motion for summary judgment as to Plaintiffs' claims for Breach of Contract, Promissory Estoppel, and Unjust Enrichment is hereby **DENIED.**
3. Defendant's motion for summary judgment as to Plaintiffs' claims for Fraud and Negligent Misrepresentation is hereby **GRANTED.**

4. Notwithstanding the above, the Court declines to enter a final judgment as to fewer than all claims, pursuant to Minn. R. Civ. P. 54.02.

5. The attached Memorandum is incorporated by reference herein.

Dated: 9/8/20

BY THE COURT:

Kevin M. Miller
Judge of District Court

Memorandum

Factual and Procedural Background

Plaintiff Ceclie Schumacher-Cookman is Defendant's daughter and is married to Plaintiff DuWayne Cookman. Defendant Lorene Schumacher owns 7.68 acres of lake front property on Rose Lake in Otter Tail County, Minnesota (hereinafter "the subject property").[1] Defendant and her husband purchased the property in 1973 and the property holds great sentimental value for the family members. In 1997, Defendant gathered her five children at her home and asked if any of them would be interested in being given a lake lot that would be subdivided from the Subject Property. Cecilie Schumacher-Cookman, Curt Schumacher, and Charles Schumacher all expressed interest in owning part of the subject property. The other children remember the conversation, but did not express an interest in obtaining any part of the lake property. Plaintiffs claim that Defendant offered to give acreage to any of the children who would build on it.

Over the next year, the parties discussed the subdivision of the property. In the winter of 1997, Plaintiff DuWayne Cookman and Defendant discussed Plaintiffs building a garage/cabin structure on the subject property. According to Curt Schumacher, during the conversation Defendant remarked that if a garage were built on the property that would mean that she would

[1] Prior to the 2013 survey Defendant and her family believed that she owned approximately 10 acres of land on Rose Lake.

own the garage. At the time of the discussion, the property had not been subdivided and Plaintiffs knew that they did not own the land that they were building on. Plaintiffs began construction in June of 1998 and finished construction in 2001.

In 1998, Defendant went to a County Variance Board meeting to request a variance to build the garage within a certain amount of feet to the lake, the variance was granted. On August 13, 1998, Defendant applied for another variance to allow her property to be subdivided. On the same day, Defendant purchased a building permit to construct the garage.

Defendant appeared before the variance board on September 10, 1998 and on October 8, 1998. The variance ultimately could not be granted because of issues with the access road. The access road would need to be deeded to the county before subdivision could occur but Defendant did not own the access road and therefore, was unable to deed it to the county. Defendant claims that Plaintiffs were aware that Defendant was unable to subdivide the property and that the variance had not been granted. Plaintiffs claim that they did not become aware of the variance issue until 2016 or 2017. No part of the subject property was ever deeded to Plaintiffs or Defendant's other children. No written contract was ever entered into for sale of the property, but Plaintiff Cecilie Schumacher- Cookman claims that there was a deed purporting to convey the property to her. No such deed was ever recorded.

Charlene Nelson (Defendant's daughter) became Defendant's power of attorney in 2013. That same year, Defendant had a survey completed on the land to update an error that was previously unknown. Plaintiffs knew about this survey and in 2016, Plaintiff DuWayne Cookman contacted the surveyor to discuss subdividing the property. It was explained to Duwayne that the problem with the road still existed and subdivision would not be possible. In 2018, Defendant placed the property for sale.

Plaintiffs have utilized the garage on the property as a cabin every year since building it. Plaintiffs have contributed to property taxes on the subject property since the cabin was built.

Plaintiffs claim that the following facts are in dispute and preclude summary judgment:

1. Defendant stated in her deposition that none of the children were interested in a lake lot but later said that Plaintiffs were interested, but that she could not follow through because she was unable to subdivide the lot.

    a. Whether Plaintiff clearly and unequivocally promised to transfer land to Plaintiffs.

2. Whether a deed was drafted sometime between 1998 and the early 2000's.

3. Whether the variance was denied or whether Defendant abandoned the process.

4. Whether there was a promise; whether there was a meeting of the minds; whether Plaintiff's actions were in furtherance of the agreement.

    a. Any Damages and the appropriate remedy.

Legal Analysis

I. Summary Judgment

Plaintiff's brought this action alleging: (1) breach of contract; (2) promissory estoppel; (3) fraud; (4) unjust enrichment; and (5) negligent misrepresentation. Defendant Lorene Schumacher has brought a motion for summary judgment pursuant to Rule 56 of the Minnesota Rules of Civil Procedure. Plaintiffs oppose the motion and claim that there are genuine issues of material fact that preclude summary judgment.

Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MINN. R. CIV. P. 56.01; *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 753 (Minn. 2005). On Summary Judgment, it is improper for the court to weigh facts or determine the

credibility of affidavits and other evidence. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The moving party bears the burden of showing the absence of an issue of material fact. *Stringer*, 705 N.W.2d at 754. A material fact is one whose resolution will affect the result or outcome of the case. *Zappa v. Fahey*, 245 N.W.2d 258, 259-60 (Minn. 1976); *Anderson*, 477 U.S. at 248. Affidavits supporting and opposing a motion for Summary Judgment must set forth facts as would be admissible in evidence. MINN. R. CIV. P. 56.05. "When deciding any summary-judgment motion, the district court must disregard hearsay evidence that would be inadmissible at trial." *In re Trusts A & B of Divine*, 672 N.W.2d 912, 921 (Minn. App. 2004).

If the moving party presents a prima facie case for Summary Judgment, the burden shifts to the nonmoving party to demonstrate the existence of specific disputed facts that create a genuine issue of material fact for trial. MINN. R. CIV. P. 56.05; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). This demonstration requires more than resting on the averments or denials of the party's pleading. MINN. R. CIV. 56.05; *Stringer*, 705 N.W.2d at 753. In other words, "[s]peculation, general assertions, and promises to produce evidence at trial are not sufficient to create a genuine issue of material fact for trial." *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). The nonmoving party must demonstrate a genuine issue of material fact by presenting "substantial evidence" that creates more than "a metaphysical doubt as to a factual issue" and that is "sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." DLH, 566 N.W.2d at 70-71. Further, Summary Judgment is appropriate when a non-moving party fails to make a showing sufficient to establish the existence of an element essential to the party's case. *Bersch v. Rgnonti & Assocs.*, 584 N.W.2d 783, 786 (Minn. App. 1998).

1. Breach of Contract Claim

In order to sustain a claim for breach of contract, there must be underlying information showing that there ever was a contract. Defendant argues that there was never a contract and therefore, this claim must fail.

"The formation of a contract requires communication of a specific and definite offer, acceptance, and consideration." *Commercial Assocs., Inc.*, 712 N.W.2d at 782 (citing *Pine River State Bank v. Mettille*, 333 N.W.2d 622, 626–27 (Minn.1983)). Courts in Minnesota typically include performance of any conditions precedent as an element of a breach-of-contract claim, *e.g.*, *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011).

A condition precedent is an event, not certain to occur, which must occur before performance under a contract becomes due. Restatement (Second) of Contracts § 224 (1981), *quoted in Seman v. First State Bank of Eden Prairie*, 394 N.W.2d 557, 560 (Minn. App. 1986); *see also, e.g., Nat'l City Bank of Minneapolis v. St. Paul Fire & Marine Ins. Co.*, 447 N.W.2d 171, 176 (Minn. 1989)(defining a condition precedent as "any fact or event, subsequent to the making of a contract, which must exist or occur before a duty of immediate performance arises under the contract"); *Carl Bolander & Sons, Inc. v. United Stockyards Corp.*, 215 N.W.2d 473, 476 (Minn. 1974); *Nat'l Union Fire Ins. v. Schwing Am., Inc.*, 446 N.W.2d 410, 412 (Minn. App. 1989) ("When a contract contains a condition precedent, a party to the contract does not acquire any rights under the contract unless the condition occurs.").

A condition precedent is not the same thing as a contractual promise, which is a manifestation of intention to act or refrain from acting in a specified way. *E.g.*, Restatement (Second) of Contracts § 2 (1981). No special terms or particular code words are necessary to create a condition precedent, but there must be some "clear and unequivocal" language that

indicates the agreement, or its terms, are conditioned upon some event. *See Carl Bolander & Sons*, 215 N.W.2d at 476; *Mrozik Constr., Inc. v. Lovering Assocs., Inc.*, 461 N.W.2d 49, 52 (Minn. App. 1990) ("We hold here that a condition precedent will not be found absent unequivocal language."). *Comprehensive Care Corp. v. RehabCare Corp.*, 98 F.3d 1063, 1066 (8th Cir. 1996) (Phrases such as "if," "provided that," "when," "after," "as soon as," and "subject to" traditionally indicate conditions precedent as opposed to contractual promises. (citing *Standefer v. Thompson*, 939 F.2d 161, 164 (4th Cir. 1991)); *see also Aslakson v. Home Sav. Ass'n*, 416 N.W.2d 786, 789 (Minn. App. 1987) (finding a condition precedent when the contract used the term "contingent upon"); *451 Corp. v. Pension Sys. for Policemen & Firemen*, 310 N.W.2d 922, 923-24 (Minn. 1981)(finding a condition precedent when the contract used the term "subject to"); *Carl Bolander & Sons, Inc.*, 215 N.W.2d at 476 (finding a condition precedent when the contract used the term "assuming that"); *Nat'l Union Fire Ins.*, 446 N.W.2d at 413 (finding a condition precedent when the contract used the term "subject to").

A claim of breach of contract requires proof of three elements: (1) the formation of a contract, (2) the performance of conditions precedent by the plaintiff, and (3) the breach of the contract by the defendant. *Briggs Transp. Co. v. Ranzenberger*, 299 Minn. 127, 129, 217 N.W.2d 198, 200 (1974); *Commercial Assocs., Inc.*, 712 N.W.2d at 782. Whether a contract exists generally is a question for the fact-finder. *Morrisette v. Harrison Int'l Corp.*, 486 N.W.2d 424, 427 (Minn.1992).

