STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0894

Bradley Hammond, et al.,
Respondents,

vs.

Andrew Grengs,
Appellant.

Filed March 8, 2021
Reversed and remanded
Ross, Judge

St. Louis County District Court
File No. 69DU-CV-19-1608

Joshua A. Newville, Samuel J. Kramer, Madia Law LLC, Minneapolis, Minnesota (for respondents)

Kay Nord Hunt, Barry A. O'Neil, Michelle K. Kuhl, Lommen Abdo, P.A., Minneapolis, Minnesota (for appellants)

Considered and decided by Bryan, Presiding Judge; Ross, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Three venture-capital partners threatened to sue a fourth partner over his use of funds from the partnership to benefit himself and his accounting firm. After the disputing factions attempted to negotiate a settlement but failed to produce a signed agreement, the three partners sued the fourth to enforce a settlement agreement that they said could be extrapolated from their email exchanges. The district court entered summary judgment

favoring the three, concluding that the email communications constituted an agreement. We hold that the record viewed in the light most favorable to the fourth partner could support a finding that the negotiating parties agreed to be bound only by a settlement agreement that was reduced to a signed writing. Because the parties never signed any writing memorializing an agreement, we reverse.

FACTS

Bradley Hammond, Kim Roufs, Boris Nektalov, and Andrew Grengs were partners in a venture-capital firm, when, beginning in 2017, the first three, who are the respondents in this appeal, began accusing Grengs of using funds from the venture-capital firm to benefit himself and his accounting firm. After they threatened to sue him, their attorney spoke with Grengs in person and by email, negotiating terms to settle the dispute. As the two moved close to an agreement over the terms, the attorney wrote Grengs saying, "I do not have authorization to make a counter demand yet, but if you're agreeable to one of the following timing arrangements, I will advise my clients to take the deal, provided that a settlement agreement is fully-executed within two weeks." (As it is made clearer below, that phrase—"provided that a settlement agreement is fully-executed within two weeks"—is the focus of our attention on appeal.)

The two haggled further about the seemingly central terms of timing and payment, and Grengs eventually gave a "counteroffer" to pay "$23K by October 1, $26K if paid between October 2 – December 31 with a $3K liquidated damages provision for failure to timely pay by December 31st." The trio's attorney responded four days later, saying, "We have a deal. Please execute and return the attached settlement agreement and confession of

judgment (to be held in escrow until after Dec. 31, as described in the agreement)." Grengs replied, "I will have my lawyers review it quick and [I will] get back to you as soon as they get back to me."

About two weeks later, Grengs wrote, "I'm waiting to hear back from my lawyers." He said that "[t]hey were concerned" about the lack of terms covering certain partnership shares, and he indicated that they were revising the draft but that Grengs was uncertain about the terms they were planning to add. The respondents' attorney replied with questions over particulars and, acknowledging that Grengs was represented by counsel, said, "I should be talking with them instead of you anyways." Grengs turned the discussion over to his attorney, adding, "I'm sure you guys can clarify that language when talking with one another. The agreement itself isn't changing."

Grengs's attorney began negotiating on Grengs's behalf, offering significant revisions to the structure and language of the draft agreement originally sent by the respondents' attorney. The attorneys argued over the terms from July to October, but they never produced a document that the two feuding factions would sign. The respondents' attorney asserted during that time that no signed agreement was necessary because the email exchanges between him and Grengs already constituted an enforceable settlement agreement. Respondents sued Grengs for breaching the alleged settlement agreement.

Both parties moved for summary judgment. The district court concluded that the parties had entered into a settlement agreement based on the email exchanges, and it granted the respondents' motion. Grengs appeals.

DECISION

Grengs appeals the district court's grant of summary judgment favoring Hammond, Roufs, and Nektalov. We review a grant of summary judgment de novo to determine whether genuine issues of material fact exist and whether the district court erred in applying the law. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017); *see also* Minn. R. Civ. P. 56.01 ("The court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law."). We view the facts and resolve all doubts and inferences in the light most favorable to the party opposing the summary-judgment motion. *Kelly v. Kraemer Constr. Inc.*, 896 N.W.2d 504, 508 (Minn. 2017). This appeal turns on the basic question of whether the undisputed facts, viewed in the light most favorable to Grengs, support the district court's conclusion that the parties' email exchange constitutes a binding settlement agreement. We hold that they do not.

