STATE OF MINNESOTA

IN SUPREME COURT

A19-1421

Court of Appeals

Moore, III, J.
Dissenting, Anderson, J.

Vermillion State Bank,

Respondent,

vs.

Filed: February 2, 2022
Office of Appellate Courts

Tennis Sanitation, LLC,

Appellant.

Mark R. Bradford, Lewis A. Remele, Jr., Steven M. Sitek, Bassford Remele, P.A., Minneapolis, Minnesota, for respondent.

Kay Nord Hunt, Michelle K. Kuhl, Barry A. O'Neil, Lommen Abdo, P.A., Minneapolis, Minnesota; and

Steven R. Coon, Law Offices of Steven Coon, Minneapolis, Minnesota, for appellant.

S Y L L A B U S

1. Minnesota applies the predominant purpose test to hybrid contracts involving goods and intangible non-goods to determine whether the contract is governed by the common law or the Uniform Commercial Code, a test in which the relative price or value of a contract's component parts is important, but not the sole or determinative consideration.

2. Oral contracts governed by the common law, subject to a few well-delineated exceptions, must be proven by a preponderance of the evidence.

3. Under a preponderance of the evidence standard, sufficient evidence existed in the record for the jury to find that the parties entered into an oral contract.

4. The district court did not abuse its discretion in denying appellant's proposed jury instructions related to the legal effect of a letter of intent and an owner's scope of authority.

5. Minnesota's postjudgment interest statute, Minnesota Statutes § 549.09 (2020), which imposes a higher interest rate to judgments exceeding $50,000, does not violate the Equal Protection Clause of either the Federal or Minnesota Constitutions.

Affirmed.

O P I N I O N

MOORE, III, Justice.

This case asks us to decide, among other issues, whether an oral hybrid contract for the sale of goods and intangible non-goods is subject to our predominant purpose test—the test used to determine whether the provisions of the Uniform Commercial Code (UCC) or the common law govern the contract as a whole. Appellant Tennis Sanitation, LLC (Tennis) repudiated an alleged oral contract it negotiated with respondent Vermillion State Bank (Vermillion) for its purchase of certain assets of a trash collection business in bankruptcy, which included tangible assets such as garbage trucks and intangible assets such as customer routes. Vermillion, after selling the assets to another company at a

significantly lesser price following Tennis's repudiation, sued Tennis for breach of contract, seeking monetary relief.

At trial, the jury returned a unanimous verdict finding that the parties entered an oral contract; the predominant factor of that oral contract was for the sale of the trash collection business' customer routes, not its physical assets; Tennis breached the contract; and as a result of the breach, Vermillion suffered $1.92 million dollars in damages. After the district court adopted the jury's verdict as its findings, Tennis made post-trial motions based on numerous alleged errors, asserting that the district court should have divided the contract into its component parts and applied the UCC to the goods portion of the contract; that a clear and convincing evidence standard applies as to the formation of the contract; that there was insufficient evidence to support the jury's finding that an oral contract existed; that the district court issued erroneous jury instructions; and that the statutory postjudgment rate of 10% imposed on judgments greater than $50,000 violates the Equal Protection Clause. The district court denied Tennis's motions, the court of appeals affirmed, and we granted Tennis's petition for review. Because we hold that hybrid contracts involving goods and non-goods should be interpreted based on the predominant purpose of the contract, and otherwise find no error in the decision of the court of appeals—including as to the constitutionality of the postjudgment statute—we affirm.

FACTS

In 2010, respondent Vermillion began loaning money to Troje's Trash Pick-up, Inc. (Troje's), a trash collection company. To secure its loans, Vermillion obtained security

interests in Troje's tangible assets, such as Troje's garbage trucks, and intangible assets, such as Troje's customer routes.

In 2015, Vermillion loaned more money to Troje's in an effort to alleviate Troje's mounting financial problems. Despite this additional funding, Troje's financial difficulties proved to be unresolvable, and in January 2016, the company filed for Chapter 11 bankruptcy. *See generally* 11 U.S.C. §§ 101–12. By this time, Vermillion had loaned more than $7 million to Troje's and was the company's largest creditor.

The bankruptcy court appointed a bankruptcy specialist to help run Troje's and maximize recovery for all creditors. The specialist recommended selling Troje's assets at auction, including garbage trucks, garbage containers, customer routes, and more.

Only two bidders submitted timely bids to buy Troje's assets at auction. Republic Services, another trash collection business, submitted the first bid. Minnesota Sanitation Company LLC, a dummy company created by Vermillion to increase other bid offers, submitted the second bid. Two days before the auction, Vermillion's president, John Poepl, reached out to Tennis's co-owners, brothers Gregory and William Tennis, to see if they were interested in acquiring Troje's assets. Poepl proposed that Vermillion's dummy company could outbid Republic and turn the assets over to Tennis because Vermillion had no intention of running a trash collection business. Both Tennis brothers expressed interest and agreed to meet with Poepl.

The next day, the Tennis brothers met with John Poepl and his son, Vermillion's vice president Matt Poepl, to discuss Troje's assets. Together, they created a rough valuation of Troje's assets, individually pricing its commercial accounts, residential

accounts, trucks, and garbage containers. The group ultimately valued the assets at $9.1 million, $5.3 million of which they attributed to Troje's customer routes. After valuing the assets, John and Matt Poepl and the Tennis brothers negotiated potential purchase prices and initially agreed to a price of $6.1 million for Troje's assets.

On the morning of the auction, August 8, 2016, John Poepl, Matt Poepl, William Tennis, Gregory Tennis, and Tennis's accountant participated in two short conference calls. In the first call, the parties discussed the purchase of Troje's assets and debated whether six natural gas trucks with nearly $1 million dollars of debt on them would be included in the final deal. In the second call, Tennis verbally agreed to purchase Troje's assets for $6.1 million, excluding the indebted natural gas trucks. The parties discussed and understood that Tennis could not perform due diligence because there was no time to inspect the assets before the auction. At the end of this second call, Vermillion asked Tennis for "an email or something saying . . . we want you to bid for us" to confirm that Tennis would pay $6.1 million for Troje's assets.

The auction began at 1:00 p.m. with Republic as the high bidder. Three minutes after the auction started, Tennis e-mailed a signed letter of intent to Vermillion. The letter of intent was expressly "non-binding" and contained multiple provisions that were not part of the parties' original verbal agreement, including a due diligence provision. After Vermillion received the letter of intent, John Poepl called Gregory Tennis and reminded him that their agreement did not allow for due diligence. During that call, John Poepl asked Gregory Tennis to confirm Tennis still wanted Vermillion to bid on the assets under the terms of their initial deal, and Gregory Tennis did so.

At 3:55 p.m., Vermillion submitted a winning $5.4 million bid for Troje's assets. The evening after the auction, John Poepl, Matt Poepl, Gregory Tennis, and William Tennis met to discuss transitioning Troje's assets over to Tennis. Despite previously confirming the parties' deal, Gregory Tennis appeared nervous about having agreed to the purchase.

On the day after the auction, the parties met with the bankruptcy specialist. Gregory Tennis continued to appear uneasy about the situation, but he nevertheless confirmed that he had asked John Poepl to bid on Troje's assets for Tennis. The parties discussed the payment and transfer of assets. The meeting ended with John Poepl growing concerned that Tennis would back out of the agreement, leaving Vermillion as the owner of Troje's assets. Later that afternoon, John Poepl's fears came to fruition when William Tennis called him and withdrew from their arrangement.