Analyzing the elements of a valid contract, there must first be an offer. Regardless of Defendant's intentions or any barriers to performance, it is undisputed that Defendant offered to give land to her children. Whether this was an offer to enter into a contract or merely an expression of a desire to give her children a gift is in dispute.

With regards to the element of acceptance, it is undisputed that Plaintiffs expressed interest in obtaining the property; thereby, accepting the offer.

The next element of consideration is disputed. Defendant's other children claim that this offer to give them land was simply a gift. Plaintiff claims that the gift was contingent on the recipient building on the land. If the finder of fact found Plaintiff's claim to be credible, then this exchange would likely qualify as consideration.

Perhaps the most disputed element is the issue of whether the contract was subject to a condition precedent. This element is subject to significant factual disputes.

There are conflicting reports regarding what exactly was said to the children about Defendant potentially giving them the land. The caselaw requires that there be a definite manifestation of the condition precedent and that this be shown through the words used. Here, depending on the affiant, Defendant said some variation of the following: (1) that she wanted to split up the lots and give to her children; or (2) that she wanted to give the children acreage of property if they would build on it.

The facts that would give rise to the formation of a contract are in dispute and whether Defendant breached the contract will be contingent on the fact finders determinations concerning the prior elements.

a. Statute of Limitations

Defendant argues that Plaintiffs' claims implicate the six year statute of limitations. However, Plaintiff claims facts that may implicate equitable estoppel. Equitable estoppel would toll the statute of limitations. Due to this alleged factual dispute, the statute of limitations cannot be relied upon to grant summary judgment.

Conclusion

The Court is not permitted to make credibility determinations at this stage in the proceedings. Based on the information that the Court is permitted to consider, there are facts in dispute that preclude summary judgment on this claim.

2. Promissory Estoppel

Minnesota Courts have found that promissory estoppel is a creature of equity. *Ruud v. Great Plains Supply, Inc.*, 526 N.W.2d 369, 372 (Minn.1995). The "application of promissory estoppel requires the analysis of three elements: (1) Was there a clear and definite promise? (2) Did the promisor intend to induce reliance, and did such reliance occur? (3) Must the promise be enforced to prevent injustice?" *Id; Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn.2000).

Looking at the three elements more closely, the Minnesota Supreme Court has called upon contract principles and held that a promise must be "clear and definite" to trigger promissory estoppel analysis of its enforcement. *Faimon v. Winona State University,* 540 N.W.2d 879, 882 (Minn. Ct. App. 1995); quoting *Ruud v. Great Plains Supply,* 526 N.W.2d 369, 372 (Minn.1995).

Here, it is alleged that Defendant repeatedly told Plaintiffs that she wanted to give them a portion of her land. Plaintiffs, through their affidavits, claim that Defendant intended to give them the parcel of land that they built their cabin on and have been taking care of since 1998.

The next prong is reliance, "to recover on a promissory estoppel claim, appellant must also show that the promise is one that might reasonably induce the promisee's action or inaction." *Faimon v. Winona State University,* 540 N.W.2d 879, 882 (Minn. Ct. App. 1995); quoting Restatement (Second) of Contracts § 90(1); *Cohen I,* 457 N.W.2d at 203–04 (citing Restatement). The reasonableness of Plaintiff's reliance is usually a question of fact for the jury.

Norwest Bank Minnesota, N.A. v. Midwestern Machinery Co., 481 N.W.2d 875, 880 (Minn.App.1992).

It is clear that Plaintiffs relied on Defendant's offer; they invested time and money to build a house on land that they did not own. However, the reasonableness of that reliance is a question that is better left to a finder of fact.

The third prong is injustice, "numerous considerations enter into a judicial determination of injustice, including the reasonableness of a promisee's reliance and a weighing of public policies in favor of both enforcing bargains and preventing unjust enrichment." *Faimon v. Winona State University*, 540 N.W.2d 879, 883 (Minn. Ct. App. 1995).

The potential injustice of this case would be that Plaintiffs would lose their investment in Defendant's property. They have invested both time and money to build the lake cabin and arguably it would be an injustice for them to lose that investment.

Looking to other public policy considerations, there is a strong public policy favoring timely assertion of rights. Plaintiffs have been aware for approximately two decades that this land was not able to be subdivided and that Defendant could not transfer the land to them and yet they waited until Defendant wanted to sell the property before asserting their rights, if any.

Conclusion

All three elements of this claim have some level of material factual dispute. Therefore, summary judgment is precluded on this claim.

3. Fraud and Misrepresentation Claim

Plaintiffs claim that there is a factual dispute precluding summary judgment on their claim of fraud, particularly when and if a promise to convey the land was made. Plaintiffs claim

that they could not have discovered the fraud until 2018 when the property was put on the market and therefore, the statute of limitations did not being to run until 2018.

"The 6-year fraud statute of limitations begins to run when the aggrieved party discovers the facts constituting the fraud." *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 172 (Minn. 2012). The facts constituting the fraud are deemed to have been discovered when they were actually discovered or, "by reasonable diligence, should have been discovered." *Toombs v. Daniels*, 361 N.W.2d 801, 809 (Minn. 1985).

Whether the presence of fraud tolls the statute of limitations is only legally relevant if there is information to support the fraud claim.

In *Hanson v. Ford Motor Co.* (8 Cir.) 278 F.2d 586, 591, the decisions of the Minnesota Supreme Court are carefully reviewed and the elements of fraud as defined by these decisions are accurately set out as follows:

1. There must be a representation;
2. That representation must be false;
3. It must have to do with a past or present fact;
4. That fact must be material;
5. It must be susceptible of knowledge;
6. The representer must know it to be false, or in the alternative, must assert it as of his own knowledge without knowing whether it is true or false;
7. The representer must intend to have the other person induced to act, or justified in acting upon it;
8. That person must be so induced to act or so justified in acting;
9. That person's action must be in reliance upon the representation;
10. That person must suffer damage;
11. That damage must be attributable to the misrepresentation, that is, the statement must be the proximate cause of the injury. See also *Davis v. Re-Trac Mfg. Cor.*, 149 N.W.2d 37 (Minn. 1967).

Even when viewing the evidence in the light most favorable to the nonmoving party, there is scant evidence, if any, to support a claim of fraud in this case. The record is clear that Defendant said she wanted to subdivide her land and give parcels of it to her children but was unable to do so and told Plaintiffs as much. Plaintiffs were aware that a variance had not been granted and Defendant was unable to gift them the land. There is no indication that Defendant made any false representations with the intention of inducing Plaintiffs to act upon the representations. In fact, Plaintiffs built the garage knowing that the land had not been conveyed to them; knowing that the property had not been subdivided; and continued building after having been made aware that the property could not be subdivided.

Conclusion

Plaintiffs have failed to set forth facts to support each element of this claim; therefore, Defendant is entitled to summary judgment on this claim.

4. Unjust Enrichment

Plaintiffs allege that Defendant induced them to invest a considerable amount of money in Defendant's land, by building a cabin/garage on the property.

"In order to establish a claim for unjust enrichment, the claimant must show that another party knowingly received something of value to which he was not entitled, and that the circumstances are such that it would be unjust for that person to retain the benefit." *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. Ct. App. 2001); *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 306 (Minn.1996); *see also, Acton Constr. Co. v. State*, 383 N.W.2d 416, 417 (Minn.App.1986). It is not enough for the Plaintiffs to show that Defendant benefited from the efforts of Plaintiffs; Plaintiffs must show that Defendant was "unjustly

enriched in the sense that the term unjustly could mean illegally or unlawfully". *Schumacher* at 729. A cause of action for unjust enrichment may be based on 'situations where it would be morally wrong for one party to enrich himself at the expense of another. *Cady v. Bush,* 166 N.W.2d 358, 361-362 (Minn. 1969).

In *Anderson v. DeLisle,* 352 N.W.2d 794 (Minn. Ct. App. 1984), the Court of Appeals supported the finding that unjust enrichment had occurred where Plaintiff and Defendant entered into a contract for the sale of land; Plaintiff began to improve the land before the contract was finalized; and Defendants knew that Plaintiff was financially unable to perform his end of the contract and would default.

The principles of *Anderson* are reiterated in *Brakke v. Hilgers,* 374 N.W.2d 553 (Minn. Ct. App. 1985) (finding that the Plaintiff's claims did not indicate that Defendant plotted unfair advantage of the Plaintiffs or anticipated from the beginning that Plaintiffs would be able to meet their financial obligations.)

Conclusion

Whether Defendant has been unjustly enriched depends on which party one believes; a credibility determination is required to settle this claim and the Court is not permitted to make such a determination. There are facts in dispute and whether Defendant was unjustly enriched is a question that is better left to the finder of fact. Therefore, summary judgment is precluded on this claim.

5. Negligent Misrepresentation

Minnesota courts have adopted the definition of negligent misrepresentation set forth in Restatement (Second) Torts §552 (1976) which provides:

> One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by the justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information. *Bonhiver v. Graff*, 248 N.W.2d 291, 298 (Minn. 1976); *Hebrink v. Farm Bureau Life Ins. Co.*, 664 N.W.2d 414, 420 (Minn. App. 2003).

To establish a claim for negligent misrepresentation, a plaintiff must show that: (1) the defendant owed the plaintiff a duty of care; (2) the defendant supplied false information to the plaintiff; (3) the plaintiff justifiably relied on that information; and (4) the defendant failed to exercise reasonable care in communicating the information. *Williams v. Smith*, 820 N.W.2d 807, 815 (Minn. 2012).

Under general concepts of tort law, "duty" is defined as an "'obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another.' " *L & H Airco*, 446 N.W.2d 372, 378 (Minn. 1989) (quoting *Rasmussen v. Prudential Ins.*, 277 Minn. 266, 268, 152 N.W.2d 359, 362 (1967), which in turn quoted Prosser, Torts § 53 (3d ed. 1964)). The essential question in determining whether a defendant owes a duty is "whether the plaintiff's interests are entitled to legal protection against the defendant's conduct." *Safeco Ins. Co. of America v. Dain Bosworth Inc.*, 531 N.W.2d 861, 871 (Minn. Ct. App. 1995).

