IN THE SUPREME COURT OF IOWA

RONALD DWIGHT KUNDE, Plaintiff-Appellant, ARTHUR D. BOWMAN and DIANE ENGELKINS, Defendant-Appellees.	)))))))))	Supreme Court Case No. 17-0791 Jackson County Case No. EQCV 027767

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR JACKSON COUNTY
HONORABLE NANCY S. TABOR

APPELLANT'S BRIEF AND ARGUMENT

D. FLINT DRAKE No. AT0002081
fdrake@drakelawpc.com

SAMUEL M. DEGREE No. AT0011207
sdegree@drakelawpc.com

DRAKE LAW FIRM, P.C.
300 Main Street, Suite 323
Dubuque, IA 52001
TEL: (563) 582-2000
FAX: (563) 583-5225
ATTORNEYS FOR APPELLANTS

CERTIFICATE OF SERVICE AND FILING

On the 22nd day of September, 2017, the undersigned certifies that a true and correct copy of the foregoing instrument will be served upon Bradley Boffeli, attorney for Defendant-Appellees, by filing this instrument electronically using the Iowa Electronic Document Management System.

The undersigned further certifies that he has filed this document electronically with the Clerk of the Supreme Court of Iowa using the Iowa Appellate Electronic Document Management System on the 22nd day of September, 2017

DRAKE LAW FIRM, P.C.

/s/ Samuel M. DeGree
SAMUEL M. DEGREE AT011207

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT ERRED IN HOLDING THAT THE APPELLATE RULING FINDING NO ENFORCEABLE CONTRACT PRECLUDES PLAINTIFF'S CLAIM FOR PROMISSORY ESTOPPEL AS A MATTER OF LAW

Authorities

Chipokas v. Hugg, 477 N.W.2d 688 (Iowa Ct. App. 1991)

Hoffman v. Red Owl Stores, Inc., 133 N.W.2d 267 (Wisc. 1965)

Kiely v. St. Germain, 670 P.2d 764 (Colo. 1983)

Mason v. Vision Iowa Bd., 700 N.W.2d 349 (Iowa 2005)

McKee v. Isle of Capri Casinos, Inc., 864 N.W.2d 518 (Iowa 2015)

National Bank v. Moeller, 434 N.W.2d 887 (Iowa 1989)

Schoff v. Combined Ins. Co. Of America, 604 N.W.2d 43 (Iowa 1999)

Stevens v. Iowa Newspapers, Inc., 728 N.W.2d 823 (Iowa 2007)

Black's Law Dictionary 1213 (6th ed. 1990)

Restatement (Second) of Contracts § 90, at 242 (1981)

II. WHETHER THE DISTRICT COURT ERRED IN HOLDING THAT THE WRITTEN FARM LEASES BETWEEN THE PARTIES PRECLUDED PLAINTIFF'S EQUITABLE CLAIMS AS A MATTER OF LAW

Authorities

Chariton Feed & Grain v. Harder, 369 N.W.2d 777 (Iowa 1985)

ROUTING STATEMENT

Appellants believe this case should be retained by the Supreme Court of Iowa because it presents a substantial issue of first impression, namely whether Iowa's promissory estoppel doctrine requires proof of agreement as to all essential terms of an enforceable contract. Iowa R. App. P. 6.1101(3)(1).

STATEMENT OF THE CASE:

Nature of the Case: Appellant Ronald Dwight Kunde appeals from the Order of the District Court of Iowa in and for Jackson County granting summary judgment in favor of Appellee Diane Engelkins, as Executor of the Estate of Arthur D. Bowman. The Honorable Nancy S. Tabor presided at all relevant proceedings.

Course of Proceeding and Disposition Below: Plaintiff Ronald Dwight Kunde initiated suit by filing a Petition on or about January 3, 2014, alleging that Defendants breached on option contract with Plaintiff to sell him agricultural real estate owned by Defendant Arthur Bowman. (Petition pp. 1-4) (App. pp. 1-4). Alternatively, Plaintiff's Petition alleged several equitable causes of action, including promissory estoppel, unjust enrichment, and quantum meruit. (Petition pp. 4-5) (App. pp. 1-5). This case proceeded to a jury trial on or about August 3, 2015, and the jury rendered a verdict for