Vermillion then needed a way to sell Troje's assets. After reaching out to Republic, the runner-up at auction, Vermillion sold the assets to it for $4 million. Republic's purchase terms, however, required Vermillion to include the natural gas trucks and cover over $1 million in debt on them.

Vermillion subsequently sued Tennis for over $4 million in damages, alleging claims of breach of contract, breach of the implied duty of good faith and fair dealing, and promissory estoppel. After a 4-day trial, the jury, under a preponderance of the evidence standard, found that an oral contract existed, the predominant factor of the contract was the purchase of Troje's customer routes, and Tennis breached the contract. The jury awarded Vermillion $1,920,000 in damages.

Tennis made a post-trial motion for judgment as a matter of law pursuant to Minn. R. Civ. P. 50.02 or, in the alternative, for a new trial. In its motion for judgment as a matter of law, Tennis alleged there was insufficient evidence to prove the existence of a contract and that, even if a contract existed, it was unenforceable under the UCC statute of frauds because the primary purpose of the contract was for goods and this contract was not in writing. Alternatively, Tennis asserted that if the predominant purpose of the contract was for non-goods, the court should bifurcate the contract into its component parts and invalidate the goods portion under the UCC statute of frauds. In its new trial motion, Tennis alleged fifteen different errors, including errors related to the standard of proof and the jury instructions.[1] The district court denied both of Tennis's motions.

Tennis also separately moved to "bar accrual of interest on the judgment" against it. In this motion, Tennis asserted that Minnesota's postjudgment interest statute, Minn. Stat. § 549.09 (2020), by providing separate rates of interest depending on the amount of the judgment, violated the Equal Protection Clause of both the Minnesota and Federal Constitutions. The district court also denied this motion.

The court of appeals affirmed, concluding that the district court correctly denied Tennis's motion for judgment as a matter of law because sufficient evidence existed to support the jury's verdict that the parties entered into a contract. *Vermillion State Bank v. Tennis Sanitation, LLC*, 947 N.W.2d 456, 465–70 (Minn. App. 2020). In doing so, the

[1] Additional alleged errors included the denial of expert testimony, an excessive judgment amount, and the denial of other jury instructions. These errors, however, are not at issue on appeal.

court of appeals affirmed that the predominant purpose test, rather than a bifurcation rule, applied to contracts such as this one which included goods and non-goods. *Id.* at 467–68. And although the court of appeals held that the district court erred by allowing the jury to decide the predominant purpose of the contract, because whether the UCC applied was a question of law, the court of appeals concluded this was not a basis for reversal. *Id.* at 468. Instead, consistent with the jury's finding, the court of appeals held that "the customer routes—a non-good—represented the contract's predominant purpose," and thus the UCC did not apply, and a valid contract existed. *Id*. at 468–69. The court of appeals likewise affirmed the district court's denial of Tennis's new trial motion, including Tennis's objections to the jury instructions. *Id.* at 469–71. Lastly, applying rational-basis review, the court of appeals held that the differing postjudgment interest rates found in Minn. Stat. § 549.09, subd. 1, depending upon the size of the judgment, did not violate the Equal Protection Clause in the federal or Minnesota constitutions. We granted Tennis's petition for review.

ANALYSIS

This case comes to us on appeal from the denial of Tennis' post-trial motions for judgment as a matter of law, or in the alternative, a new trial. We review the district court's denial of a motion for judgment as a matter of law de novo, viewing the evidence in the light most favorable to Vermillion. *See Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919 (Minn. 2009). We affirm the denial of a motion for judgment as a matter of law unless no reasonable theory supports the verdict. *Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 55 (Minn. 2019). This means that to reverse, the evidence must be " 'so overwhelming

on one side that reasonable minds cannot differ as to the proper outcome.' " *Lamb v. Jordan*, 333 N.W.2d 852, 855 (Minn. 1983) (quoting 4 D. McFarland & W. Keppel, *Minnesota Civil Practice* § 2402 (1979 and Supp. 1982)). We review the denial of a motion for a new trial based on an erroneous jury instruction for an abuse of discretion. *Daly v. McFarland*, 812 N.W.2d 113, 122 (Minn. 2012).

On appeal to our court, Tennis argues the district court committed five errors in its ruling on these motions. First, Tennis alleges that the UCC governs here—at least as to the sale of goods—and the UCC statute of frauds renders the oral agreement unenforceable. Tennis argues that the district court erred by applying the predominant purpose test to the parties' hybrid agreement and instead should have bifurcated the contract into two parts—one for the sale of goods and one for the sale of intangible non-goods—and applied the UCC to the goods portion of the contract.[2] This interpretation would make the goods portion of the oral contract unenforceable under the UCC statute of frauds. Alternatively, Tennis asserts that even if the predominant purpose test applies, the UCC—and its statute

[2] Our precedent refers to this test as both the "predominant factor" and the "predominant purpose" test. *Compare Valley Farmers' Elevator v. Lindsay Bros.*, 398 N.W.2d 553, 556 (Minn. 1987) ("We adopt the 'predominant factor' test"), *overruled on other grounds by Hapka v. Paquin Farms*, 458 N.W.2d 683 (Minn. 1990), *and McCarthy Well Co. v. St. Peter Creamery, Inc.*, 410 N.W.2d 312, 315 (Minn. 1987) ("We adopted the 'predominant factor' test."), *with Vesta State Bank v. Indep. State Bank of Minn.*, 518 N.W.2d 850, 854 (Minn. 1994) ("We use the 'predominant purpose' test."). This inconsistency in terminology is reflected in both the district court's jury verdict form (asking the jury to determine the "predominant factor" of the parties' contract) and post-verdict order (referring to both descriptions of the test), as well as the in the court of appeals opinion (same). We refer to it as the "predominant purpose" test here because the test considers multiple factors in determining whether the overall thrust or purpose of the contract is for the sale of goods or nongoods.

of frauds—governs the entire oral contract because its predominant purpose was for the sale of goods. Second, Tennis argues that Vermillion was required to prove the oral contract by clear and convincing evidence, rather than by a preponderance of the evidence as the jury was instructed. Third, Tennis claims there was insufficient evidence of an agreement as to the contract's fundamental terms to support the jury's finding that an oral contract was entered into. Fourth, Tennis claims the district court committed reversible error by denying two of its proposed jury instructions. Fifth and finally, Tennis submits that Minnesota's postjudgment interest statute, Minn. Stat. § 549.09, violates the Equal Protection Clause of both the United States and Minnesota Constitutions because it imposes different interest rates depending upon the size of the judgment. We address each argument in turn.

I.

We begin with the threshold question of whether the parties' hybrid oral contract—which involved both goods and intangible assets—is governed by the UCC or the common law. Tennis argues that it was entitled to judgment as a matter of law because the district court erred in applying the predominant purpose test—which we have applied to hybrid contracts involving goods and services—to determine which law governs the parties' oral contract. Tennis asserts that because this contract involved goods such as garbage trucks and intangible assets such as customer routes, rather than goods and services, the contract fell outside the scope of the predominant purpose test entirely. As a result, Tennis claims the district court should have divided the contract into its component parts and negated the goods portion of the contract under the UCC statute of frauds because the contract was not

in writing. In reviewing this issue, we must determine what law governs the interpretation of the parties' oral contract and then apply that law to the facts of this case.

A.