Minnesota courts have recognized that a duty of care exists in certain legal relationships such as accountant/client, attorney/client, and in some fiduciary relationships. A duty of care also exists in certain legal relationships where one person has superior knowledge or expertise. *Caritas Family Services*, 488 N.W.2d 282, 288 (Minn. 1992). There is no duty/liability when the parties are engaging in an arm's length commercial transaction. See *Safeco Ins. Co. of America v. Dain Bosworth Inc.*, 531 N.W.2d 861, 871 (Minn. Ct. App. 1995).

Conclusion

There is no indication that Defendant owed any duty to Plaintiffs because the parties were either engaging in an arm's length transaction for the transfer of real estate or Defendant was gifting Plaintiffs property. Establishing a duty is a base element for a claim of negligent misrepresentation. If Defendant did not owe Plaintiffs a duty of care, then there can be no claim. Therefore, Defendant is entitled to summary judgment on this claim.

Conclusion

Because the record reflects a genuine dispute of material fact with regard to three of the claims, the Court denies Defendant's motion for summary judgment as to those claims. Although Defendant is entitled to relief on the two undisputed claims, the Court declines to reduce that relief to a written judgment until the conclusion of this matter, when the Court will be able to issue a single judgment encompassing all relief that is ultimately obtained. For the foregoing reasons, summary judgment is **GRANTED** in part and **DENIED** in part.

KMM

K.M.M.

MINNESOTA JUDICIAL BRANCH

Filed in District Court

State of Minnesota

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STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF OTTER TAIL SEVENTH JUDICIAL DISTRICT

Phillip Kaste and Amanda Kaste,

Plaintiffs,

vs.

The Rusty Nail, Inc.,
dba The Rust Nail, Stellas, LLC;
and Sara Marie Boyum, Nathan Paul Boyum,
Individually and Jointly,

Defendants.

ORDER AND MEMORANDUM DENYING MOTION FOR SUMMARY JUDGMENT, DENYING MOTION FOR DEFAULT JUDGMENT, AND GRANTING MOTION TO DISMISS A PARTY

Court File No. 56-CV-19-97

On November 11, 2019, the above-entitled matter came on for hearing before the undersigned Judge of District Court, at the Otter Tail County Courthouse in Fergus Falls, Minnesota on Defendants' Motions for Summary Judgment, Default Judgment, and to dismiss the Boyums as individual parties. Attorney Joseph Ellig appeared on behalf of Plaintiffs Phillip Kaste and Amanda Kaste. Attorney Jessie Sogge appeared on behalf of Defendants The Rusty Nail, Inc., dba The Rusty Nail, Stellas, LLC; and Sara Boyum and Nathan Boyum. Third-party Defendant Michael Spilde made no appearance. Plaintiff submitted Exhibits A-V, 1, and 3 in response to Defendant's motions. Defendant submitted exhibits A-I in support of the Motion for Summary Judgment; and Exhibit A in support of the Motion for Default Judgment. At the hearing, the Court received Exhibit MTN 001, Answer from Third-Party Defendant, Michael Spilde.

Based upon the entire file, the applicable law, the arguments of the parties, and for the reasoning set forth in the attached Memorandum, IT IS HEREBY ORDERED THAT:

1. Defendants' Motion for Summary Judgment is **DENIED**.

2. Defendants' Motion for Default Judgment is **DENIED.**

3. Defendant's Motion to Dismiss Sara Boyum and Nathan Boyum as individual parties is **GRANTED.**

4. This matter is scheduled for a pre-trial hearing on **March 9, 2020 at 11:30 a.m.** and a jury trial commencing on **March 24, 2020 at 8:30 a.m.** before the undersigned Judge of District Court, at the Otter Tail County Courthouse, in the city of Fergus Falls, Minnesota

5. The attached Memorandum is incorporated herein.

Dated: 1/21/20.

BY THE COURT:



Kevin M. Miller
Judge of District Court

MEMORANDUM

Factual and Procedural Background

This case arises out of injuries sustained by Plaintiff Phillip Kaste (hereinafter "Kaste") when he was shot by Third-Party Defendant Michael Spilde (hereinafter "Spilde") outside of the Rusty Nail. The Rusty Nail is a bar and restaurant located at 106 E. Summit St., Battle Lake, Minnesota 56515. The Rusty Nail is owned by Sara and Nathan Boyum. The Boyums have over ten years of experience owning and operating bars. On the night and early morning of May 14 and 15, 2016, Kaste and Spilde were patrons of the Rusty Nail. Evan Meece (hereinafter "Meece"), Sara Boyum, and Nathan Boyum were all working as bartenders. Nathan Boyum testified that they are trained to identify signs of obvious intoxication and that they provide some training to their employees through on the job shadowing.

The record is somewhat unclear as to the amount of alcohol that Kaste and Spilde consumed while at the Rusty Nail on the night in question. That evening, Kaste arrived at the Rusty Nail with his wife, Amanda Kaste, at around 8:30/9:00 p.m. Kaste drank between 5-10 "Battle Lake Bulldogs" and screwdrivers. When Spilde arrived at the Rust Nail, he had previously been drinking at another bar and consumed one beer and possibly one shot of alcohol.

As it relates to Spilde, Sara Boyum recalls serving him one beer and did not notice anything about his speech or behavior that would indicate to her that he was intoxicated. Nathan Boyum does not recall any specific conversations with Spilde but testified that he may have served him one beer. Meece recalls serving Spilde one or two beers but does not recall observing anything that would indicate that Spilde was obviously intoxicated that night. Spilde testified that he thought he had consumed approximately 3 Coors Light beers and one shot of alcohol that evening. Spilde's bar tab from that evening indicates that he had been served 6 beers and one shot of alcohol. Spilde testified that he was intoxicated that evening.

Neither the Boyums nor Meece recall any interactions between Kaste and Spilde while inside the bar. Surveillance video from the bar confirms that no interaction occurred between the two.

The bar closed at 1:00 a.m. on May 15, 2016. Around this same time, Sara Boyum returned to the bar to assist Nathan Boyum and Meece in cleaning up.[1] When she returned to help clean, Sara Boyum parked her car behind Spilde's car on a public road directly outside of the Rusty Nail. Spilde was in his car, with the engine running and the lights on. Sara Boyum noticed Kaste, whom she recognized, outside of the car and observed Spilde, inside the car, holding a gun. After observing this, Sara Boyum walked quickly inside to tell her husband.

[1] Sara Boyum had briefly left the bar to bring her babysitter home and later returned to assist with cleaning up.

While seated in his car, with Kaste directly outside the driver's side window, Spilde shot Kaste in the chest. After Sara Boyum ran inside to report the gun, Nathan Boyum went to the door and observed Kaste being shot. After observing the shooting, Nathan Boyum shut the door and locked it.

Kaste testified that at the end of the night, after exiting the bar, he heard a man yelling insults at him. Kaste testified that he thought he might know the man, so he walked towards him. Kaste testified that when he was approximately two feet from the driver's side window, he observed that the man was holding a pistol. He continued toward the car in an attempt to swat the pistol away.

Spilde testified that he was in his car attempting to drive home and saw an individual standing in the middle of the road. He became fearful because the individual was a very large man.[2] He then pulled out his gun and shot the man in self-defense.

After Spilde shot Kaste, Spilde drove home, consumed more alcohol, and waited for police to arrive. Spilde was arrested and charged with Attempted Murder and First-Degree Assault- Great Bodily Harm. Spilde pled guilty to First-Degree Assault and is currently serving his sentence in prison. Two hours after the shooting, police administered a preliminary breath test to Spilde and it indicated a blood alcohol concentration ("BAC") of 0.15, a later test showed a result of 0.16.

Michael Spilde testified that he drank some vodka after arriving home but is not sure how much. He also testified that he was intoxicated on the night of the incident and doesn't think he would have shot anyone if he hadn't been. Through his report, Dr. Jon Van Berkom provided that based on the amount of alcohol consumed and the passage of time before the tests were conducted,

[2] By contrast, Michael Spilde weighed approximately 125 lbs. at the time of the incident.

Spilde would have had a BAC of 0.20-0.22 at the time of the shooting and would have been displaying signs of impairment.

Defendant Rusty Nail now brings three motion before the Court:

1. Motion for Summary Judgment on the basis that Plaintiff cannot prove the essential elements of the Minnesota Civil Damages Act;
2. Motion for Default Judgment against Third-Party Defendant Michael Spilde based on allegations that Spilde has not entered an Answer or otherwise participated in the proceedings; and
3. Motion to Dismiss Sara Boyum and Nathan Boyum as individual parties to the action.

I. Motion for Summary Judgment

Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MINN. R. CIV. P. 56.03; *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 753 (Minn. 2005). On Summary Judgment, it is improper for the court to weigh facts or determine the credibility of affidavits and other evidence. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The moving party bears the burden of showing the absence of an issue of material fact. *Stringer*, 705 N.W.2d at 754. A material fact is one whose resolution will affect the result or outcome of the case. *Zappa v. Fahey*, 245 N.W.2d 258, 259-60 (Minn. 1976); *Anderson*, 477 U.S. at 248. Affidavits supporting and opposing a motion for Summary Judgment must set forth facts as would be admissible in evidence. MINN. R. CIV. P. 56.05. “When deciding any summary-

judgment motion, the district court must disregard hearsay evidence that would be inadmissible at trial." *In re Trusts A & B of Divine*, 672 N.W.2d 912, 921 (Minn. App. 2004).

If the moving party presents a prima facie case for Summary Judgment, the burden shifts to the nonmoving party to demonstrate the existence of specific disputed facts that create a genuine issue of material fact for trial. MINN. R. CIV. P. 56.05; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). This demonstration requires more than resting on the averments or denials of the party's pleading. MINN. R. CIV. 56.05; *Stringer*, 705 N.W.2d at 753. In other words, "[s]peculation, general assertions, and promises to produce evidence at trial are not sufficient to create a genuine issue of material fact for trial." *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). The nonmoving party must demonstrate a genuine issue of material fact by presenting "substantial evidence" that creates more than "a metaphysical doubt as to a factual issue" and that is "sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." DLH, 566 N.W.2d at 70-71. Further, Summary Judgment is appropriate when a non-moving party fails to make a showing sufficient to establish the existence of an element essential to the party's case. *Bersch v. Rgnonti & Assocs.*, 584 N.W.2d 783, 786 (Minn. App. 1998).