Plaintiff finding that Defendants breached their contract with Plaintiff, and that Plaintiff was entitled to damages in the amount of $52,000.00. (Verdict Form, p. 1) (App. p. 117). However, after the jury verdict was rendered, Judge Paul Macek granted Defendants' earlier Motion for Directed Verdict on the grounds that there was insufficient evidence presented to the jury to prove the existence of a contract, and an Order for Judgment in Defendants' favor was filed on or about August 6, 2015. (Trial Transcript pp. 437-440) (App pp. 87-90). Plaintiff filed a Motion to Amend and Enlarge the Court's ruling on or about August 17, 2015, requesting that the Court reconsider its ruling, and alternatively that the Court order a new trial on Plaintiff's equitable causes of action. (Motion to Enlarge) (App. pp. 121-125). Defendants filed a resistance on or about August 17, 2015. (Resistance to Motion to Enlarge) (App. pp. 126-128). On or about September 2, 2015 the Court filed an Order denying Plaintiff's Motion to Amend and Enlarge, and Plaintiff filed a Notice of Appeal and mailed such notice to the Defendants' attorney on September 3, 2015. (Order Sept. 2, 2015) (App. pp. 129-132).

In an opinion filed September 28, 2016, the Court of Appeals affirmed the ruling of the district court that the trial record did not contain substantial evidence to support the jury's finding that Kunde and Bowman reached agreement on all essential terms of the contract, but reversed the decision of

the district court denying Kunde's request for a new trial on his equitable claims. (Ct. App. Opinion pp. 7-8) (App. pp. 141-142). The Court of Appeals remanded the matter for trial on the equitable claims (Ct. App. Opinion p. 8) (App. p. 142).

The district court filed an Order on March 14, 2017 setting trial for September 5, 2017. (Order Mar. 14, 2017) (App. pp. 144-146). Defendant filed a Motion for Summary Judgment on Remand, along with accompanying Brief and Statement of Undisputed Facts on March 24, 2017 (Motion for Summary Judgment, Brief and Memorandum in Support of Summary Judgment, Statement of Undisputed Facts in Support of Summary Judgment) (App. pp. 147-157). Defendant also filed an Exhibit List in Support of Summary Judgment on March 24, 2017 (Exhibit List in Support of Summary Judgment) (App. pp. 158-159).

Plaintiff filed a resistance to Defendant's Motion for Summary Judgment on April 7, 2017, accompanied by a Memorandum of Authorities and Statement of Disputed Material Facts. (Resistance to Motion for Summary Judgment on Remand, Memorandum of Authorities, Statement of Disputed Material Facts) (App pp. 193-210). Hearing on Defendant's Motion was held on May 5, 2017, and the Court entered an Order granting summary judgment in favor of Defendant on May 19, 2017. (Order, May 19,

2017) (App. pp. 211-217). Plaintiff filed a Notice of Appeal on May 19, 2017. (Notice of Appeal) (App. pp. 218-219).

Facts: Plaintiff Ronald Kunde has owned farmland in Jackson County, Iowa since 2000. (Trial Transcript pp. 13-14) (App pp. 17-18). Mr. Kunde had significant experience in farming—his parents farmed, and he worked on a harvest crew in Texas for four years before moving back home to Iowa where he continued to help the family farming operation. (Trial Transcript pp. 10-12) (App pp. 14-16). In 2000, Mr. Kunde bought his primary farm and residence, and he purchased additional farmland in 2007. (Trial Transcript pp. 13-14) (App p. 17-18). Mr. Kunde's farm and residence is adjacent to the 102-acre farm owned by Defendant Arthur Bowman, which is the subject of this litigation. (Trial Transcript p. 15) (App p. 19). Mr. Kunde has known Mr. Bowman as his neighbor since 2000; their interactions generally included the occasional "hello" and brief discussion concerning farming practices. (Trial Transcript p. 15) (App p. 19). Mr. Bowman, and his wife prior to her death, had been engaged in farming for many years, at least since they purchased the farm in question in 1969. (Trial Transcript p. 209) (App p. 75).