The interpretation and application of the UCC is a legal question that we review de novo. *Sorchaga v. Ride Auto, LLC*, 909 N.W.2d 550, 555 (Minn. 2018). The same standard likewise applies to "the application or extension of our common law." *Soderberg v. Anderson*, 922 N.W.2d 200, 203 (Minn. 2019). Additionally, because this issue comes to us on a post-verdict motion for judgment as a matter of law, which "admits every inference reasonably to be drawn from the evidence as well as the credibility of the testimony for the adverse party," we thus construe all facts in favor of Vermillion. *Seidl v. Trollhaugen, Inc.*, 232 N.W.2d 236, 239 (Minn. 1975).

Article 2 of the UCC, which Minnesota has codified at Minn. Stat. § 336.2 *et seq.*, "applies to transactions in goods." Minn. Stat. § 336.2-102 (2020). Under Article 2, "goods" are defined as "all things . . . which are movable at the time of identification to the contract for sale other than" money, investment securities, and "things in action." Minn. Stat. § 336.2-105(1) (2020). The common law governs contracts for non-goods. *See McCarthy Well Co. v. St. Peter Creamery, Inc.*, 410 N.W.2d 312, 315 (Minn. 1987) ("[I]f the predominant purpose of the contract is the rendition of services, then the U.C.C. does not govern.").

There are, however, frequently situations where contracts cover both goods and non-goods, i.e., a "hybrid contract." *See Valley Farmers' Elevator v. Lindsay Bros.*, 398

N.W.2d 553, 555–56 (Minn. 1987).[3] Some contracts primarily cover a good like a furnace, *O'Laughlin v. Minn. Nat. Gas. Co.*, 253 N.W.2d 826, 831–32 (Minn. 1977), or a water softener, while also covering "some related service" such as the installation of these goods, *Kopet v. Klein*, 148 N.W.2d 385, 389–90 (Minn. 1967). Other contracts primarily cover non-goods such as a customer route or a service like the restoration of a well, *McCarthy Well Co.*, 410 N.W.2d at 315, and secondarily cover some incidental goods.

To resolve potential conflicts between the UCC and the common law, we adopted the predominant purpose test to determine whether hybrid contracts involving goods and services are governed by the UCC or the common law. *Valley Farmers' Elevator*, 398 N.W.2d at 556; *Vesta State Bank v. Indep. State Bank of Minn.*, 518 N.W.2d 850, 854 (Minn. 1994). "Under the predominant purpose test, a hybrid transaction is classified according to its dominant characteristic." *Vesta State Bank*, 518 N.W.2d at 854. A hybrid contract primarily covering goods is governed by the UCC and its statutorily enumerated rules, including its statute of frauds, statute of limitations, and the application of various implied warranties. *Id.*; *McCarthy Well Co.*, 410 N.W.2d at 315. A hybrid contract primarily covering services falls outside the scope of the UCC, and instead we apply the common law. *McCarthy Well Co.*, 410 N.W.2d at 315; *Vesta State Bank*, 518 N.W.2d at 854.

[3] *Valley Farmers' Elevator* was later overturned in part on other grounds, but the adoption of the predominant purpose test—which is the focus of this opinion—remains good law. *See Hapka v. Paquin Farms*, 458 N.W.2d 683, 688 (Minn. 1990).

Tennis argues that the predominant purpose test does not apply to this agreement because the contract here did not involve goods and services, but rather goods, such as trucks and equipment, and "intangible assets," such as customer routes. Noting that we have applied the predominant purpose test to contracts involving goods and services, and that we have never applied the test to a contract comprised purely of goods and intangible assets, Tennis argues we should not extend the predominant purpose test to contracts such as this one and should instead adopt a bifurcation approach for such contracts.

In making this argument, Tennis relies on a Tenth Circuit decision that split a hybrid contract into two parts: goods and non-goods. *Foster v. Colo. Radio Corp.*, 381 F.2d 222, 226 (10th Cir. 1967). Under the approach outlined in *Foster*, the portion of the contract covering goods is governed by Article 2 of the UCC and is subject to the UCC statute of frauds, various warranties, and other protections. *Id*. In this case, that would mean that the UCC would govern the part of the contract involving Troje's trucks, containers, and other goods. According to Tennis, that part of the contract would be invalid under the UCC statute of frauds, Minn. Stat. § 336.2-201, because the contract is not in writing. Meanwhile, the common law would govern the part of the contract involving Troje's intangible assets—customer routes, good will, intellectual property, and other non-goods. But as Vermillion correctly points out, the *Foster* case is an outlier, representing a minority position among courts that have considered the issue.[4] *Foster* is the only case cited by the

[4] *See, e.g.*, *Fab-Tech, Inc. v. E.I. Dupont De Nemours & Co.*, 311 F.App'x. 443, 445 (2d Cir. 2009) (noting that Vermont "like most jurisdictions" does not follow *Foster* and rather follows the predominant purpose test); *BMC Indus., Inc. v. Barth Indus., Inc.*, 160 F.3d 1322, 1329 (11th Cir. 1998) ("Most courts follow the 'predominant [purpose]' test to

parties that has actually applied the bifurcation approach and has not later been rejected by a higher court.[5] For the reasons discussed below, we join numerous other courts in rejecting the bifurcation approach and affirming the application of the predominant purpose test to this hybrid contract for the sale of goods and intangible assets.[6]

Tennis's first argument for applying the bifurcation approach instead of the predominant purpose test is that, although the reasoning behind the predominant purpose test adequately addresses concerns related to hybrid contracts consisting of goods and services, that reasoning does not extend to hybrid contracts involving tangible goods and

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determine whether such hybrid contracts are transactions in goods, and therefore covered by the UCC, or transactions in services, and therefore excluded."); *Salt Lake City Corp. v. Sekisui SPR Ams., LLC*, 482 F. Supp. 3d 1177, 1187 (D. Utah 2020) ("The majority of courts have adopted the one-law approach, which applies the UCC to the entire contract if it is predominately a contract for goods."); *Kirkpatrick v. Introspect Healthcare Corp.*, 845 P.2d 800, 803 (N.M. 1992) (noting that "New Mexico and a majority of jurisdictions" do not follow the bifurcation approach, but rather use the primary purpose test).

[5] The only other case cited by Tennis that adopted the bifurcation approach was an Indiana Court of Appeals decision. *Data Processing Servs. v. L.H. Smith Oil Corp.*, 492 N.E.2d 314, 318 (Ind. Ct. App. 1986). The approach taken in that case was considered and later expressly rejected by the Indiana Supreme Court. *Insul-Mark Midwest, Inc. v. Mod. Materials, Inc.*, 612 N.E.2d 550, 554 (Ind. 1993) ("[T]he predominant thrust test is the best and most workable approach for determining the applicability of the U.C.C. to mixed transactions.").

[6] *See De Filippo v. Ford Motor Co.*, 516 F.2d 1313, 1323 (3d Cir. 1975) ("We believe it preferable to utilize a rule of reasonable characterization of the transaction as a whole."); *Hudson v. Town & Country True Value Hardware, Inc.*, 666 S.W.2d 51, 54 (Tenn. 1984) (concluding that it is "inappropriate to segregate goods from non-goods"); *Insul-Mark Midwest, Inc. v. Mod. Materials, Inc.*, 612 N.E.2d 550, 554 (Ind. 1993) (rejecting bifurcation because it is "less sensitive to parties' expectations" and "would be difficult to apply"); *Pittsley v. Houser*, 875 P.2d 232, 235 (Idaho Ct. App. 1994); *Salt Lake City Corp. v. Sekisui SPR Ams., LLC*, 482 F. Supp. 3d 1177, 1188 (D. Utah 2020) (rejecting the bifurcation approach under Utah law).

intangible assets. Vermillion disagrees and argues that bifurcation is incompatible with the predominant purpose test regardless of the contract's underlying composition of assets.