Civil Damages Act

The Minnesota Civil Damages Act, or the Dram Shop Act, makes selling, giving, furnishing or in any way procuring alcoholic beverages for the use of an obviously intoxicated person illegal. See Minn. Stat. § 340A.502 (2009). Further, the act provides a remedy for such sales:

> A spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support, or who incurs other pecuniary loss by an intoxicated person or by the intoxication of another person, has a right of action in the person's own name for all damages sustained against a person who caused the intoxication of that person by illegally selling alcoholic beverages. Minn. Stat. § 340A.801, subd. 1 (2009).

To prevail in a dram shop action under this statute, the claimant must prove: (1) that the sale of alcohol was illegal; (2) that the violation was substantially related to the purpose sought to be achieved by the Act; (3) that the illegal sale of alcohol caused or contributed to intoxication; and (4) that the intoxication was a proximate cause of the Plaintiff's injuries. *Rambaum v. Swisher*, 435 N.W.2d 19, 21 (Minn.1989); *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 372 (Minn.2008).

Illegal Sale

To prove an illegal sale occurred, Plaintiff must provide evidence of an illegal sale of alcohol; in other words, that the Rusty Nail sold or furnished intoxicating liquor to Spilde while he was "obviously intoxicated." *Osborne v. Twin Town Bowl Inc.*, 749 N.W.2d 367, 372 (Minn. 2008). The standard for determining whether a person is "obviously intoxicated" is whether intoxication is "observable in appearance or behavior of the person to whom the intoxicating liquor is furnished." *Mjos v. Village of Howard Lake*, 287 Minn. 427, 178 N.W.2d 862, 867 (Minn. 1970).

Defendant suggests that because the bartenders testified that they did not observe any obvious signs of intoxication in Spilde, that he was not obviously intoxicated. The Court finds this argument unpersuasive. In *Murphy v. Hennen*, the Court found sufficient evidence to sustain a finding of an illegal sale despite no witness testimony regarding the allegedly intoxicated person's behavior in the bar. This was due to the nature and extent of his drinking and his conduct upon leaving the bar. See *Murphy v. Hennen,* 119 N.W.2d 489 (Minn. 1963).

"A finding of intoxication and obvious intoxication does not require proof of any specified amount of drinking or of any degree of intoxication, but simply proof that, as a result of drinking intoxicants, a person has lost control to any extent of his mental or physical faculties and that such condition is, or should be, observable or apparent to the seller." *Id.* at 493.

Spilde's statement about being intoxicated; his small stature, the amount of alcohol that he consumed throughout the night; his behavior upon leaving the bar (yelling insults at a stranger); the report of Dr. Jon Van Berkom regarding Spilde's alcohol consumption; and Spilde's actual BAC all create enough of a genuine issue of fact as to whether the Rusty Nail made an illegal sale to preclude summary judgment.

Purpose of the Civil Damages Act

The purpose of the Civil Damages Act is as follows: to provide a remedy for a spouse or other injured person for all damages sustained against a person who caused the intoxication of that person by illegally selling alcoholic beverages. See Minn. Stat. § 340A.801, subd. 1 (2009). "The intent and purpose of the Act's provisions are clear. The mischief to be suppressed is the illegal furnishing of liquor causing a person's intoxication and the remedy to be advanced is the

protection of innocent third persons injured as a result by providing those persons a claim of civil damage." *Lefto v. Hoggsbreath Enterprises, Inc.* 581 N.W.2d 855, 857 (Minn.1998).

Here, it is undisputed that Phillip Kaste was injured after being shot in the chest by Michael Spilde. The Plaintiffs in this case fall within the category of those contemplated in the Act. Plaintiffs allege that this assault occurred after the Rusty Nail illegally furnished alcohol to Spilde, causing his intoxication and the injury. Therefore, this case is clearly within the scope and purpose of the Minnesota Civil Damages Act.

Causation

In addition to proving that an illegal sale occurred, there must also be a "show[ing] by competent proof" that the illegal sale of alcohol "caused or contributed to...intoxication and that the same was a proximate cause of the [Plaintiff's] injuries." *Kryzer v. Champlin Am. Legion No. 600,* 494 N.W.2d 35, 36-37 (Minn.1992) quoting *Hartwig v. Loyal Order of Moose, Brainerd Lodge,* 91 N.W.2d 794, 801 (Minn. 1958).

A genuine issue of material fact remains as to the issue of causation relating to Spilde's intoxication. Spilde's bar tab indicated that he had purchased 6 beers and a shot at the Rusty Nail, this was after he consumed a beer and a possibly shot at another bar. Spilde stated that he was intoxicated on the night in question. These facts provide a sufficient causal link between Defendant's alleged illegal sale and Spilde's alleged intoxication.

The next step in the analysis is whether there is a genuine issue of material fact as to whether Spilde's intoxication was a proximate cause of Plaintiff's injury. In other words, the intoxication must be a substantial factor in bringing about the injury. *Osborne,* 749 N.W.2d at 373.

As such, the intoxication need not be the sole cause of injury for liability to attach under the Dram Shop Act. *Id.* at 375-76.

Here, it is possible that Spilde's choices and actions substantially resulted from his intoxicated state of mind. Much like an intoxicated driver who speeds up at a red light because his alcohol-impaired judgment leads him to believe he can make it through an intersection before an oncoming vehicle arrives, or an intoxicated individual who decides to jump off a bridge when faced with arrest, Spilde's decision to engage in a verbal altercation with Kaste and ultimately to shoot him, could have been substantially and directly caused by his alcohol-impaired judgment. See *Kvanli v. Village of Watson*, 272 Minn. 481, 485, 139 N.W.2d 275, 278 (1965); *Osborne v. Twin Town Bowl Inc.*, 749 N.W.2d 367, 374 (Minn. 2008).

Additionally, the *Osborne* Court alluded that causation is apparent in a dram shop case when it relates to a "bar fight scenario." *Osborne*, 479 N.W.2d at 378. The case at hand is factually similar to a bar fight scenario.

In this case, there is the statement from Spilde that he doesn't believe he would have shot anyone if he had not been intoxicated. Therefore, a jury could find that Kaste's injuries were proximately caused by Spilde's intoxication. This creates a genuine issue of material fact that precludes summary judgment.

II. Motion for Default Judgment

Minn. R. Civ. Pro. 55.01 governs the procedure for Default Judgment. "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed therefor by these rules or by statute, and that fact is made to appear by affidavit, judgment by default shall be entered against that party...." Minn. R. Civ. P. 55.01.

Defendant seeks Default Judgment against Third-Party Defendant Michael Spilde. Defendant represented to the Court that Spilde had not participated in the proceedings thus far and had not entered any Answer. The Court does not agree. Spilde has "otherwise defend[ed]" as contemplated within the rule. Michael Spilde is currently incarcerated; this makes his appearing at Court hearings quite difficult, but he has still attempted to participate in the proceedings.

Spilde was served with the Third Party Summons and Complaint on June 5, 2019. Defendant submitted as Exhibit A, in their Motion for Default Judgment, a letter from Spilde dated June 5, 2019, indicating that he was attempting to secure counsel and requesting a continuance. Spilde further explained that the prison's legal library was scheduled to be closed for a period of time in June 2019 and this had complicated his ability to research and respond to the Summons and Complaint. At the hearing on November 21, 2019, Defendant represented that although a letter had been received from Spilde on November 15, 2019, no Answer had been filed. The contents of the letter, marked as Exhibit MTN 001, are as follows:

> Answers by Michael Spilde.
>
> I have read the papers served upon me and do not understand how to respond.
>
> Because I do not understand the papers served upon me, I deny the allegations except for my name is Michael Spilde. I do not deny I was at The Rusty Nail. I do not deny I consumed alcohol and was intoxicated by the alcohol provide to me by The Rusty Nail.
>
> Respectfully,
>
> /s/ Michael Spilde
>
> 11-12-19

This Court finds that despite its late service to the Defendant's, this letter constitutes an Answer by Spilde. Given Spilde's incarceration and difficulty accessing other materials, the Court does not find his delay in answering the complaint to be inexcusable. Additionally, Spilde has demonstrated his desire to participate in the proceedings by cooperating to be deposed and making himself available for communications with opposing Counsel.

The Court finds that Spilde has attempted to participate in the proceedings and has otherwise defended himself against the summons and complaint; therefore, the Court denies Defendant's Motion for Default Judgment.

III. Motion to Dismiss Sara Boyum and Nathan Boyum as Individual Parties

The motion to dismiss the Boyums as individual parties to the action is not opposed by the Plaintiff. Therefore, the Court grants the motion.

Conclusion

For the above stated reasons,

1. Defendant's Motion for Summary Judgment is hereby **DENIED**;
2. Defendant's Motion for Default Judgment is **DENIED;** and
3. Defendant's Motion to Dismiss the Boyums as individual parties is **GRANTED.**

KMM

K.M.M.

Filed in District Court
State of Minnesota
July 8, 2021

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF OTTER TAIL SEVENTH JUDICIAL DISTRICT

AgCountry Farm Credit Services PCA,

Plaintiff,

vs.

Wayland State Bank,

Defendant.

ORDER AND MEMORANDUM DENYING MOTION FOR SUMMARY JUDGMENT

Court File No. 56-CV-20-471

On April 12, 2021, the above-entitled matter came on for hearing before the Honorable Kevin M. Miller of District Court, at the Otter Tail County Courthouse in Fergus Falls, Minnesota, via remote technology, on Defendants' Motion for Summary Judgment. Attorney Jon Brakke appeared on behalf of Plaintiff. Attorney Christopher Morris appeared on behalf of Defendant. The parties each submitted briefs and affidavits to support their arguments. The parties also orally argued their positions at the hearing.

Based upon the entire file, the applicable law, the arguments of the parties, and for the reasoning set forth in the attached Memorandum, IT IS HEREBY ORDERED THAT:

1. Defendants' Motion for Summary Judgment is **DENIED**.
2. The attached Memorandum is incorporated by reference herein.