At trial, Mr. Kunde testified that in the fall of 2007, Mr. Bowman approached Mr. Kunde outside his home to ask if Mr. Kunde would be

willing to rent his farm. (Trial Transcript pp. 16-17) (App pp. 20-21). In response, Mr. Kunde asked Mr. Bowman whether he would be interested in selling a farm owned by Mr. Bowman's wife, Cleo. (Trial Transcript pp. 17-18) (App pp. 21-22). While Mr. Bowman replied that his wife's farm had recently sold for $3,100.00 per acre, he would be interested in selling his own farm. (Trial Transcript pp. 18-19) (App pp. 22-23). Mr. Bowman told Mr. Kunde that he would be willing to sell the farm for $1,900.00 per acre; however, Mr. Kunde replied that he thought the farm was worth more, and they eventually agreed upon $3,000.00 per acre. (Trial Transcript pp. 21-22) (App pp. 24-25). Mr. Kunde indicated that he wanted to discuss the potential purchase with his brother, and Mr. Bowman told him that he could rent the farm in the meantime, and purchase the farm at his option. (Trial Transcript pp. 23-26) (App pp. 26-28).

Mr. Bowman's previous tenant, Lawrence Thines, did not care for the farm to Mr. Bowman's satisfaction, and Mr. Thines had damaged several aspects of Mr. Bowman's farm. (Trial Transcript pp. 184-188) (App pp. 66-70). During their fall 2007 conversation, Mr. Bowman commented on Mr. Kunde's good stewardship of his own property, and indicated that he liked the work Mr. Bowman had done on his farm. (Trial Transcript p. 23) (App p. 26). Mr. Kunde and Mr. Bowman discussed making similar improvements to

Mr. Bowman's farm. (Trial Transcript p. 24) (App. p. 27).Mr. Kunde told Mr. Bowman that he would like to make improvements to Mr. Bowman's farm as well; Mr. Kunde testified that he would not have considered doing these types of improvements to the farm if Mr. Bowman had not promised that he could purchase the farm. (Trial Transcript pp. 26-27) (App pp. 29-30). The improvements were part of the oral agreement between Mr. Kunde and Mr. Bowman for Mr. Kunde's option to purchase the farm. (Trial Transcript p. 29) (App p. 32).

Eventually, Mr. Kunde entered into a written lease agreement to rent Mr. Bowman's farm for the 2008 farm year. (Trial Transcript p. 27-28) (App. pp. 30-31). Mr. Kunde made a handwritten list of the improvements he had discussed with Mr. Bowman, and brought them to Mr. Bowman's attorney's office to include in the lease. (Trial Transcript pp. 27-28) (App pp. 30-31). At Mr. Kunde's request, this list was included as an addendum to the 2008 farm lease. (2008 Farm Lease, p. 5, Trial Transcript p. 216) (App. pp. 96, 76). This list contains permissive language, not mandatory language; for example, paragraph one states "Any construction, removal or maintenance of the property fence lines will be rentor's expense." (Plaintiff's Ex. 1, p. 5) (App. p. 96). In a ruling on Motion for Amendment and Enlargement of an Order denying a previous Motion for Summary

Judgment filed by Defendant, Judge Tabor ruled that the leases and addendums "in no way 'obligate' the plaintiff to make improvements to the property." (Order, March 19, 2015, p. 2) (App. p. 9).

Additional written leases were executed for farm years 2009, 2012, and 2013, and Mr. Kunde also leased Mr. Bowman's farm in 2010 and 2011 under the terms of the 2009 lease. (Plaintiff's Ex. 2-4, Trial Transcript p. 37) (App. pp. 97-115, 34). The terms of the lease were generally the same each year, except that some pasture acres were converted to tillable acres due to Mr. Kunde's work at his expense, and the rental amount rose in some years. (Plaintiff's Ex. 1-4, Trial Transcript p. 37) (App. pp. 91-115, 34).

Throughout the course of farming Mr. Bowman's property, Mr. Kunde made substantial improvements to the property, including banking expensive fertilizer in the soil, excavation and leveling the property, installing drain tile, general clean-up, repairing and installing fences, and creating and redirecting waterways. (Trial Transcript pp. 50-65, Plaintiff's Exhibit 5) (App pp. 39-54, 116). This work converted approximately 23 acres of non-tillable acres to tillable acres. (Trial Transcript pp. 77-78) (App. pp. 55-56). According to Plaintiff's Exhibit 5, Mr. Kunde incurred $52,000.00 in cost for his labor, equipment use, and materials in making such improvements. (Plaintiff's Exhibit 5) (App. pp. 116). Mr. Kunde

testified that he and Mr. Bowman actively discussed the improvements Mr. Kunde was making, and that whenever he asked Mr. Bowman how he should proceed, Mr. Bowman would tell Mr. Kunde to do it however he wanted, since the farm would be his. (Trial Transcript p. 31) (App. p. 33). Friends of Mr. Bowman testified that he was extremely pleased with the improvements Mr. Kunde made to his farm. (Trial Transcript pp. 158-160, 280-281) (App. pp. 62-64, 82-83). Mr. Kunde testified that he would not have made the long-term improvements he did if he were merely renting the property, and that he did the work in reliance on Mr. Bowman's promise that we would be able to buy the farm. (Trial Transcript p. 78) (App. p. 56).