We first adopted the predominant purpose test in our *Valley Farmers' Elevator* decision. 398 N.W.2d at 556. We explained that "the sale of goods is often accompanied by the rendition of services," and the inclusion of labor within a goods contract "does not necessarily exclude the transaction from coverage under the [UCC]." *Id*. We then pointed out that the predominant purpose test would preclude a seller of goods from avoiding certain UCC warranties by including a "labor charge." *Id.* In subsequent cases, we continued to apply the predominant purpose test to contracts involving both goods and services. *See, e.g.*, *McCarthy Well Co.*, 410 N.W.2d at 315. We have not, however, specifically addressed a hybrid contract involving both goods and intangible assets.

As an initial matter, we disagree with Tennis's assertion that the reasoning behind our adoption of the predominant purpose test is inapplicable to contracts involving goods and non-goods. In *Valley Farmers' Elevator*, our adoption of the predominant purpose test arose from a concern that sellers of goods would simply add an incidental service charge to avoid UCC warranties related to the goods. *See* 398 N.W.2d at 556. We believe a similar situation could arise with the sale of non-goods. Take this case for example. If Vermillion sold all the garbage trucks, bins, and other garbage-hauling equipment, but included one token customer route to avoid the UCC warranties, the predominant purpose test would ensure that the UCC would still cover the contract.

In addition, other principles of contract interpretation support the application of the predominant purpose test to hybrid contracts involving goods and non-goods. "The

primary goal of contract interpretation is to determine and enforce the intent of the parties." *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004); *see Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009). This principle applies whether we are dealing with a hybrid or non-hybrid contract. *Wise Furniture v. Dehning*, 343 N.W.2d 26, 29 (Minn. 1984) (explaining that we recognize and enforce "the intent of the parties" despite "the hybrid nature of the transaction"). When faced with a hybrid contract, we assume that the parties intend to follow through on the entire contract and not just its component parts. Yet, if "the language used [in the contract], the subject matter of the contract, and how the parties themselves treated [the contract]" shows that the parties intended it to be divisible, we treat it as such. *Anderson v. Kammeier*, 262 N.W.2d 366, 371 (Minn. 1977). This approach makes sense because the component parts of a hybrid contract are frequently useless or less valuable by themselves.

The predominant purpose test furthers the intent of the parties to the contract because it treats the contract as uniform and applies a single set of rules to the entire contract. The bifurcation approach, on the other hand, could defeat the parties' underlying intentions by dividing the contract and making certain portions unenforceable. For example, if the UCC statute of frauds invalidated the goods portion of the contract because the contract was not in writing, it would frustrate the overarching purpose of the contract and could make the component portions worthless. *See De Filippo v. Ford Motor Co.*, 516 F.2d 1313, 1323 (3d Cir. 1975) ("[T]o insist that the Statute of Frauds apply only to a portion of the contract, would be to make the contract divisible and impossible of performance within the intention of the parties.").

This case provides an example of how the fundamental principle of characterizing contractual agreements as a whole intersects with the predominant purpose test. Tennis and Vermillion formed an oral contract with the intention of contracting for nearly all Troje's assets, including goods and intangible assets. Neither party presented evidence that the parties intended the contract to be divisible. Instead, even though most witnesses testified to the primary value being the customer routes, William Tennis acknowledged at trial that the goods portion of the contract was essential to the overarching deal because "[i]f you don't have equipment, trucks to pick up these stops, the stops are no good to you." If this oral contract was bifurcated and the UCC statute of frauds applied to the goods portion, the initial purpose of the contract to transact for nearly all Troje's assets would be defeated because Tennis would have the customer routes but no trucks to serve the customers on those routes. *Compare* Minn. Stat. § 336.2-201 (2020) (stating that "a contract for the sale of goods for the price of $500 or more is not enforceable . . . unless there is some writing" that proves its existence), *with McCardle v. Williams*, 258 N.W. 818, 820 (Minn. 1935) (common law case explaining oral contracts are enforceable "where [there is] no particular requirement of form"), *and McCarthy Well Co.*, 410 N.W.2d at 315 (indicating the UCC does not govern contracts that are not for the sale of goods).

The statute of limitations also supports the application of the predominant purpose test to this contract. Under the UCC, a breach-of-contract action must be brought within 4 years after the breach occurred. Minn. Stat. § 336.2-725(1) (2020). Breach-of-contract actions not governed by the UCC must be brought within 6 years after the breach occurred. Minn. Stat. § 541.05, subd. 1(1) (2020). If a party waits 5 years to sue on a breach of a

hybrid contract, the predominant purpose test will treat the contract as a single transaction, assuming the parties' intent was to treat the contract as indivisible and apply one body of law accordingly. The bifurcation approach in the same scenario, however, may result in the claim for the goods portion of the contract being untimely, given the application of the UCC's shorter statute of limitations, while the same breach as to the non-goods portion would be enforceable.

Moreover, even if a contract or its breach would be enforceable under both the UCC or the common law, bifurcation would still result in difficulties applying different law to each separate part of the contract. For example, as the Tennessee Supreme Court observed, the bifurcation approach can present "difficult and in some instances insurmountable problems of proof in segregating assets and determining their respective values at the time of the original contract and at the time of resale, in order to apply two different measures of damages." *Hudson v. Town & Country True Value Hardware, Inc.*, 666 S.W.2d 51, 54 (Tenn. 1984).

Far from adhering to the UCC's goal of simplifying, clarifying, and modernizing the law governing commercial transactions, Minn. Stat. § 336.1-103(a)(1) (2020), bifurcation complicates and confuses this area of the law. Because our general contract principles support the application of the predominant purpose test to hybrid contracts involving goods and intangible assets, we reject Tennis's argument that the reasoning behind the predominant purpose test should not be extended to such hybrid contracts.

We are equally unpersuaded by Tennis's second argument for bifurcation that because nothing in the UCC's language prohibits use of that approach, we should apply it.

We do not interpret the UCC's silence on bifurcation as tacit support for that approach. Additionally, as previously mentioned, the purpose of the UCC is to "simplify, clarify, and modernize the law governing commercial transactions." Minn. Stat. § 336.1-103(a)(1). Due to the practical problems with bifurcation, we believe this introductory language to the UCC cuts against Tennis's argument. We, therefore, reject this argument for the adoption of the bifurcation approach.

Tennis's third and fourth arguments for bifurcation assert that the application of the predominant purpose test would deprive it of certain UCC warranties and frustrate the purpose behind the statute of frauds. According to Tennis, the application of the predominant purpose test would remove UCC protections from the goods portion of this contract and make it more susceptible to fraud. Under Minnesota's predominant purpose test, however, if the substantial or predominant characteristic of the contract is the rendition of services, an intangible asset which is a type of non-good, as opposed to the sale of goods, "the U.C.C. does not govern." *McCarthy Well Co.*, 410 N.W.2d at 315. Because the hybrid contract was predominantly a contract for non-goods, Tennis was not entitled to warranties under the UCC or the protection of its statute of frauds. We have never applied UCC warranties or its statute of frauds to contracts for predominantly non-goods; we are unclear as to why Tennis believes it is entitled to an exception from that general rule. Thus, we reject Tennis's third and fourth arguments for bifurcation.