Parties enter into a binding agreement when one of them communicates a specific and definite offer, the other party accepts that specific offer, and consideration exists in the terms. *See Cederstrand v. Lutheran Bhd.*, 117 N.W.2d 213, 219–221 (Minn. 1962). The offer and acceptance constitutes a contract only if they are definite enough for us to conclude that the parties reached a meeting of the minds on the essential terms. *Jallen v. Agre*, 119 N.W.2d 739, 743 (Minn. 1963). The district court concluded that the parties evidenced a clear meeting of the minds on June 4, 2018, culminating when the respondents' attorney said, "We have a deal." The facts do not compel that conclusion.

Although it is true that, absent conflicting circumstances, a court might piece together a string of emails and infer from them some specific agreement binding on both parties, the string here includes two contingencies, one of which was never met. When a party manifests his intent to remain unbound until he signs a formal writing, no contract forms until the parties sign a formal writing. *Massee v. Gibbs*, 210 N.W. 872, 874 (Minn. 1926). The district court's analysis never mentions the precursor to the attorney's "We have a deal" email, which occurred five days earlier. Drawing all reasonable inferences in favor of Grengs as the party opposing the summary-judgment decision, one could conclude that the respondents' attorney placed two conditions on the creation of any binding agreement: "[I]f you're agreeable to one of the following timing arrangements, I will advise my clients to take the deal, provided that a settlement agreement is fully-executed within two weeks." We can assume for our purposes that the first condition was met ("if you're agreeable to one of the following"). But the record shows certainly that the second condition was never met ("*provided that* a settlement agreement is fully-executed.") (Emphasis added). And it does not appear from the record that, after the attorney prefaced his proposed settlement terms to Grengs with the signed-writing contingency, either party said anything suggesting an intent to waive that contingency.

We add that one need not treat the "fully-executed" phrase as a literal precondition to find error in the summary-judgment decision. Whether or not it was an actual precondition to contract formation, the phrase in context would leave a reasonable person with the understanding that a purported acceptance to his "counteroffer" would not end the contract-formation process. And Grengs's response to the attorney's request that Grengs

execute the attached draft agreement corroborates this understanding. By declaring that he would "have [his] lawyers review it" and that he would "get back to [the respondents' attorney] as soon as [his lawyers] get back to [him]," Grengs acted consistently with the previously established premise that the email exchanges would not, by themselves, result in a binding agreement. As a result, the record lacks conclusive evidence supporting summary judgment on the question of whether the parties had a meeting of the minds on whether the parties would be bound by the email statements without a signed writing.

During oral argument in this appeal, the respondents' counsel took the position that his use of the term "fully-executed" agreement had really just meant a *written* agreement, including respondents' email to Grengs saying, "We have a deal," not a *signed* agreement. But his own use of the term belies the assertion. Soon after saying in an email that he would advise his clients to "take the deal, provided that a settlement agreement is fully-executed," he asked Grengs to "execute and return the attached settlement agreement." We do not accept as reasonable counsel's claim that he meant "execute" to mean sign only in the second email but not the first. The context shows instead that he was using the term as lawyers customarily use it: "To make (a legal document) valid by signing; to bring (a legal document) into its final, legally enforceable form." Black's Law Dictionary 689 (10th ed. 2014). In any event, for the purposes of the appeal from summary judgment, we are less concerned with what the respondents' attorney meant than we are with how Grengs understood the term. And nothing we have seen in the record would compel a finding that he understood "fully-executed" to mean anything other than signed by all the parties.

We are not persuaded otherwise by the respondents' emphasis on Grengs's statement, "[t]he agreement itself isn't changing," when he discussed his attorney's revisions to the respondents' draft agreement. Again we consider the context. The context suggests only that Grengs was stating that the revisions were not intended to change any agreed-upon terms, not that the email exchanges constituted a binding agreement without the formal execution that the respondents' counsel had introduced into the negotiations.

Grengs makes other arguments related to the offer, acceptance, and allegedly unethical behavior by respondents' attorney. But these are alternative reasons to contest the district court's holding that a contract had formed. We need not address them in light of our analysis. He also argues that the district court miscalculated costs and disbursements ascribed to him. Our holding also moots that issue. And finally, the district court's analysis addressed the merits of the respondents' motion for summary judgment and its conclusion foreclosed its need for it to address Grengs's motion for summary judgment. We hold only that the respondents are not entitled to summary judgment, and we take no position on whether the facts construed in favor of the respondents would allow for summary judgment in Grengs's favor. We therefore reverse and remand for further proceedings, including an analysis of Grengs's summary-judgment motion.

Reversed and remanded.