Patricia Hoffman, a farm owner and landlord in the area, testified that in her experience as a landlord of farm property the landlord typically pays for improvements like installing drain tile. (Trial Transcript p. 173) (App. p. 65). Jeffrey Troendel, an expert on farmland value and rental price, similarly testified that improvements adding tillable acres to a farm property would typically be paid for by the landlord. (Trial Transcript. pp. 254-255) (App. pp. 79-80). Mr. Troendel also testified that if a tenant does improvements that are normally the responsibility of the landlord, there is either a discount on the rent or an agreement on how they would be reimbursed. (Trial Transcript p. 254) (App. p. 79). Mr. Troendel testified that the rent paid by

Mr. Kunde during the terms of the leases was fair market rent (Trial Transcript. pp. 253-254) (App. pp. 78-79).Skott Gent, an expert on the use of fertilizer on farmland, testified that clearing work and drain-tile work is typically paid for by the landlord. (Trial Transcript p. 283) (App. p. 85), and also that improving fertility in the manner that Mr. Kunde did is a long-term investment. (Trial Transcript p. 273) (App. p. 81).

In 2010, Mr. Kunde attempted to exercise his option to purchase the Bowman farm as promised by Mr. Bowman. (Trial Transcript pp. 40-41) (App. pp. 35-36). However, after informing Mr. Bowman of his desire to purchase the farm, Mr. Bowman's daughter Diane Engelkins informed Mr. Kunde that she had discovered a third party right of first refusal on the farm. (Trial Transcript p. 42) (App. p. 37). In a meeting following the discovery of the right of first refusal, both Mr. Kunde and Ms. Engelkins testified that Mr. Bowman told Mr. Kunde "I feel like I lied to you." (Trial Transcript pp. 44, 197) (App. pp 39, 74). Charles Bredall testified that following the discovery of the right of first refusal, Mr. Bowman said that he planned to reimburse Mr. Kunde for the work he had done to improve the property. (Trial Transcript pp. 282-283) (App. pp. 84-85).

At the time of trial, Mr. Bowman was residing in a nursing home in Clinton County and suffered from late stage dementia, and was unable to

testify at trial as a result of his mental state. (Petition p. 2) (App p. 2). Ms. Engelkins, arranged for a public auction for the sale of the farm. (Petition p. 2) (App p. 2). Mr. Kunde informed Ms. Engelkins over the phone that this action was contrary to his option to purchase the farm from Mr. Bowman, and later directed his attorneys to send a letter to Ms. Engelkins and the auctioneer describing his claim on the property. (Trial Transcript pp. 82-85) (App. pp. 57-60). Despite Mr. Kunde's objections, the farm sold at auction for $6,850.00 per acre. (Trial Transcript pp. 151, 235, 370) (App. pp. 61, 77, 86).

ARGUMENT

I. THE DISTRICT COURT ERRED IN HOLDING THAT THE APPELLATE RULING FINDING NO EFNORCEABLE CONTRACT PRECLUDES PLAINTIFF'S CLAIM FOR PROMISSORY ESTOPPEL AS A MATTER OF LAW

A. Standard of Review and Preservation of Error

The standard of review for summary judgment cases is well settled. Stevens v. Iowa Newspapers, Inc., 728 N.W.2d 823, 827 (Iowa 2007). The Court reviews summary judgment motions for correction of errors at law. Id.. Summary judgment is appropriate only when the entire record demonstrates that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Id. The Court reviews the evidence in the light most favorable to the nonmoving party. Mason v. Vision Iowa Bd., 700 N.W.2d 349, 353 (Iowa 2005).

Error was preserved in this matter when Appellant resisted Appellee's Motion for Summary Judgment both in writing and at hearing before the District Court, asserting that genuine issues of material fact existed regarding the elements required to prove promissory estoppel.