In sum, because we find Tennis's arguments for bifurcation to be unpersuasive, and because of our concern with bifurcation's practical problems, we join the majority of other courts that have addressed this issue in rejecting the bifurcation approach and affirming the

application of the predominant purpose test to this hybrid contract for the sale of goods and intangible assets.

B.

We now turn to the application of the predominant purpose test to this contract. Before turning to the evidence here, we agree with the court of appeals that the district court erred in allowing the jury to determine the predominant purpose of this contract. *Vermillion State Bank*, 947 N.W.2d at 468. "The question as to the classification of a hybrid contract is generally one of law." *Valley Farmers' Elevator*, 398 N.W.2d at 556. Thus, this is an issue that the district court should have decided.[7] We also agree with the court of appeals, however, that "the fact that a jury rather than the district court decided the contract's predominant purpose here is not a basis for reversal." *Id.* Because the "classification of a hybrid contract" is a question of law, it is an issue that we, in turn, review de novo. *Valley Farmers' Elevator*, 398 N.W.2d at 556. For the reasons discussed below, applying a de novo standard of review, we conclude that the predominant purpose of this contract is the sale of non-goods.

As previously mentioned, under the predominant purpose test, "a hybrid transaction is classified according to its dominant characteristic." *Vesta State Bank*, 518 N.W.2d at

[7] This issue arises in the context of a post-verdict motion for judgment as a matter of law, which ordinarily would require us to construe all facts in favor of Vermillion. *See Seidl*, 232 N.W.2d at 239. There is a question, however, as to whether any deference is appropriate when the district court or jury decides a pure legal question without making any underlying factual findings. Because neither party addresses the standard of review that applies in this situation, we assume without deciding that de novo review applies here as it does to other questions of law.

854. When classifying a hybrid contract, the relative price or value of a contract's component parts is an important consideration, but it is not the sole or determinative consideration.[8]

In addition to relative value, we consider all relevant evidence bearing on the predominant purpose of the contract, including the language of the contract (when available), the parties' purpose in entering the contract, and the facts and circumstances surrounding the formation of the contract, such as the type of business involved. This approach is consistent with our view that "the primary goal of contract interpretation is to determine and enforce the intent of the parties." *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323 (Minn. 2003); *Valspar Refinish*, 764 N.W.2d at 364. It is also consistent with how other jurisdictions apply the predominant purpose test. For example, other courts have noted that they look to "several factors" when classifying a contract, and "[f]oremost among these are the language of the agreement itself and the circumstances of its making and performance." *Lamell Lumber Corp. v. Newstress Int'l, Inc.*, 938 A.2d 1215, 1223 (Vt. 2007); *see also BMC Indus., Inc. v. Barth Indus., Inc.*, 160 F.3d 1322, 1329–30 (11th Cir. 1998) (noting that no single factor is determinative in

[8] The dissent's assertion that we should limit our analysis to the relative value of the contract's component parts is based on an overbroad reading of *Vesta State Bank v. Independent State Bank of Minnesota*, 518 N.W.2d 850, 854 (Minn. 1994). The dissent's reasoning suggests *Vesta* stands for the proposition that we do not consider the parties' characterization of a contract—only the relative value of the component parts. This assertion overstates our holding in *Vesta*. Though we disregarded how one party characterized the contract in that case, we did not say that the relative value of a contract's component parts is the sole, determinative factor. *See* 518 N.W.2d at 854-55.

classifying a hybrid contract and that "several aspects of a contract" are "particularly significant," including evidence that "provides insight into whether the parties believed the goods or services were the more important element of their agreement"); *Nw. Equip., Inc. v. Cudmore*, 312 N.W.2d 347, 350 (N.D. 1981) ("Although the amount charged for goods and services, respectively, may be a factor to be considered in determining the predominant thrust and purpose of the contract, it is not by itself a clear indication of what the parties considered the predominant purpose."); *Audio Visual Artistry v. Tanzer*, 403 S.W.3d 789, 799 (Tenn. Ct. App. 2012) (including "the reason the parties entered the contract" as one of four factors in applying the predominant purpose test).

With these factors in mind, we turn to the evidence. Relying exclusively on one breakdown of the contract price where the trucks and garbage containers were valued higher than the customer routes, Tennis argues the contract was predominantly for the sale of goods because the trucks and containers, in comparison, were worth more. But as Vermillion correctly points out, at the parties' meeting on August 7, the day before the auction, the parties placed a valuation of $9.1 million dollars on Troje's assets as a whole. Of that $9.1 million, the parties attributed a majority ($5.3 million dollars or roughly 58 percent) of the value to Troje's customer routes, a non-good. Although Tennis argues on appeal that the majority of the price was for the sale of goods—the trucks—this valuation is based on only one breakdown of the price and contradicts testimony from Tennis's own witnesses. Gregory Tennis testified that the relative value of the trucks was only "30 percent," and Tennis's accountant testified that the prospect of revenue from the customer routes was the driving force behind Tennis's interest in the assets. Moreover, the

bankruptcy specialist who assessed the value of Troje's assets similarly estimated that the routes comprised 70 to 75 percent of the company's value.

Tennis's argument also places too much weight on the relative price of a contract's component parts, which as we have stated, is an important consideration, but is not the sole or determinative factor. As the court of appeals properly observed, "[m]ost trial witnesses," for both Vermillion and Tennis, "testified that the customer routes represented Troje's true value." *Vermillion State Bank*, 947 N.W.2d at 468. Based on this evidence, we conclude that the dominant characteristic of the contract was the customer routes, an intangible asset, and therefore the common law governs the contract, rather than the UCC.

II.

We next turn to the proper standard of proof the jury was to apply in determining whether the parties had in fact formed a contract. Tennis argues it is entitled to JMOL or a new trial because the jury, at the district court's instruction, applied the preponderance of the evidence standard of proof to the formation of this oral contract, instead of the clear and convincing evidence standard.

The applicable standard of proof is a legal question we review de novo. *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). In civil cases, Minnesota courts apply two different evidentiary standards: preponderance of the evidence and clear and convincing evidence. *Id.* at 838–39. The preponderance of the evidence standard "requires that to establish a fact, it must be more probable that the fact exists than that the contrary exists." *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 4 (Minn. 2004). The clear and convincing evidence standard is higher and requires that "the truth of the facts asserted

is 'highly probable.' " *Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978). Each standard "serves several purposes," and the standard "varies depending on the type of case." *Christie*, 911 N.W.2d at 838.

"In most civil cases, we use the less rigorous standard, preponderance of the evidence, 'because society has a minimal concern with the outcome of private suits.' " *Id*. at 839 (quoting *Carrillo v. Fabian*, 701 N.W.2d 763, 774 (Minn. 2005)). There are limited circumstances, however, when we apply the clear and convincing evidence standard because of "an underlying concern" about fraud and a heightened "need for certainty surrounding the contract." *Id*. at 840; *see also Carrillo*, 701 N.W.2d at 774 ("Civil cases involving allegations of fraud or other quasi-criminal wrongdoing may use the intermediate clear and convincing evidence standard because the defendant's interests at stake in those cases are more substantial than those present in a typical civil case.").

With this background in mind, we turn to Tennis's arguments for a heightened evidentiary standard. Tennis's first argument—that this oral contract implicates the UCC statute of frauds and, therefore, necessitates a heightened standard of review—fails based upon our determination that the common law, rather than the UCC, governs this contract. *See* Minn. Stat. § 336.2-201(1).

Tennis next argues that because the letter of intent contradicts the oral agreement between the parties, this type of contract presents fraud concerns analogous to other circumstances in which we apply the clear and convincing evidence standard. After examining our precedent applying this standard, we disagree.