Dated: 7/8/21

BY THE COURT:

Kevin M. Miller
Judge of District Court

MINNESOTA JUDICIAL BRANCH

Memorandum

Undisputed Facts and Procedural Background

1. An entity by the name of CMS Farms of New York Mills, Inc. (hereinafter "CMS") is indebted to Plaintiff, AgCountry Farm Credit Services PCS (hereinafter "AgCountry") in the principal amount of $500,000.00. This loan was executed pursuant to the terms of a Promissory Note/Loan Agreement dated April 6, 2018 (hereinafter "Note"). As collateral for the Note, CMS granted AgCounty a security interest in all farm products; all livestock, born or unborn; all accounts; and all proceeds. Craig Salmela appears to have or have had an ownership interest in CMS.
2. CMS defaulted on the Note and owes AgCountry $356,588.08 plus accruing interest.
3. In December 2018, CMS used $293,144.97 of the funds from the Note to purchase 5,450 nursery pigs from PIC USA, Inc. (hereinafter "PIC").
4. PIC is an abbreviation for Pig Improvement Company and is a company focused on breeding and hog genetics.
5. Wayland State Bank (hereinafter "Wayland") extended a series of business loans to a company called PEBS Minnesota LLP (hereinafter "PEBS"). The loan was secured via security agreement and the funds were used to purchase livestock from PIC and to acquire a hog facility (real estate) from CMS.
6. PEBS raised pigs as an ongoing source of semen for PIC.
7. PEBS executed a bill of sale and assignment to an individual named Craig Salmela for nursery pigs. PEBS applied to proceeds from the sale of the pigs to a debt it owed Wayland. On January 2, 2019, CMS used $45,000 from the Note to purchase 1,250 sows.

8. On January 10, 2019, PEBS executed a bill of sale and assignment to Craig Salmela for 1,250 sows. PEBS applied the proceeds from the sale to a debt it owed to Wayland.

Disputed Facts

1. Plaintiff alleges that CMS transferred the pigs it purchased using funds from the Note to PEBS and that PEBS then sold those same pigs and applied the proceeds to amounts that PEBS owed to Wayland.

Legal Analysis

I. Summary Judgment

Plaintiff brought this action on alleging three counts: (1) Priority of Security Interests; (2) Unjust Enrichment; and (3) Accounting. Defendant brought a motion for summary judgment on April 12, 2021, positing that there is no genuine issue of material fact for the Court to resolve.

Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MINN. R. CIV. P. 56.01; *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 753 (Minn. 2005). On Summary Judgment, it is improper for the court to weigh facts or determine the credibility of affidavits and other evidence. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The moving party bears the burden of showing the absence of an issue of material fact. *Stringer*, 705 N.W.2d at 754. A material fact is one whose resolution will affect the result or outcome of the case. *Zappa v. Fahey*, 245 N.W.2d 258, 259-60 (Minn. 1976); *Anderson*, 477 U.S. at 248. Affidavits supporting and opposing a motion for Summary Judgment must set forth facts as would be admissible in evidence. MINN. R. CIV. P. 56.05. “When

deciding any summary-judgment motion, the district court must disregard hearsay evidence that would be inadmissible at trial." *In re Trusts A & B of Divine*, 672 N.W.2d 912, 921 (Minn. App. 2004).

If the moving party presents a prima facie case for Summary Judgment, the burden shifts to the nonmoving party to demonstrate the existence of specific disputed facts that create a genuine issue of material fact for trial. MINN. R. CIV. P. 56.05; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). This demonstration requires more than resting on the averments or denials of the party's pleading. MINN. R. CIV. 56.05; *Stringer*, 705 N.W.2d at 753. In other words, "[s]peculation, general assertions, and promises to produce evidence at trial are not sufficient to create a genuine issue of material fact for trial." *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). The nonmoving party must demonstrate a genuine issue of material fact by presenting "substantial evidence" that creates more than "a metaphysical doubt as to a factual issue" and that is "sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." DLH, 566 N.W.2d at 70-71. Further, Summary Judgment is appropriate when a non-moving party fails to make a showing sufficient to establish the existence of an element essential to the party's case. *Bersch v. Rgnonti & Assocs.*, 584 N.W.2d 783, 786 (Minn. App. 1998).

Here, there is no question that there is a material fact in dispute. However, Defendant alleges that Plaintiff has failed to make a showing sufficient to establish the existence of elements essential to their case. It is this issue to which Court now turns.

Priority of Security Interests

The first claim in the matter is a priority of security interests, which follows the legal structure of a common law action for conversion. The elements of common law conversion are

as follows: (1) the plaintiff holds a property interest; and (2) defendant deprives plaintiff of that interest. *Olson v. Moorhead Country Club,* 568 N.W.2d 871, 872 (Minn.App.1997), *review denied* (Minn. Oct. 31, 1997). A party's acceptance of property subject to a security interest constitutes conversion. *See Farmers State Bank of Delavan v. Easton Farmers Elevator*, 457 N.W.2d 763, 766 (Minn.Ct. App.1990). Good faith does not provide a defense for a claim of conversion. *Dairy Farm Leasing Co. v. Haas Livestock Selling Agency,* 458 N.W.2d 417, 419 (Minn.App.1990).

The record before the Court indicates that the Plaintiff believes that the Defendant has deprived the Plaintiff of its property interest in a security interest with CMS. This security interest regards the collateral used to secure Plaintiff's Promissory Note with CMS, encompassing all farm products; all livestock, born or unborn; all accounts; and all proceeds from CMS. CMS defaulted on its loan payments due under the Note, and Plaintiff alleges that that CMS transferred the pigs it purchased using funds from the Note to PEBS, and that PEBS then sold those same pigs and applied the proceeds to amounts that PEBS owed to Defendant. Whether this chain of events supports a common law claim for conversion is undecided. Plaintiff clearly has a property interest in its security interest from CMS, thus the first element of conversion is fulfilled. The second element of conversion is at issue here, and it is to this element that the Court now turns.

Plaintiff has provided the Court with a prima facie case that Wayland accepted proceeds from PEBS that may be AgCountry's collateral. Plaintiff has demonstrated its execution of a Promissory Note with CMS that provided Plaintiff with a security interest in the pigs and the accounts and proceeds of those pigs as collateral. Plaintiff has also provided evidence that the pigs and money flowing from their transfer through different third parties may have resulted in

Defendant's acceptance of Plaintiff's security interests in said pigs. This tenuous chain of events provides a prima facie showing of sufficient evidence to establish the existence of elements essential to a claim for conversion.

Defendant's good faith in the matter does not provide a defense for Plaintiff's common law claim for conversion. Defendant may very well have accepted the proceeds stemming from Plaintiff's security interest without knowledge of Plaintiff's interest. Thus, the Court finds that there is a genuine issue of material fact in the Plaintiff's claim regarding the Priority of Security Interests.

Unjust Enrichment

"In order to establish a claim for unjust enrichment, the claimant must show that another party knowingly received something of value to which he was not entitled, and that the circumstances are such that it would be unjust for that person to retain the benefit." *Schumacher v. Schumacher,* 627 N.W.2d 725, 729 (Minn. Ct. App. 2001); *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.,* 544 N.W.2d 302, 306 (Minn.1996); *see also, Acton Constr. Co. v. State,* 383 N.W.2d 416, 417 (Minn.App.1986). It is not enough for the Plaintiffs to show that Defendant benefited from the efforts of Plaintiffs; Plaintiffs must show that Defendant was "unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully." *Schumacher* at 729.

A cause of action for unjust enrichment may be based on 'situations where it would be morally wrong for one party to enrich himself at the expense of another. *Cady v. Bush,* 166 N.W.2d 358, 361-362 (Minn. 1969). The Court does not need to believe that the elements of unjust enrichment are fulfilled before ruling that summary judgment is inappropriate; only that

the movant has met its burden establishing sufficient evidence to support the elements for a claim of unjust enrichment.

Plaintiff has alleged that Defendant was unjustly enriched by knowingly receiving Plaintiff's security interest under the Note executed with CMS, and that Defendant's retention of that benefit is unjust under the circumstances. The undisputed fact that Plaintiff has not been able to recover the loan amount due under its Promissory Note with CMS is not enough to support a claim for unjust enrichment, nor is the undisputed fact that Defendant PEBS applied the proceeds from the January 10th sale and assignment with Craig Salmela to a debt it owed to Wayland.

However, Plaintiff's contends that the chain of events, from the Note executed with CMS to Wayland's debt to Defendant, demonstrates a case of unjust enrichment. The preliminary evidence provided by the Plaintiff of this chain of events is enough to survive a motion for summary judgment, providing the Court with a prima facie showing of evidence sufficient to support an element essential to the Plaintiff's claim for unjust enrichment.

Accounting

Accounting is an equitable remedy known "that compels the disclosure of money or property held or obtained by a particular party but which belongs to another." *Elliott v. Noah's Ark Processors, LLC*, No. 37-CV-11-200 (Minn.Dist.Ct. Jan. 28, 2013). See also *Keough v. St. Paul Milk Co.*, 205 Minn. 96, 103, 285 N.W. 809, 815 (1939) (describing an accounting as an equitable remedy); *Raymond Farmers Elevator Co. v. American Surety Co. of New York*, 207 Minn. 117, 290 N.W. 231 (1940) (action for accounting held an equitable action for monetary damages); 1A C.J.S. Accounting § 21 (2005) ("Equity has jurisdiction to compel an accounting when one party has profits in which another is entitled to share."). Remedies for accounting are available "primarily in two circumstances: when a fiduciary owes an equitable duty to account

and when the accounts at issue are exceedingly complicated*." Fafinski v. Benepartum Law Group*, No. 19HA-CV-10-5838 (Minn.Dist.Ct. May 09, 2012) (citing *United Prairie Bank-Mountain Lake v. Haugen Nutrition & Equipment*, LCC, N.W.2d (Minn. 2012)). The required prerequisite to maintain a suit for accounting, like other equitable remedies, is "the absence of an adequate remedy at law." *Landgraf v. Ellsworth*, 126 N.W.2d 766, 769 (Minn. 1964). Furthermore, accounting is "an extraordinary remedy usually available only when legal remedies are inadequate." *See Lefkowitz v. Citi-Equity Group, Inc.,* 146 F.3d 609, 611 (8th Cir.1998) (citing *Bradshaw v. Thompson*, 785 454 F.2d 75, 79 (6th Cir.1972)).