B. Discussion

The district court's Order granting Defendant's Motion for Summary Judgment notes that to prevail on his claim of promissory estoppel, Plaintiff must prove, inter alia, a "clear and definite oral agreement." (Order May 19,

2017, p. 2) (App. p. 212) The district court then held that, because the Court of Appeals ruled that the evidence presented at trial did not prove agreement on the essential terms of a contract between Plaintiff and Arthur Bowman Plaintiff cannot demonstrate a "clear and definite oral agreement" as a matter of law. Defendant's argument infers that proof of a "clear and definite oral agreement" in relation to the theory of promissory estoppel requires proof of agreement on all essential terms of an enforceable contract. This inference is unsupported by authority.

Iowa Courts have used two formulations of the elements of the elements of the theory of promissory estoppel; the first, cited by Defendant, requires a "clear and definite oral agreement." See e.g., McKee v. Isle of Capri Casinos, Inc., 864 N.W.2d 518, 532 (Iowa 2015). This version of the elements is recited by the Iowa Supreme Court in Schoff v. Combined Ins. Co. Of America, 604 N.W.2d 43, 48 (Iowa 1999), which explores the meaning of "clear and definite oral agreement." The Schoff Court first noted that the Supreme Court of Iowa relied on the principles of law found in the Restatement of Contracts §90, and recited the elements of promissory estoppel enumerated by the Restatement (Second) of Contracts:

> A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee or a third person and

> which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.

Id. (quoting Restatement (Second) of Contracts § 90, at 242 (1981)).

The Schoff Court next cited previous decisions where it "observed that in the cases in which we found a clear and definite agreement, there was 'a clear understanding by the promisor that the promisee was seeking an assurance upon which he could rely and without which he would not act.' " Id. Given this observation, the Schoff Court concluded that "it is best to simply include the promisor's understanding as a separate element, rather than having it subsumed in the clear-and-definite agreement requirement." Id. at 48-49. Accordingly, the Schoff court restated the elements of promissory estoppel as:

> (1) a clear and definite promise; (2) the promise was made with the promisor's clear understanding that the promisee was seeking an assurance upon which the promisee could rely and without which he would not act; (3) the promisee acted to his substantial detriment in reasonable reliance on the promise; and (4) injustice can be avoided only by enforcement of the promise.

Id. at 49. The Schoff court further defines the term "clear and definite promise': "A 'promise' is '[a] declaration . . . to do or forbear a certain specific act." Schoff 604 N.W.2d at 50-51 (citing *Black's Law Dictionary* 1213 (6th ed. 1990)). A promise is "clear" when it is easily understood and

not ambiguous" Id. at 51A promise is "definite" when the assertion is explicit and without any doubt or tentativeness. Id.

The Schoff court's reformulation of the elements of promissory estoppel did not redefine the doctrine, but instead clarified that a "clear and definite agreement" means a clear and definite promise made with the understanding that the promise was seeking an assurance upon which the promisee could rely and without which he would not act—a different standard than that necessary to support a legally enforceable contract. This principle is reinforced by the Court of Appeals in Chipokas v. Hugg, 477 N.W.2d 688 (Iowa Ct. App. 1991), wherein the plaintiff alleged that "the trial court held him to the standard of proving a clear and definite agreement in the sense of a completed contract." Id. at 690. Rather than hold that the "clear and definite agreement" element of promissory estoppel does indeed require a completed contract, the Court of Appeals rebuked the plaintiff's assertion, stating that: "[a] review of the record, however, does not support this allegation." Id.

In considering the question of whether promissory estoppel requires proof of an agreement regarding essential terms of a contract, the Supreme Court of Colorado held that promissory estoppel "is often appropriate when parties have not mutually agreed on all the essential terms of a proposed

transaction." Kiely v. St. Germain, 670 P.2d 764, 767 (Colo. 1983). This holding was based on the observation that "promissory estoppel is not defined totally in terms of contract principles." Id. Rather, it "is also grounded upon principles of fair dealing familiar to equity jurisprudence." Id. Similarly, the Supreme Court of Wisconsin in Hoffman v. Red Owl Stores, Inc., 133 N.W.2d 267 (Wisc. 1965) held that the elements of promissory estoppel were met even where the essential terms of a contract were never reached, including "the size, cost, design, and layout of the store building; and the terms with respect to rent, maintenance, renewal, and purchase options." Id. at 274. The Hoffman Court pointed out that the Restatement of Contracts "does not impose the requirement that the promise giving rise to the cause of action must be so comprehensive in scope as to meet the requirements of an offer that would ripen into a contract if accepted." Id. at 275.