In *Christie*, we applied the clear and convincing evidence standard to an oral contract for the sale of land because land has a "special status" in the law compared to other forms of property, and Minnesota has "a statute of frauds that imposes safeguards on contracts for the sale of land." 911 N.W.2d at 839–40; *see* Minn. Stat. § 513.05 (2020) (stating that contracts for certain interests in land "shall be void unless the contract . . . is in writing"). In so holding, we noted that "our precedent requires a higher standard of proof to combat concerns about fraud" in oral contracts for the sale of land. *Christie,* 911 N.W.2d.at 840. At the same time, we noted that "claims for breach of other oral contracts may not necessarily present the same" concerns. *Id*.

In this case, the agreement between Vermillion and Tennis neither involves land nor implicates the statute of frauds. The agreement is also not like other oral contracts in which there exists "an underlying concern . . . that a fraudulent claim regarding the contract could be enforced if the standard of proof is not high enough to ensure certainty." *Id*.[9] Thus, the

[9] The categories of contracts in which we require a higher standard include oral modifications of written contracts (where oral terms might contradict or modify the written terms), *Kavanagh v. Golden Rule*, 33 N.W.2d 697, 700 (Minn. 1948); reformation of written contracts due to mutual mistake (where oral testimony contradicts the plain terms of the contract to show it was not the parties' true intent), *Gartner v. Gartner*, 74 N.W.2d 809, 812 (Minn. 1956); and oral contracts to make a will when a party seeks specific performance (where only one party is available to testify as to the terms of the contract), *Clark v. Clark*, 288 N.W.2d 1, 8 n.10 (Minn. 1979). *See Christie*, 911 N.W.2d at 840. In these categories of cases, "the more rigorous standard of proof allows courts to be certain that the parties orally agreed to modify a contract or to provide a particular bequest of property, [or] that both parties were mutually mistaken and require reformation of a contract . . . ." *Christie*, 911 N.W.2d at 840. None of these situations apply here. Tennis concedes that the letter of intent was not a written contract, and no other writing existed, so this is not an oral modification of a written contract; the parties do not claim that they made a mutual mistake that would require reformation of a written contract; and the

reasoning behind our application of the higher evidentiary standard in *Christie* does not lend itself to a heightened evidentiary standard here.

To accept Tennis's position would require adoption of a new and broad rule that clear and convincing evidence is needed to establish any oral contract involving disputed terms. Tennis has not provided a persuasive reason to adopt such a striking deviation from this state's contract law. While we have recognized that the terms of an oral contract might be "more difficult to prove" than a written agreement, *Larson v. Archer-Daniels-Midland Co.*, 32 N.W.2d 649, 653 (Minn. 1948), we have never imposed a higher standard of proof for oral agreements generally. This is an ordinary breach-of-contract action in which Vermillion had the burden of proving the oral agreement "by a fair preponderance of the evidence." *Costello v. Johnson*, 121 N.W.2d 70, 74 (Minn. 1963). Once Vermillion established the terms of the oral agreement, they became "as binding as the terms of a written agreement." *Larson*, 32 N.W.2d at 653. Tennis has not explained how this particular contract is more susceptible to fraud than other types of contracts, and Tennis has not alleged any type of fraud here. As the court of appeals accurately summarized, "this case does not present concerns about fraud that would require applying the clear-and-convincing-evidence standard." *Vermillion State Bank*, 947 N.W.2d at 465.

III.

Having established that the preponderance of the evidence standard applies, we next apply that standard to Tennis's argument that the court of appeals erred in affirming the

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contract is not an oral contract to make a will nor are the parties seeking specific performance.

jury's finding of an oral contract because there was insufficient evidence presented at trial to establish the contract's fundamental terms. Tennis argues the terms of this contract could not be ascertained with any reasonable certainty and that no reasonable jury could find that a meeting of the minds occurred. Vermillion counters that the jury properly found the existence of an oral contract and that the fundamental terms could be ascertained with reasonable certainty.

"A contract is formed when two or more parties exchange bargained-for promises, manifest mutual assent to the exchange, and support their promises with consideration." *Med. Staff of Avera Marshall Reg'l Med. Ctr. v. Avera Marshall*, 857 N.W.2d 695, 701 (Minn. 2014). The existence and terms of a contract are questions for the factfinder. *Bergstedt, Wahlberg, Berquist Assocs., Inc. v. Rothchild*, 225 N.W.2d 261, 263 (Minn. 1975). Whether mutual assent exists is "judged objectively, not subjectively." *Cederstrand v. Lutheran Bhd.*, 117 N.W.2d 213, 221 (Minn. 1962). While contracts that are too vague or indefinite are void and unenforceable, *King v. Dalton Motors, Inc.*, 109 N.W.2d 51, 52 (Minn. 1961), "it is not necessary that the parties agree on every possible point," *Hill v. Okay Constr. Co.*, 252 N.W.2d 107, 114 (Minn. 1977). Instead, "the law requires merely that the parties' intent as to the fundamental terms of the contract can be ascertained with reasonable certainty." *Id.*; *see also Furuseth v. Olson*, 210 N.W.2d 47, 49 (Minn. 1973). Additionally, "the law does not favor the destruction of contracts because of indefiniteness." *King*, 109 N.W.2d at 53.

Here, both parties agree that the jury could have ascertained the price—a fundamental term—but they dispute the other terms. Tennis argues in particular that it was

impossible to know which specific assets were covered by the oral contract. Tennis also asserts that Vermillion's president, John Poepl, "knew there was no agreement," based on certain testimony he gave at trial. Vermillion responds that "[t]he parties agreed on the fundamental contract terms." It also points out that multiple witnesses testified about exactly which assets were to be purchased as part of the deal between the parties.

We conclude that adequate evidence in the record supports the jury's findings of the existence of an oral contract and the assets covered by that agreement under a preponderance of the evidence standard. The individual assets covered by the contract were supported by the parties' valuation and numerous pieces of trial testimony. The testimony detailed multiple meetings and phone calls during which the parties discussed the ultimate deal price and the exclusion of the natural gas trucks. Testimony also described Gregory and William Tennis affirming the parties' agreement and William Tennis instructing John Poepl to have Vermillion bid on Tennis's behalf at auction. Therefore, we affirm the court of appeals decision and uphold the district court's denial of Tennis's post-trial motion on this issue.

IV.

Tennis's last argument for a new trial is that the district court erred in denying two of Tennis's proposed jury instructions. Our "review of jury instructions is limited." *Peterson v. BASF Corp.*, 711 N.W.2d 470, 484 (Minn. 2007). "We review a trial court's refusal to give a jury instruction for abuse of discretion." *Daly*, 812 N.W.2d at 122. This means that "we will not reverse where jury instructions overall fairly and correctly state the applicable law." *Id.* (quoting *Stewart v. Koenig*, 783 N.W.2d 164, 166 (Minn. 2010)).

And even if a "jury instruction . . . materially misstates the law," we need not grant a new trial unless the error was prejudicial. *George v. Estate of Baker*, 724 N.W.2d 1, 10 (Minn. 2006).

First, Tennis claims it is entitled to a new trial because the district court denied a specific instruction related to its letter of intent. Tennis's first proposed jury instruction explained that the letter of intent "was not a contract but only an offer . . . to investigate the prospective purchase." The instruction further explained that the jury must find that a separate contract, outside of the letter of intent, existed to find a contract in this case. Tennis argues it was prejudicial error to not instruct the jury on the nature and purpose of a letter of intent because the jury would not understand how to evaluate such a letter. Vermillion, however, never argued that the letter of intent was the contract at trial, and the letter of intent is largely immaterial to the parties' oral contract. We believe the district court acted well within its discretion in declining to give this proposed jury instruction.