In this case, Plaintiff has presented evidence to demonstrate that the accounts at issue are exceedingly complicated and may require an equitable remedy like accounting. Additionally, if the Plaintiffs claims for conversion and unjust enrichment ultimately fail, the Plaintiff may still be successful on a claim for accounting if the Court deems the equitable remedy is necessary due to the "absence of adequate remed[ies] at law." *Landgraf* at 769. Plaintiff has provided evidence that there may be a present inequity in this case, where the complex transfers and assignments of pigs and their proceeds have resulted in a detriment to the Plaintiff, as they have not been able to recover damages under CMS's defaulted loan payments.

Further, both parties have agreed that Defendant received proceeds from PEBS to satisfy outstanding debt. The issue in question is whether those proceeds were connected to Plaintiff's security interest in its Promissory Note with CMS. The parties have presented conflicting evidence regarding this issue, yet viewing the evidence in the light most favorable to the nonmoving party demonstrates that there is genuine issue of fact with sufficient evidence to support an essential element of Plaintiff's claim for accounting. Thus, the accounting claim also survives Defendant's motion for summary judgment.

Conclusion

Because the record reflects a genuine dispute of material fact with a prima facie showing sufficient to establish the existence of an element essential to the case, the Court is compelled to deny Defendant's motion. For the foregoing reasons, summary judgment is **DENIED.**

KMM

K.M.M.

MINNESOTA JUDICIAL BRANCH

Filed in District Court
State of Minnesota
May 18 2020 12:06 PM

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF OTTER TAIL SEVENTH JUDICIAL DISTRICT

Ryan Carey,

Plaintiff,

vs.

Clay County, Minnesota,

Defendant.

ORDER AND MEMORANDUM GRANTING MOTION FOR SUMMARY JUDGMENT

Court File No. 14-CV-17-1687

On March 13, 2020, the above-entitled matter came on for hearing before the undersigned Judge of District Court, at the Otter Tail County Courthouse in Fergus Falls, Minnesota on Defendants' Motion for Summary Judgment. Attorney Isaac Kaufman appeared on behalf of Plaintiff Ryan. Attorney Joshua Heggem appeared on behalf of Defendant Clay County, Minnesota. Plaintiff submitted Exhibits A-K in response to Defendant's motion.

Based upon the entire file, the applicable law, the arguments of the parties, and for the reasoning set forth in the attached Memorandum, IT IS HEREBY ORDERED THAT:

1. Defendants' Motion for Summary Judgment is **GRANTED**.

2. The attached Memorandum is incorporated by reference herein.

Dated: 5/18/20

BY THE COURT:

Kevin M. Miller
Judge of District Court

MEMORANDUM

Factual and Procedural Background

Plaintiff, Sheriff's Deputy Ryan Carey (hereinafter "Deputy Carey") was hired by the Clay County Sheriff's Office in 2001. During this time, Deputy Carey worked both as a patrol officer and a canine handler. Compl. Ex. A, p. 1 (March 13, 2013) (Lundberg, Arb.). In June 2012, Deputy Carey was attending a training in Eden Prairie, Minnesota. Late at night at the hotel, Deputy Carey and other law enforcement officers who were attending the training were socializing by the pool. The group was being disruptive and the hotel's management called law enforcement (hereinafter "the incident"). *Id.* at 3.

Following the incident, there was an internal affairs investigation into Deputy Carey's involvement. *Id.* at 4. The investigators and Clay County Sheriff Bill Bergquist determined that Deputy Carey was being untruthful regarding communications he had with others regarding the incident. On July 25, 2012, the Clay County Sheriff terminated Deputy Carey's employment. Comp. ¶7.

Law Enforcement Labor Services, Inc. (hereinafter "the Union"), filed a grievance on behalf of Deputy Carey challenging his termination. The issue was arbitrated on January 15 and 16, 2013, before arbitrator James Lundberg. Comp. ¶8. In his findings, Arbitrator Lundberg relied on the following facts. On June 21, 2012 Clay County Sheriff's Lieutenant Steve Todd was contacted by Eden Prairie Minnesota Police Department Lieutenant Morrow. Compl. Ex. A, p. 3 (March 13, 2013) (Lundberg, Arb.).

> Lt. Morrow was unhappy with an incident that occurred at the Residence Inn in Eden Prairie during the late hours of June 9, 2012 and the early hours of June 10, 2012. The grievant, Deputy Carey was staying with his wife at the Residence Inn at the time and attended a K-9 training session on June 10, 2012.
>
> Lt. Todd was informed that Deputy Carey and Deputies from Wabasha County were in a group that was being loud and refused to leave the pool area of

> the hotel, when asked by the manager. A call was made to the Eden Prairie Police and Officer Schmidt answered the call. According to the investigation notes of Lt. Todd and the e-mail from Lt. Morrow, Deputy Carey refused to leave the pool area. Deputy Carey only left, after being given several commands. The investigation report indicates that Deputy Carey was very intoxicated and argued with Officer Schmidt. It was reported that one of the K-9 officers was making his dog bark and a siren from one of the police cars had been activated.
>
> Lt. Morrow was acting on hearsay information provided by Eden Prairie Officer Irmiter. Officer Irmiter was not called as a witness in this arbitration and the source or sources of Officer Irmiter's information is/are unknown.
>
> In fact, most of the information that was given to Lt. Todd by Lt. Morrow, as obtained from Officer Irmiter, was either inaccurate or completely wrong based upon the direct testimony of witnesses who were present at the time of the incident in the early hours of June 10, 2012 at the Residence Inn in Eden Prairie Minnesota. However, Lt. Todd assumed that Lt. Morrow was providing him with an accurate picture of what happened prior to the K-9 trials on June 10, 2012 and he initiated an "Internal Complaint."
>
> Lt. Todd initiated an Internal Investigation in Deputy Carey's conduct by calling Deputy Carey at 5:30 PM on June 21, 2012. Deputy Carey was on vacation at the time he took the phone call. He was attending a fishing tournament in Devils Lake, North Dakota. In a telephone conversation Lt. Todd informed Deputy Carey that allegations of misconduct had been made against him regarding [the incident]. Lt. Todd testified that he told Deputy Carey not to discuss the matter with anyone except his Union Representative and his Attorney. Lt. Todd also testified that he ordered Deputy Carey to see him when he returned from vacation.
>
> . . .
>
> Since Deputy Carey was on vacation, in the process of registering for a fishing tournament and was receiving oral notification by cell phone with considerable background noise and movement, it is reasonable to conclude that he was not completely focused on the conversation.

Id. at 3-4. After receiving the phone call Deputy Carey made some comments to fellow officers, but there is no evidence he violated a written non-disclosure order that was not served on him until June 30, 2012. *Id*. at 5. There is no evidence that any of these conversation interfered with or corrupted the investigation. *Id*. Lt. Todd argued that Deputy Carey was supposed to see him as soon as he returned from vacation, but it was his job to serve Deputy Carey with the non-disclosure order and it was reasonable for Deputy Carey not to know whether he was to seek out Lt. Todd or just wait until they crossed paths. *Id*. at 5-6.

Individuals who were present during the incident gave testimony indicating that it was not Deputy Carey's siren or dog barking and that Deputy Carey was the Deputy who stayed to talk to Eden Prairie Officers after the others had left. *Id*. at 7. Officers made these admissions against their own interests, making it clear that the allegations of dishonesty by Deputy Carey were based on inaccurate information. *Id*.

After Deputy Carey was given his Tennessen/Garrity warning, Deputy Carey recalled speaking to Deputy Steffes about the incident. *Id.* at 9.

> During the course of the investigation, Deputy Steffes found several text messages on his phone from Deputy Carey. The text messages were sent shortly after Lt. Todd ordered Deputy Carey not to talk to anyone about the incident . . . Deputy Carey inaccurately testified in his interview that he talked to Deputy Steffes but not that he sent text messages to Deputy Steffes. In fact, he vigorously denied sending text messages. Grievant testified at arbitration that he still had no recollection of the text messages. However, he did explain and support with data from his phone service that he sent and received approximately 16,000 text messages over a period of 8 months. Grievant's failure to recall a series of text messages sent on June 21, 2012 was deemed a lie by the Employer. However, Deputy Carey was asked to respond to questions about specific text messages on a specific day, when he sent and received an average of 67 messages each day. Deputy Carey's testimony that he did not and does not recall sending the text messages is credible in light of the number of text messages he routinely receives and transmits each day. *Id.*

Based on his findings of fact, Arbitrator Lundberg found that there was "insufficient evidence to establish that Deputy Carey made dishonest statements to the investigators" and that the employer did not have just cause to discharge Deputy Carey. Arbitrator Lundberg directed that Deputy Carey be reinstated with full back pay and benefits. Sheriff Bergquist reinstated Deputy Carey and assigned him to a courtroom security position. Comp. ¶13.

Since being reinstated, Deputy Carey has applied for approximately 12 different work assignments (Siiro Aff. ¶8). For each of these openings, the Sheriff chose another applicant. The Union challenged both Clay County's decision to reinstate Deputy Carey

with a courtroom security assignment and the subsequent decisions not to transfer Deputy Carey to one of the other work assignments that he applied for. Both challenges were submitted to an arbitrator. Both arbitrators determined the issues to be inarbitrable. Deputy Carey did not appeal either of these arbitration decisions.

In a letter to Attorney Kaufman and Attorney Rengel on April 25, 2013, Arbitrator Lundberg wrote,

> "[a]ssigning Deputy Ryan to courthouse duty prevents him from working the same level of overtime as is available for road duty officers and increases his expenses, because he is unable to use a squad car to travel to and from his home. Consequently, the assignment is a form of punishment and the employer did not have just cause to punish the grievant." (Doc. 5; May 15, 2017.)