While Kiely and Hoffman are persuasive authority, they correctly point out that the elements of promissory estoppel set forth in the Restatement do not require that the promise encompass all the essential terms necessary to an enforceable contract. As noted in Kiely, promissory estoppel is rooted in the principles of fair dealing, not exclusively in contract law. While Iowa courts do not appear to have expressly ruled on the

question of whether promissory estoppel requires proof of agreement regarding all essential terms of an enforceable contract, the Court's reasoning in Schoff reflects the holdings in Kiely and Hoffman. The Schoff Court reaffirmed Iowa's reliance on the Restatement formulation of promissory estoppel, and restated the elements of promissory estoppel to better reflect the Restatement. Schoff 604 N.W.2d at 48-49. The Restatement elements do not require proof of agreement on the essential terms of an enforceable contract, and the Schoff Court's expression of conformity with the Restatement suggests Iowa's version similarly does not require such proof. The Schoff Court also discussed its previous ruling in National Bank v. Moeller, 434 N.W.2d 887 (Iowa 1989), wherein the Court compared and contrasted three other decisions with respect to the element of a "clear and definite agreement," noting that "in cases in which we found a clear and definite oral agreement, there was 'a clear understanding by the promisor that the promisee was seeking an assurance upon which he could rely and without which he would not act." Schoff 604 N.W.2d at 48 (quoting National Bank, 434 N.W.2d at 889). In other words, the important factors for proving a "clear and definite agreement" are not considerations rooted in contract law such as whether the parties have agreed to all the essential terms of an enforceable contract, but rather principles of fairness

and equity relating to the promisor's reasonable understanding that his or her promise would induce action or forbearance by the promisee in reliance on the promise.

In the present case, Mr. Kunde has testified that Arthur Bowman promised him that he could purchase the farmland at issue for $3,000 per acre, whenever he was ready to do so. (Trial Transcript pp. 23-26) (App. pp. 26-29). The district court and the Court of Appeals ruled that at the first trial herein Plaintiff did not provide substantial evidence of all of the "essential" terms of a contract, and therefore the promise was not enforceable as an option contract. However, a fully enforceable contract to purchase real estate is not required for Plaintiff's action to prevail; rather, the elements of promissory estoppel enumerated by the Schoff Court require only proof of a clear and definite promise that Mr. Bowman would sell plaintiff the property.

Significant evidence was presented at trial that Mr. Bowman's promise was both clear and definite, and not conditional on anything but Mr. Kunde's exercise of his option to purchase. Mr. Kunde testified regarding substantial long-term improvements he made to the farm, including banking fertilizer in the soil for future years, installing drain tile, excavating and leveling the property, repairing and installing fences, and creating and

redirecting waterways. (Trial Transcript. pp. 50-65) (App. pp. 39-54). Mr. Kunde testified that he relied on Mr. Bowman's promise that he would be able to buy the farm at his option in making such improvements, and that he would not have made them without such promise. (Trial Transcript p. 78) (App. p. 56).When testifying with respect to these improvements, Diane Engelkins never contested that Mr. Kunde made these improvements. (Trial Transcript pp. 188-191) (App. pp. 70-73). Several witnesses, including Patricia Hoffman, Jeffrey Troendel, and Skott Gent testified that the types of improvements made by Mr. Kunde would typically be paid for or reimbursed by the landlord. (Trial Transcript pp. 173, 254-55, 273, 283) (App. pp. 65, 79-80, 81, 85). These facts indicate that Mr. Kunde acted in reliance on Mr. Bowman's promise when making long-term improvements to the property.

More importantly, several portions of testimony demonstrate that Mr. Bowman understood that his promise would induce action by Mr. Kunde. Mr. Kunde testified that whenever he approached Mr. Bowman regarding specific improvements, Mr. Bowman would say to do it however he wanted, since the farm would be his. (Trial Transcript p. 31) (App. p. 33). When Mr. Kunde attempted to enforce his option in 2010, but the discovery of the third-party right of first refusal cast doubt on the transaction, both Mr.

Kunde and Ms. Engelkins testified that Mr. Bowman told Mr. Kunde "I feel like I lied to you." (Trial Transcript pp. 44, 197) (App. pp. 38, 74). Charlie Bredall testified that after the right of first refusal was discovered, Mr. Bowman said that he planned to reimburse Mr. Kunde for the work he had done to improve the property. (Trail Transcript pp. 282-83) (App. pp. 84-85). These facts indicate that Mr. Bowman was fully aware that his promise induced Mr. Kunde to act in reliance by making long-term improvements to the farm in anticipation of his ultimate ownership.