Second, Tennis argues it was entitled to an instruction on Gregory Tennis's scope of authority. According to Tennis, Gregory Tennis could not act unilaterally, and the jury should have been given an instruction that read: "In order to find Tennis Sanitation made the alleged oral contract, you must find . . . that Willie Tennis joined Greg Tennis in agreeing to its terms." Tennis's claimed reason for requesting this instruction is belied by the record. According to Tennis, it was entitled to an agency instruction because the only time a contract could have been formed was during two 1-minute conversations between Gregory Tennis and John Poepl. There was evidence, however, that every pre-auction meeting involved both of Tennis's owners and John Poepl; this supports the assertion that

Gregory Tennis did not act unilaterally. Additionally, as the court of appeals explained, "the jury heard testimony that both" of Tennis's co-owners "affirmed an oral contract for [Vermillion] to bid on Troje's assets." *Vermillion State Bank*, 947 N.W.2d at 470. The jury heard testimony to support the assertion that both Gregory and William Tennis entered into this contract together, including testimony about the August 7 meeting, the pre-auction phone call, the post-auction meeting, and the August 9 meeting where both brothers confirmed their previous arrangement.

Furthermore, Vermillion correctly states that Tennis presented no evidence that Gregory Tennis did not have the ability to bind the company unilaterally. Tennis argues that its membership agreement prohibits Gregory Tennis from acting unilaterally but cannot point to language restricting Gregory Tennis from acting alone. The membership agreement requires both owners to agree to sell off significant assets, "confess a judgment against the company," or make changes to the articles of incorporation. Nothing, however, restricts Gregory Tennis from buying assets unilaterally. The denial of this jury instruction was within the district court's broad discretion.

V.

Finally, Tennis contends that the provision of Minnesota's postjudgment interest statute, which imposes different interest rates based upon the size of the judgment, Minn. Stat. § 549.09, subd. 1(c)(1)–(2), violates the Equal Protection Clause of the United States and Minnesota Constitutions. U.S. Const. amend. XIV; Minn. Const. art. I, § 2. We review the constitutionality of a statute de novo. *State v. Cox*, 798 N.W.2d 517, 519 (Minn. 2011). And we presume statutes are "constitutional and will strike down a statute as

unconstitutional only if absolutely necessary." *Id.* "To prevail, a party challenging the constitutionality of a statute must demonstrate beyond a reasonable doubt that the statute violates a constitutional provision." *Id.*

Under both the United States and Minnesota Constitutions, "a law that treats groups of people differently . . . does not violate the Equal Protection Clause . . . when it is a rational means of achieving the legislative body's legitimate policy goal," unless it "impacts fundamental rights or creates a suspect class." *Fletcher Props., Inc. v. City of Minneapolis*, 947 N.W.2d 1, 22 (Minn. 2020). Thus, when evaluating an equal protection challenge, we employ different standards of review depending on the nature of the challenge. *Fletcher Props.*, 947 N.W.2d at 19. "If a constitutional challenge involves neither a suspect classification nor a fundamental right, we review the challenge using a rational basis standard under both the state and federal constitutions." *Gluba ex rel. Gluba v. Bitzan & Ohren Masonry*, 735 N.W.2d 713, 719 (Minn. 2007). Here, Tennis concedes that the classification made in Minnesota's postjudgment interest statute—applying different interest rates based upon the size of the judgment—is not a suspect classification and does not infringe upon a fundamental right. It is, therefore, subject to rational basis review. Tennis argues that the statute fails rational basis review.

The statute at issue concerns postjudgment interest, which "is a judgment creditor remedy designed to compensate a wronged party for loss of use of money awarded by a final judgment." *Alby v. BNSF Ry., Co.*, 934 N.W.2d 831, 837 (Minn. 2019). Minnesota's postjudgment interest statute provides that "interest shall accrue on the unpaid balance of the judgment or award from the time that it is entered or made until it is paid, at the annual

rate provided in subdivision 1." Minn. Stat. § 549.09, subd. 2. Judgments or awards of "$50,000 or less" have a rate of interest that is "based on the secondary market yield of one year United States Treasury bills, calculated on a bank discount basis." Minn. Stat. § 549.09, subd. 1(c)(1)(i). This interest rate has been four percent since 2009.[10] Judgments or awards "over $50,000," like this $1.92 million dollar judgment, generally accrue interest at a rate of "ten percent per year until paid." Minn. Stat. § 549.09, subd. 1(c)(2).

Because both equal protection clauses "begin with the mandate that all similarly situated individuals shall be treated alike," *Scott v. Minneapolis Police Relief Ass'n*, 615 N.W.2d 66, 74 (Minn. 2000), we begin our equal protection analysis by determining "whether the law creates distinct classes within a broader group of similarly situated persons or whether those treated differently by the law are sufficiently dissimilar from others such that the law does not create different classes within a group of similarly situated persons." *Fletcher Props.*, 947 N.W.2d at 22. The relevant group here is persons with judgments entered against them. Persons with judgments of over $50,000 against them and persons with judgments of $50,000 or less against them are similarly situated in the sense that they have both had judgments levied against them. The postjudgment interest statute then creates two distinct classes within that group and is, therefore, subject to equal protection analysis under rational basis review.

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[10] The statute directs the State Court Administrator to determine this interest rate each year. Minn. Stat. § 549.09, subd. 1(c)(1)(i); *see 2021 Interest Rates on State Court Judgments and Arbitration Awards*, https://www.mncourts.gov/getattachment/State-Court-Administrators-Office/Content-Overview-(2)/Content-Overview/2021-Interest-Rates-on-State-Court-Judgments.pdf.aspx?lang=en-USat (last visited January 24, 2022).

A statute will survive rational basis review if "it is a rational means of achieving a legislative body's legitimate policy goal." *Id*. at 19. Tennis argues that the Legislature's policy goal was to deter insurance companies from engaging in fruitless appeals to delay paying claimants and that it intended the 10 percent interest rate to apply only to judgments against such insurance companies. But according to Tennis, the postjudgment interest statute is not rationally related to serving its alleged goal, because it is underinclusive in that it does not apply to judgments against insurers that are less than $50,000, and also sweeps more broadly than its intended purpose in that it applies to *all* judgments greater than that amount. Vermillion responds that various governmental interests support the statute, and the statute is rationally related to those interests.

When reviewing the legislative history of the postjudgment interest statute, it appears to have been primarily passed to discourage large debtors from pursuing relatively meritless appeals. When deciding to raise the postjudgment interest rate for large judgments in 2009, some legislators believed it was unfair that large interest debtors appealed judgments just "to buy down the value of" the judgment by investing the money in the market while their frivolous appeals were pending. Hearing on H.F. 1611, H. Comm. Fin. – Pub. Safety Fin. Div., 86th Minn. Leg., April 2, 2009 (audio tape) (comments of Rep. Carlson, Sr.). One legislator explained that Minnesota's postjudgment interest rate represented the lowest in the country and that passing an updated interest rate would put Minnesota in line with other states. *Id.* We conclude that these are legitimate governmental interests. *See Rodriguez v. Schutt*, 914 P.2d 921, 929 (Colo. 1996) (finding that legitimate governmental interests supported Colorado's postjudgment interest statute); *Emberton v.*

GMRI, Inc., 299 S.W.3d 565, 582 (Ky. 2009) (finding that Kentucky's postjudgment interest statute had "a thoroughly rational[] basis . . . long recognized by the courts").