Arbitrator Lundberg went on to state that he did not feel that Deputy Carey's reinstatement "conformed fully with the 'spirit' of the arbitration award but does follow the 'letter' of the award". Arbitrator Lundberg determined that "… management has the right to assign a deputy to any road or courthouse position" and that reinstatement of Deputy Carey to a specific assignment was beyond his jurisdiction. *Id.*

Regarding the grievance for being denied a change of assignment from courthouse to patrol/canine, Arbitrator Richard Beens found that Article 7.2.4 of the Collective Bargaining Agreement between the parties gave "the Employer the exclusive right to assign positions and duties within the sub-classification of Deputy. Compl. Ex. C, p. 9 (August 26, 2015) (Beens, Arb.). Arbitrator Beens found the grievance to have merit but ultimately found that the dispute was not arbitrable. *Id.* at 10.

Deputy Carey has since been passed over for other work assignment and for overtime patrol assignments. Deputy Carey's status as a "Brady Officer" is just one factor among many that he considers when making work assignments (Siiro Aff. ¶10). The

current Sheriff, Mark Empting, has experience working patrol assignments with Deputy Carey. Sheriff Empting has previously observed Deputy Carey playing videogames and sleeping while on patrol; neither of these incidences resulted in a report, investigation, or discipline (Empting Dep. 35, 37, 38). Sheriff Empting considers Deputy Carey a "Brady Officer" based, in part, on the opinion of Clay County Attorney Brian Melton. *Id.* at 24, 29. County Attorney Melton is aware of the situation surrounding Deputy Carey's termination and subsequent reinstatement (Melton Aff. ¶8). He thinks that the information will likely need to be disclosed in future criminal prosecutions. *Id.*

Plaintiff Ryan Carey is seeking the following relief:

1. Declaratory Judgment- finding that Plaintiff Carey does not have the status of a Brady Officer;

2. Permanent Injunction- enjoining Clay County from designating Plaintiff Carey as a Brady Officer and from denying him or refusing to consider him for assignments on that basis.

Defendant Clay County has previously made a motion for summary judgment (Doc. 36; December 21, 2017). The Court issued an Order Denying Summary Judgment finding that summary judgment was premature and additional discovery needed to be conducted to provide information necessary to Plaintiff's due process claims (Doc. 54; April 13, 2018). Such discovery has since concluded and Clay County now brings another motion for summary judgment (Doc. 73; January 15, 2020).

As a preliminary matter, as stated and analyzed in the Court's prior Order denying summary judgment, the issues before the Court are not suited to arbitration; therefore, Deputy Carey has exhausted his administrative remedies.

Legal Analysis

Defendant Clay County is seeking an Order granting their motion for summary judgment. Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MINN. R. CIV. P. 56.01; *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 753 (Minn. 2005). For the sake of clarity, the Court will analyze whether the County is entitled to judgment as a matter of law first and then will analyze whether there are any genuine issues of material fact.

I. Declaratory Judgment

Deputy Carey is seeking an order of the Court finding that he does not have the status of a "Brady Officer".

In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), the Supreme Court held that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith of the prosecution." *Id.* at 87; *See also, State v. Roan*, 532 N.W.2d 563, 571 (Minn. 1995).

Giglio v. U.S., 405 U.S. 150 (1972) provides further instruction on the prosecution's duty to disclose exculpatory information. The Supreme Court stated that "[w]hen the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within" the *Brady* rule. *Id.* at 154 (quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959)). Impeachment evidence (evidence adversely affecting credibility) about a state's witness falls within the *Brady* rule. *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375 (1985).

Under *Brady*, the suppression by the State, whether intentional or not, of material evidence favorable to the defendant violates the constitutional guarantee of due process. *Brady v. Maryland*,

373 U.S. 83, 87 (1963). The United States Supreme Court has since defined the three elements of a *Brady* violation: (1) the evidence must be favorable to the defendant because it would have been either exculpatory or impeaching; (2) the evidence must have been suppressed by the prosecution, intentionally or otherwise; and (3) the evidence must be material—in other words, the absence of the evidence must have caused prejudice to the defendant. *Pederson v. State,* 692 N.W.2d 452, 459 (Minn.2005) (citing *Strickler v. Greene,* 527 U.S. 263, 281–82 (1999)).

When determining whether impeachment evidence is material under *Brady,* the undisclosed impeachment evidence cannot be viewed in isolation. Rather, the impeachment evidence must be viewed in context, alongside the witness's testimony, in light of any other impeachment evidence, and in light of corroborating evidence that bears on the witness's credibility. *Youngblood v. West Virginia,* 547 U.S. 867, 870 (2006) ("[A]lthough a 'showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal,' ... [t]he reversal of a conviction is required upon a 'showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.' ") (quoting *Kyles v. Whitley,* 514 U.S. 419, 434 (1995)) (internal citations omitted). The *Kyles* Court instructs that "[t]he prudence of the careful prosecutor should not therefore be discouraged".

In addition to the prosecution's constitutional obligations, Minnesota Statutes also require disclosure of exculpatory information.

Prosecutors are required to disclose all exculpatory information or material in the prosecutor's possession and control that tends to negate or reduce the defendant's guilt. Minn. R. Crim. P. 9.01 subd. 1(6) The prosecutor's obligations under this rule extend to material information in the possession or control of members of the prosecution staff and any others who have

participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to the prosecutor's office. Minn. R. Crim. P. 9.01 subd. 1a(1).

The prosecution is tasked by both the Constitution and Minnesota law with disclosing potentially exculpatory information. This information includes evidence of an officer's past dishonesty. Whether Deputy Carey's alleged dishonesty must be disclosed in a criminal prosecution depends on the context of the specific case. The entire case and the entirety of Deputy Carey's testimony would need to be looked at to determine if the allegation of dishonesty is material. It is impossible for this Court to know whether the information about Deputy Carey's alleged dishonesty will be material to a future criminal prosecution. The Court will not put future prosecutors in the position of deciding whether to violate an order of this Court or violate their constitutional obligations if they think that the information regarding Deputy Carey is material and requires disclosure.

Additionally, it is not the situation that the prosecution is unaware of the facts that lead to Deputy Carey's termination, subsequent reinstatement, and Sheriff Empting continuing to believe that he had been dishonest. The county attorney knows exactly what transpired that lead to Deputy Carey's "Brady" designation and despite the arbitrator's findings, County Attorney Melton still thinks that the information would likely need to be disclosed in a criminal prosecution.

In addition to interfering with the prosecution's constitutional and statutory obligations, a Declaratory Judgment would also impermissibly violate a criminal defendant's right to due process.

In a case out of Nevada, Officer Doe was placed on the equivalent of a "Brady list" after he returned a broken coffee pot while on duty and was found to have violated department policies

including "Neglect of Duty" and "Promotion of Integrity". *Sparks Police Protective Ass'n v. City of Sparks*, No. 3:16-cv-00681-MMD-WGC, 2016 LEXIS 176589 (D.Nev. Dec. 21, 2016). The Sparks Police Protective Association (SPPA) argued that no procedure exists to challenge whether the results of an internal investigation must be disclosed and therefore, the requirement to disclose policy violations is a "definite threat to Officer Doe's career which amounts to an unlawful taking of his property by a government agency." SPPA sought a temporary restraining order and the Court declined to issue the order, finding that there was no violation of Officer Doe's right to due process because he was not terminated or denied the right to be a police officer. The Court also found that it would be against public interest to issue a TRO because of the potential harm to criminal defendants. The Court noted that SPPA's motion "asks the Court to withhold potential *Brady* material from criminal defendants- itself a constitutional violation- and will create potential rippling adverse effects on the prosecution of these criminal cases, including obtaining guilty verdicts that may be subsequently reversed on appeal." *Id.*

Deputy Carey relies heavily on a case from the New Hampshire Supreme Court, *Duchesne v. Hillsborough County Attorney*, 119 A.3d 188 (N.H. 2015). In that case, two officers were accused of using excessive force while off duty at a local bar. The police chief ordered both an internal affairs and criminal investigation into the incident. The internal affairs investigation found that the officers had violated several department policies and they were placed on leave. The criminal investigation found no violation of the law. The police chief reported to the County Attorney that the officers had violated department policy by using excessive force. The officers were placed on a "Laurie List" (the New Hampshire equivalent of a "Brady List") *State v. Laurie*, 139 N.H. 325, 329, 653 A.2d 549 (1995). Pursuant to the provisions of the Collective Bargaining Agreement, the officers filed a grievance regarding the discipline imposed by the chief.

The arbitrator found that the officers had not violated department policy and therefore, there was not cause to punish them.

After arbitration, the chief wrote to the county attorney requesting that the officers' names be removed from the "Laurie List", the county attorney declined to do so because there was a sustained complaint of excessive force. [1]

The officers filed suit seeking (1) declaratory judgment that the county attorney violated a state statute that provided a process for disclosure of police personnel files by refusing to remove their names from the "Laurie List"; (2) an injunction prohibiting the county attorney from designating the incident as a "Laurie Issue"; and (3) a writ of mandamus to compel the county attorney to remove their names from the "Laurie List". The officers also argued that the county attorney's refusal to remove their names from the list violated their constitutional rights to due process.

In analyzing their claim, the Court made a distinction between information that could be used to attack a witness's general credibility and evidence used to impeach specific testimony given by a witness, implying that the former would likely always require disclosure. The Court noted that had the officers lied or been dishonest, then the analysis about disclosure would be different.

> "[T]he only conduct at issue here is the petitioners' involvement in a single incident of alleged excessive use of force, and there is no suggestion that they attempted to lie about or cover up their conduct. Even if the accusation were true, this incident, without something more (such as evidence that the petitioners lied or misrepresented the facts) would not be admissible to impeach the petitioners' general credibility because an instance of excessive use of force is not probative of truthfulness or untruthfulness." *Duchesne v. Hillsborough County Attorney*, 119 A.3d 188, 197 (N.H. 2015).

[1] Although not the case in *Duchesne*, it appears common in the State of New Hampshire for the prosecution to be unaware of why an Officer is on a "Laurie List". The Court reviews the officer's personnel files or other information for exculpatory information and ultimately decides if disclosure is necessary.