Viewing the evidence on record in the light most favorable to Mr. Kunde, material issues of disputed fact exist regarding the elements of promissory estoppel. Therefore, this Court should reverse the district court's Order granting summary judgment on Mr. Kunde's claim for promissory estoppel and remand for further proceedings.

II. THE DISTRICT COURT ERRED IN HOLDING THAT THE WRITTEN FARM LEASES BETWEEN THE PARTIES PRECLUDED PLAINTIFF'S EQUITABLE CLAIMS AS A MATTER OF LAW

A. Standard of Review and Preservation of Error

The standard of review for summary judgment cases is well settled. Stevens v. Iowa Newspapers, Inc., 728 N.W.2d 823, 827 (Iowa 2007). The Court reviews summary judgment motions for correction of errors at law. Id.. Summary judgment is appropriate only when the entire record

demonstrates that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Id. The Court reviews the evidence in the light most favorable to the nonmoving party. Mason v. Vision Iowa Bd., 700 N.W.2d 349, 353 (Iowa 2005).

Error was preserved in this matter when Appellant resisted Appellee's Motion for Summary Judgment both in writing and at hearing before the District Court, asserting that the written farm leases did not cover the same points as the implied contract and promise asserted by Appellant, and therefore did not preclude recovery for his equitable claims as a matter of law.

B. Discussion

In its Order granting Defendant's Motion for Summary Judgment on Remand, the district court held that because the subject matter of Mr. Bowman's promise to Mr. Kunde is already covered by the written farm leases, Mr. Kunde's theory of promissory estoppel fails as a matter of law. (Order, May 19, 2017 pp. 3-4) (App. pp. 213-214). Similarly the district court ruled that the improvements made by Mr. Kunde were covered by the farm leases, and therefore Mr. Kunde could not recover under the theories of quantum meruit or unjust enrichment. (Order, May 19, 2017, pp. 5-6) (App. pp. 215-216). The district court order did not address whether material facts

existed to support the elements of each of Mr. Kunde's equitable claims, but rather turned on its determination that an express contract existed as to the same subject matter of Mr. Kunde's equitable claims. (Order, May 19, 2017 pp. 1-6) (App. pp. 211-216).

It is true that an express contract and an implied contract cannot coexist with respect to the same subject matter, and the former supersedes the latter. Chariton Feed & Grain v. Harder, 369 N.W.2d 777, 791 (Iowa 1985). However, the Iowa Supreme Court has held that there may be a contract implied in law on a point not covered by an express contract, so long as it is a "point not fully covered by an express contract and in direct conflict therewith." Smith v. Stowell, 125 N.W.2d 795, 800 (Iowa 1964). In other words, the existence of an express contract regarding some broadly chosen subject matter does not supersede an implied contract regarding the same subject matter unless it is the claimed implied contract provisions are fully covered by, and in conflict with, the express contract.

The district court held that the leases between Mr. Bowman and Mr. Kunde covered the same subject matter as Mr. Bowman's promise to Mr. Kunde: "i.e., Bowman's farm and the relationship rights, and obligations that Kunde had with it." (Order May 19, 2017 p. 4) (App. p. 214). This holding is overly broad and simplistic, and contradictory to the Court's

holding in Stowell. By choosing a common subject matter as broad as "Bowman's farm," the district court ignores the possibility that multiple contractual relationships may exist regarding farmland. For example, a tenant may have both a standard farm lease and a separately executed and recorded right of first refusal, or perhaps a separate contractual right to harvest timber or hunt on the same property. In the present case, Mr. Kunde's lease created a tenant-landlord relationship with Mr. Bowman regarding his farm. Mr. Bowman's promise to Mr. Kunde, on the other hand, created a buyer-seller relationship. There is no rule of law that only one type of relationship between the parties may exist, and Mr. Bowman's promise did not in any way contradict the terms of the farm leases. As a result, this Court should reverse the district court's holding that Mr. Kunde's claim for promissory estoppel was foreclosed by the existence of the farm leases between the parties.