Tennis argues that the Legislature passed the bill to deter insurance companies from engaging in unnecessary appeals, not to have it apply to large debtors more broadly. In support, Tennis cites a committee hearing the year after the 10 percent interest rate passed, in which a legislator states that the rate was intended to apply only to insurance companies. Hearing on H.F. 3085, H. Comm. Civ. Just., 86th Minn. Leg., Mar. 17, 2010 (audio tape) (comments of Rep. Marquart). No other legislators made comments like this and Tennis fails to provide any substantial evidence that the Legislature intended the statute to apply only to insurance companies. We therefore reject Tennis's equal protection argument.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

C O N C U R R E N C E & D I S S E N T

ANDERSON, J. (concurring in part, dissenting in part).

I concur in the court's conclusion in Section I.A extending our adoption of the predominant purpose test for mixed transactions of goods and services to mixed transactions involving goods and intangible non-goods. In other words, I agree that the Uniform Commercial Code (UCC), and its statutorily enumerated rules including the statute of frauds provision, applies to mixed contracts involving the sale of goods and non-goods in which the predominant purpose of the transaction is the sale of goods. I also concur in Sections IV and V.

Because I do not agree that the predominant purpose in this contract was intangible assets, I dissent from the court's conclusions in Sections I.B and III of the opinion that there is sufficient evidence to support the finding by the jury that the parties entered into a contract. I conclude that the predominant purpose of this mixed transaction was the sale of goods. It necessarily follows from that conclusion that the statute of frauds applies, and therefore a writing is required for the contract to be enforceable. Because no writing that satisfies the statute of frauds exists in this case, I would reverse the court of appeals and remand to the district court for further proceedings consistent with this conclusion.

Minnesota, along with every other state, has adopted a version of the statute of frauds, which originated in England in the 17th century. Robert A. Hillman, *Principles of Contract Law* 134 (W. Acad. Publ'g 4th ed. 2019). The statute of frauds exists because of concern that allowing certain types of oral contracts may facilitate fraud. *Alamoe Realty Co. v. Mut. Tr. Life Ins. Co.*, 278 N.W. 902, 903 (Minn. 1938); *see also* John W. Smith,

Treatise on the Law of Frauds and the Statute of Frauds 328 (1907) ("[T]he statute is intended to prevent wrongs and injuries that might be perpetrated under oral contracts . . . ."). Today, Minnesota law requires that, to be enforceable, contracts for the sale of goods of $500 or more must be documented in a sufficient writing. Minn. Stat. § 336.2-201 (2020).

We have previously determined that this requirement of section 336.2-201 also applies to mixed contracts—i.e., contracts for both the sale of goods and the provision of services—when the predominant purpose of the contract is the sale of the goods. *Valley Farmers' Elevator v. Lindsay Bros. Co.*, 398 N.W.2d 553, 556 (Minn. 1987), *overruled on other grounds by Hapka v. Paquin Farms*, 458 N.W.2d 683 (Minn. 1990). Here, in a conclusion that I agree with, we now also make clear that section 336.2-201 applies to mixed contracts of goods of $500 or more and intangible assets or non-goods when the goods are the predominant purpose.

But I disagree with the court's conclusion that the predominant purpose of this contract was the intangible assets. Because a predominance of the purchase price—$3.8 million out of $6.1 million total—was attributable to the sale of goods, I conclude that the predominant factor in the contract between appellant Tennis Sanitation, LLC and respondent Vermillion State Bank was the sale of those goods.

The predominant purpose of a mixed transaction is a question of law, which our court reviews de novo. *Id.* "Under the predominant purpose test, a hybrid transaction is classified according to its dominant characteristic." *Vesta State Bank v. Indep. State Bank of Minn.*, 518 N.W.2d 850, 854 (Minn. 1994). We are not bound by what a party calls the

transaction, or by what a party claims was its subjective purpose in entering the agreement. *Id*. Rather, we will examine the substance of the contract and determine which of the component parts are worth more. *See id*. (deciding that the predominant purpose of a contract was the sale of a combine, "[i]rrespective of its characterization of the transaction"); *McCarthy Well Co. v. St. Peter Creamery, Inc*., 410 N.W.2d 312, 315 (Minn. 1987) (holding that a contract was primarily for services because only $8,329.45 out of the $34,573.27 total price was for goods); *Valley Farmers' Elevator*, 398 N.W.2d at 556 (holding that a contract was primarily a sale of goods because, "[o]f the full $504,000 contract price, less than $120,000 can be identified as attributable to 'labor' ").

The court here holds that non-goods constituted the primary value of the contract. Although the court asserts that we must look beyond the relative value of assets to establish the predominant purpose of a contract, the court, in its analysis, nevertheless focuses largely on the relative value of the trucks and the customer routes. It points to a valuation from the August 7 meeting potentially showing that the value of the customer routes was $5.3 million out of $9.1 million. But the parties did not agree to $9.1 million; they agreed on a price of $6.1 million. The notes of the accountant for Tennis contain the sole breakdown in the record of this price. This estimate valued the goods for sale at $3.8 million and assigned the routes a value of only $2.3 million. No other estimate shows a breakdown of the final price. The court also briefly points to testimony indicating that customer routes were the reason that Tennis was interested in the deal. But *why* Tennis agreed to the deal is not relevant; the predominant purpose of the agreement is based on the value of the assets being sold. The only breakdown of the agreed-on price indicates

that the goods were more valuable than the intangible assets. The predominant purpose in this transaction was the sale of goods.

Because the predominant purpose was the sale of goods, Minnesota's version of the UCC—and therefore its version of the statute of frauds—applies.[1] *See Valley Farmers' Elevator*, 398 N.W.2d at 556. A contract for the sale of goods worth $500 or more is unenforceable "unless there is some writing sufficient to indicate that a contract for sale has been made." Minn. Stat. § 336.2-201(1). To be sufficient, the writing must be signed by the party against whom enforcement is sought. *Id*. No such writing exists here; the only writing signed by Tennis was the letter of intent. This letter directly states that it is not a binding agreement. Vermillion itself acknowledged that the letter of intent "doesn't work" as a confirmation of the agreement. Since no sufficient writing to confirm the contract exists, it is unenforceable under the statute of frauds.

This mixed contract for the sale of goods and non-goods is properly governed by the UCC statute of frauds because goods are the predominant purpose in the contract. The goods sold were worth more than $500, thus triggering the UCC statute of frauds, and because no writing exists that satisfies the statute of frauds, I conclude that the contract is

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[1] The parties disagree about the standard of proof that Vermillion must meet to establish that the predominant factor in this contract was something other than goods, and thus the contract was not subject to the statute of frauds. Tennis argues that clear and convincing evidence is required; Vermillion insists that the standard usually applicable in civil disputes, preponderance of the evidence, is sufficient. Because I conclude that the record here is conclusive, I need not, and do not, reach this issue. As a matter of law, the predominate factor in *this* transaction was the sale of goods. The contract, if any, was thus void and unenforceable. *See* Minn. Stat. § 336.2-201(1). My concern is that the position taken by Vermillion, and apparently endorsed by the court, undercuts the legislative policy here in favor of written contracts for the sale of goods.

void and unenforceable. *Id*. I would reverse the court of appeals and remand to the district court for further proceedings consistent with this opinion.