The Court ultimately found there was no reason that the information about the incident should be disclosed as part of a "Laurie" disclosure because the arbitrator and criminal investigation found no evidence of wrong doing.

The most important distinction between this case and *Duchesne* is that Deputy Carey has been accused of dishonesty. Under the *Duchesne* analysis, an allegation of dishonesty during an investigation would impact Deputy Carey's general credibility and therefore, would likely need to be disclosed.

There is no denying that this "Brady designation" has had a negative impact on Deputy Carey's reputation and work opportunities within the Sheriff's Department. However, the relief Deputy Carey is seeking puts the Court in the position of determining whether Deputy Carey's right to due process is more important than that of a criminal defendant. There is no indication that Deputy Carey's right to due process has actually been violated and there is no caselaw indicating that if they had been violated that his rights would trump those of a criminal defendant's.

Additionally, the Court shares the concerns outlined by the Nevada Court. There could certainly be a situation in a criminal prosecution where it could be relevant that Deputy Carey had been untruthful about sending text messages. If not relevant to impeach specific testimony, it could certainly be relevant as to Deputy Carey's general credibility. It would be contrary to the public interest for the Court to issue an Order that could have the future impact of violating criminal defendants' constitutional rights, resulting in reversal of convictions and wasted Court resources.

The Court is without precedent or compelling reason to grant the requested relief. The prosecution is tasked with disclosing exculpatory information to protect the rights of the criminal defendant. The Court cannot issue an Order declaring that this information will never be relevant or require disclosure in a criminal proceeding; and the Court will not issue an Order that could

violate a criminal defendant's right to due process. Therefore, the Court is unable to grant Deputy Carey his requested declaratory relief and Clay County is entitled to summary judgment on this claim.

II. Injunctive Relief

Deputy Carey is seeking an injunction enjoining Clay County from designating him a "Brady Officer" or from denying him or refusing him for work assignments on that basis. The question of injunctive relief ultimately hinges on the extent and parameters of the Clay County Sheriff's authority to determine deputy work assignments.

> "A public employer is not required to meet and negotiate on matters of inherent managerial policy. Matters of inherent managerial policy include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure, selection of personnel, and direction and the number of personnel." Minn. Stat. §179A.07 Subdivision 1 ("PELRA").

Minnesota caselaw has analyzed what decisions fall within the umbrella of "inherent managerial policy". Transfer of personnel is a matter of inherent managerial policy and therefore, not subject to negotiation; criteria for choosing personnel to transfer is negotiable under the Public Employment Labor Relations Act. *Minneapolis Federation of Teachers Local 59 v. Minneapolis Special School Dist. No. 1*, 258 N.W.2d 802 (Minn. 1977).

In *Minneapolis Association of Administrators and Consultants v. Minneapolis Special School Dist. No. 1*, 311 N.W.2d 474 (Minn. 1981), the Court found that removing certain

employees' administrative responsibilities and thus cutting their pay, concerned a matter of inherent managerial policy: the school district's organizational structure. The Court found that deciding which employees would have administrative responsibilities must be discretionary if the school district is to establish properly the school district's organizational structure. Therefore, the school district may not be required to meet and negotiate with plaintiff concerning the method of determining which positions to divest of administrative functions.

In *City of Winona, Minnesota Teamsters Public and Law Enforcement Employees Union Local 320 v. Law Enforcement Labor Services, Inc.*, WL 10880 (Minn.App. 1997) (unpublished), the Court found that restructuring the police department to eliminate certain positions and reassigning officers was a matter of inherent managerial policy.

State ex rel. Quiring v. Bd. of Educ. of Indep. Sch. Dist. No. 173, 623 N.W.2d 634, 637-39 (Minn. App. 2001) (determining that employer did not violate PELRA by eliminating school principal's position because restructuring was a matter of inherent managerial policy.)

These cases can be distinguished from *Firefighters Union Local 4725 v. City of Brainerd*, 920 N.W.2d 232 (Minn. Ct. App. 2018). In that case the city's decision to restructure effectively eliminated the union and therefore, violated PELRA.

All of the cases considering inherent managerial authority can be distinguished from this case. There is not a broad restructuring occurring in the Sheriff's Office and Deputy Carey's position has not been eliminated. However, the caselaw is instructive in that it shows that restructuring and personnel decisions are typically within the inherent managerial authority of the employer under PELRA and the applicable collective bargaining agreement.

For further instruction, the Court looks to the Clay County Collective Bargaining Agreement ("CBA").

ARTICLE 5. EMPLOYER AUTHORITY

5.1 It is recognized that, except as expressly stated herein, the Employer will retain whatever rights and authority are necessary for it to operate and direct the affairs of Clay County in all of its various aspects including, but not limited to, the right to direct the working forces; to plan, direct and control all the operations and services of the County; to determine the methods, means, organization and number of personnel by which such operations and services are to be conducted; to assign and transfer employees; to schedule working hours and to assign overtime; to hire, promote, demote, suspend, discipline, discharge or relieve employees due to lack of work or other legitimate reasons; to make and enforce rules and regulations; and to change or eliminate existing methods, equipment or facilities.

Article 7.2.4

Except as noted above, nothing in this section shall be construed to limit the Employer's right to assign or reassign employees to duties within a job classification.

The plain language of the statute and the collective bargaining agreement, clearly indicate that the Clay County Sheriff has the authority to determine the work assignments of the Clay County Sheriff's Deputies. Absent violation of the Public Employment Labor Relations Act or the Collective Bargaining Agreement the Court will not interfere with the Sheriff's authority.

It seems apparent that the real relief Deputy Carey seeks is being returned to a patrol assignment within the Sheriff's Office. The Court empathizes with Deputy Carey in that his alleged dishonesty seems relatively minor and occurred a significant amount time ago; however, that doesn't change the Clay County Sheriff's ability to choose Deputy Carey's work assignment.

III. Summary Judgment Standard

Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MINN. R. CIV. P. 56.01; *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 753 (Minn. 2005). The moving party bears the burden of showing the absence of an issue of material fact. *Stringer*, 705 N.W.2d at 754. A material fact is one whose resolution will affect the result or outcome of the case. *Zappa v. Fahey*, 245 N.W.2d 258, 259-60 (Minn. 1976); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). Affidavits supporting and opposing a motion for Summary Judgment must set forth facts as would be admissible in evidence. MINN. R. CIV. P. 56.03. "When deciding any summary-judgment motion, the district court must disregard hearsay evidence that would be inadmissible at trial." *In re Trusts A & B of Divine*, 672 N.W.2d 912, 921 (Minn. App. 2004). On Summary Judgment, it is improper for the court to weigh facts or determine the credibility of affidavits and other evidence. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997); *Anderson*, 477 U.S. at 248.

If the moving party presents a prima facie case for Summary Judgment, the burden shifts to the nonmoving party to demonstrate the existence of specific disputed facts that create a genuine issue of material fact for trial. MINN. R. CIV. P. 56.05; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). The nonmoving party must demonstrate a genuine issue of material fact by presenting "substantial evidence" that creates more than "a metaphysical doubt as to a factual issue" and that is "sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH*, 566 N.W.2d at 70-71. This demonstration requires more than resting on the averments or denials of the party's pleading. MINN. R. CIV. 56.05; *Stringer*, 705 N.W.2d at 753. In other words, "[s]peculation,

general assertions, and promises to produce evidence at trial are not sufficient to create a genuine issue of material fact for trial." *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995).

Further, Summary Judgment is appropriate when a non-moving party fails to make a showing sufficient to establish the existence of an element essential to the party's case. *Bersch v. Rgnonti & Assocs.*, 584 N.W.2d 783, 786 (Minn. App. 1998).

Clay County has presented a prima facie case that there are no material facts in dispute. Therefore, the burden shifts to the Plaintiff to point to specific facts that are in dispute. The Plaintiff argues that the following facts are in dispute and preclude summary judgment.

i. Whether Deputy Carey was knowingly and deliberately untruthful.

ii. What role Deputy Carey's alleged untruthfulness and his designation as a Brady Officer, played in him being removed from patrol duties.

iii. What role Deputy Carey's alleged untruthfulness and his designation as a Brady Officer played in him being denied other assignments.

iv. Whether the other reasons the County provided to explain Deputy Carey's denial for reassignment were legitimate or fabricated.

v. Whether and to what extent Deputy Carey has been stigmatized and incurred damage to his reputation and professional standing as a result of the Brady designation.

vi. What role the County Attorney played in assigning Deputy Carey to court security and preventing him from obtaining other assignments.

It is not disputed that the arbitrator did not find that Deputy Carey had been untruthful or that certain county officials continue to believe that he was untruthful, despite the arbitrator's findings.

It is not disputed that county officials considered Deputy Carey's "untruthfulness" when determining his work assignment and his applications for reassignment. It's technically in dispute

the weight they gave his untruthfulness when making employment determinations, but resolution of that issue is not material because it will not affect the outcome of the case.

It is not material whether the various other reasons provided to explain Deputy Carey's denial for reassignment were legitimate or fabricated. There is testimony that there were other concerns with his performance and Deputy Carey did not deny that he had played video games or slept while on duty in the past. Resolution of this issue will not affect the outcome of this case and therefore, is not material.

The harm to Deputy Carey's reputation and professional standing as a result of the Brady designation is not material to his claims for declaratory and equitable relief.

It is not disputed that Sheriff Empting spoke with the County Attorney about Deputy Carey. Whether the Sheriff consulted the County Attorney about Deputy Carey's work assignment is not material to his claims for declaratory and equitable relief.

Although it would likely be personally beneficial to Deputy Carey to learn the answers to these questions, they are not disputed facts that are material to the complaint. Resolution of these facts would not have impact on the outcome of this case and would not provide any clarification on whether Deputy Carey is entitled to relief.

Conclusion

There are no issues of material fact and the Court is unable to grant Deputy Carey the requested relief; therefore, Clay County is entitled to Judgment as a matter of law.

For the above stated reasons,

1. Defendant's Motion for Summary Judgment is hereby **GRANTED**;

KMM

K.M.M.

MINNESOTA JUDICIAL BRANCH