With respect to Mr. Kunde's claims for quantum meruit and unjust enrichment, the district court held that "there is no dispute that Bowman and Kunde had several express lease agreements defining their relationship. . . . The lease agreements set forth Kunde's obligations and duties in exchange for being able to possess Bowman's real estate." (Order, May 19, 2017, p. 5) (App. p. 215). This holding contradicts a previous holding by Judge Tabor:

> Further the defendants argue that the real estate lease "obligated" the plaintiff to perform the improvements on the property. This Court has reviewed the leases and addendums attached to the defendant's motion. Those lease in no way "obligate" the plaintiff to make improvements on the property. The leases are standard Iowa Bar Association form Farm Leases. The clear language of the leases in paragraph #14 states in pertinent part "All buildings, fences, and improvements of every kind and nature that *may* be erected or established . . ." (emphasis added). The use of the term "may" is clear and unambiguous. Nothing in that term indicates an "obligation" to make such improvements.

(Ruling on Motion for Amendment or Enlargement, March 19, 2015, pp. 2-3) (App. pp. 130-131). As referenced by Judge Tabor in her earlier ruling, the leases contained an addendum provided by Mr. Kunde of the improvements he had discussed with Mr. Bowman. (Trial Transcript pp. 27-28) (App pp. 30-31). This addendum was initially drafted by Mr. Kunde, and it was included as part of the farm leases at his insistence. (Trial Transcript pp. 27-28) (App. pp. 30-31). This indicates that the listed improvements were not intended to be mandatory obligations to be performed by Kunde as part of the consideration for his ability to rent the property.

Because the farm leases do not obligate Mr. Kunde to perform the improvements, there is no express contract provision governing such improvements and compensation therefor. Mr. Kunde's claim for compensation under the theories of quantum meruit and unjust enrichment stems from his rebuffed reliance on Mr. Bowman's promise that he would be

able to purchase the farm at his option, and therefore enjoy the benefits of the long-term improvements he had made. By selling the property at auction rather than honoring Mr. Bowman's promise to Mr. Kunde, Ms. Engelkins appropriated the benefit of Mr. Kunde's labor. As Charles Bredall testified, following the discovery of the right of first refusal, which cast doubt on whether Mr. Kunde would be able to purchase the farm, Mr. Bowman said that he planned to reimburse Mr. Kunde for his work on the property. (Trial Transcript pp. 282-283) (App. pp. 84-85). Justice requires that Mr. Kunde receive compensation for the benefit conferred upon the Defendant by Mr. Kunde's long-term improvements to the property.

In addition, the district court cites Smith v. Harrison, 325 N.W.2d 92, 94 (Iowa 1982) for the proposition that benefits received pursuant to a contract cannot be unjust enrichment unless there are grounds to set aside the contract. (Order, May 19, 2017, p. 5) (App. p. 215). The district court states that "Kunde cannot claim that he did not receive compensation as he received the right of possession under the lease which allowed him to crop the farmland," and that "any improvements made on the real estate further benefited Kunde while he was a tenant." (Order, May 19, 2017 p. 5) (App. p. 215). However, Mr. Kunde is not claiming recovery for any short-term benefits he received while farming the property; rather, he claims

compensation for the long-term improvement in value to the property. Therefore, it is erroneous to say that because Mr. Kunde received some benefit by virtue of the lease and the improvements he made to the farm during his tenancy, he cannot claim compensation for any benefit his improvements conferred upon Mr. Bowman.

The leases did not contain provisions on the same subject matter as Mr. Bowman's promise to Mr. Kunde, and the leases did not obligate Mr. Kunde to make the long-term improvements to the property. In any event, the question of whether the provisions of the farm leases fully cover the points forming the basis of Mr. Kunde's equitable claims should be reserved for the finder of fact, and is not appropriate for summary judgment. Therefore this Court should reverse the district court's holding that Mr. Kunde's equitable claims are foreclosed by the existence of the farm leases, and remand for further proceedings.

CONCLUSION

Appellants respectfully request that the Court reverse the decision of the district court granting Appellee's Motion for Summary Judgment and remand this matter to the district court with instructions to proceed to trial.

Respectfully submitted,

DRAKE LAW FIRM, P.C.

/s/ D. Flint Drake
D. Flint Drake No. AT0002081

/s/ Samuel M. DeGree
Samuel M. DeGree No. AT0011207

ATTORNEY'S COST CERTIFICATE

I, the undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Brief and Argument was $0.00, and that amount has been paid in full by the Drake Law Firm, P.C.

/s/ Samuel M. DeGree
Samuel M. DeGree No. AT0011207

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

[X] This brief contains [5,627] words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

[X] this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman, font 14 point.

/s/ Samuel M. DeGree Dated: September 22, 2017
SAMUEL M. DEGREE, No. AT0011207