2026 VT 38

No. 25-AP-354

Bourdeau Bros., Inc.	Supreme Court
v.	On Appeal from Superior Court, Franklin Unit, Civil Division
Melissa St. Pierre and Jason St. Pierre	March Term, 2026

Navah Spero, J.

Antonin I. Z. Robbason of Ryan Smith & Carbine, LTD., Rutland, for Plaintiff-Appellant.

Samantha V. Lednicky of Catamount Law, PLLC, Hinesburg, for Defendant-Appellee.

PRESENT: Reiber, C.J., Eaton, Waples, Nolan and Drescher, JJ.

¶ 1. **DRESCHER, J.** Plaintiff Bourdeau Bros., Inc. (BBI), an agricultural-supply company, sued to recover payment for cattle feed that it delivered to a dairy farm owned by defendant Melissa St. Pierre and her late husband, Jason St. Pierre, after the St. Pierres separated.[1] BBI appeals following the civil division's entry of judgment for Melissa, arguing that it erred in concluding that a novation released Melissa from her obligations under the parties' contract. In the alternative, BBI contends that the trial court erred in determining that it waived its unjust-enrichment claim by failing to oppose Melissa's motion for summary judgment on that count and in holding that, in any event, any recovery was barred by the doctrine of unclean hands. We

[1] To avoid confusion, we have elected to refer to the St. Pierres by their first names.

conclude that BBI failed to preserve its arguments relative to the unjust-enrichment claim for our review on appeal. We agree, however, that the evidence did not support a novation. We therefore reverse and remand for further proceedings relating to BBI's breach-of-contract claim.

I. Procedural and Factual Background

¶ 2. The following background is drawn from the record and the trial court's unchallenged findings. Beginning in 2007, Melissa and Jason owned and operated a dairy farm in Enosburg Falls, Vermont. The trial court found that the parties agreed to the basic terms of their financial relationship by signing a credit application. See infra, ¶ 11 note 4. The St. Pierres would order grain and BBI would deliver it to the farm and then invoice the St. Pierres for the cost of the delivery. The invoices were due within thirty days, following which interest accrued at a rate of 18%.

¶ 3. Beginning in at least 2016 and continuing through the end of 2018, BBI and the St. Pierres engaged in a consistent course of conduct: BBI regularly delivered grain to the St. Pierre's farm, and the St. Pierres made regular small payments, supplemented by occasional larger payments to reduce the balance owed. When the balance exceeded $30,000, the St. Pierres could expect a phone call from someone at BBI asking them to make a payment. During this period, the outstanding balance never exceeded $37,000.

¶ 4. In October 2018, Melissa and Jason separated. The St. Pierres agreed that they would take out a joint loan and use it to pay off the balance of the debt owed to BBI—but from that point forward, Melissa would no longer be responsible for any of the farm's expenses, including future invoices from BBI. They also agreed that Melissa would no longer manage or be present on the farm.

¶ 5. Jason continued running the farm. By December 2019, BBI's president—Jacob Bourdeau—knew that the St. Pierres had separated. Mr. Bourdeau, on behalf of BBI, entered an agreement with Jason: while the St. Pierre's divorce was pending, Jason would continue to make some payments on his debt to BBI, but the full balance would not be paid off until after the divorce was finalized. Jason agreed that at that time, he would take out new loans, refinance old loans, or sell his property if necessary to satisfy the debt to BBI. This promise satisfied Mr. Bourdeau.

¶ 6. Thereafter the balance owed on the St. Pierre account surpassed previous levels. By January 2021, the debt exceeded $55,000. During that month, Jason opened a separate account with BBI—which BBI called a "credit account"—into which he made a series of payments that were not applied to the outstanding balance on the grain account. By April 2021, Jason had deposited $18,000 into the credit account.

¶ 7. Prior to the St. Pierre's final divorce hearing, Jason's attorney drafted an affidavit which Mr. Bourdeau reviewed and signed with the understanding that it was to be used in the divorce proceeding. The affidavit reflected the balance due on the grain account as of November 2021—$92,239.50—but made no mention of the credit account.

¶ 8. The St. Pierres had their final divorce hearing in the family division in March 2022. The $18,000 in the credit account was not transferred to pay down the main grain account until August 2022.

¶ 9. The family division had yet to issue a final order and divorce decree when Jason died unexpectedly in October 2022. Upon Jason's death, the divorce action terminated, and Melissa became the sole owner of the farm. She shut down the farming operation and sold the cattle.

¶ 10. Four days after Jason's death, BBI sued Melissa for amounts owed on the St. Pierre feed account.[2] The complaint contained three counts. Count One alleged that the parties entered

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[2] BBI named the "Estate of Jason St. Pierre" as codefendant in the caption of its complaint and referred to "Jason St. Pierre" as a defendant throughout. BBI acknowledged that no estate had been opened for Jason at the time it filed this pleading, but explained that it was naming the estate at this juncture "out of an abundance of caution." There is no indication that BBI ever served Jason's estate with process in this case or, indeed, that an estate was ever opened.

a valid sales agreement under Vermont's Uniform Commercial Code (UCC), 9A V.S.A. §§ 2-101-725, and Melissa breached that agreement by failing to pay BBI's invoices when due. Counts Two and Three raised claims of unjust enrichment and "detrimental reliance."[3]

A. Summary Judgment

¶ 11. BBI moved for summary judgment on its breach-of-contract claim. See V.R.C.P. 56(a) (providing that court shall grant summary judgment on claim "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law"). It argued material facts were undisputed because Melissa failed to respond to requests to admit that BBI propounded early in the litigation. See V.R.C.P. 36(a), (b) (providing that where party fails to timely respond to request for admission, "[t]he matter is admitted" and thereafter "conclusively established unless the court on motion permits withdrawal or amendment of the admission"); see also, e.g., Gallipo v. City of Rutland, 2005 VT 83, ¶ 22, 178 Vt. 244, 882 A.2d 1177 (noting "that courts may grant summary judgment based on unanswered requests to admit"). BBI argued that Melissa's constructive admissions established that BBI delivered grain to the farm, those deliveries were accepted, and that as of January 2023, the outstanding balance on the St. Pierre grain account was $116,108.57. BBI contended that, pursuant to the UCC, 9A V.S.A.

[3] BBI does not raise any arguments relative to the latter claim on appeal, and we therefore do not discuss its merits in this opinion. We observe, however, that BBI never identified any authority for the proposition that detrimental reliance is a freestanding cause of action under Vermont law. See Pettersen v. Monaghan Safar Ducham PLLC, 2021 VT 16, ¶¶ 11, 15, 214 Vt. 269, 256 A.3d 604 (recognizing showing of "detrimental reliance" as necessary to prevail on promissory-estoppel claim); In re Griffin, 2006 VT 75, ¶¶ 20, 180 Vt. 589, 904 A.2d 1217 (describing "detrimental reliance" as an essential element of equitable estoppel); see also, e.g., Minor v. Tyson Foods, Inc., 60 F.Supp.3d 684, 689 (W.D. Va. 2014) ("[N]o independent cause of action for detrimental reliance exists under Virginia law." (quotation omitted)); Erickson's Flooring & Supply Co. v. Tembec, Inc., 212 F.App'x. 558, 562 (6th Cir. 2007) ("Michigan does not recognize an independent cause of action for detrimental reliance."); Paxi, LLC v. Shiseido Ams. Corp., 636 F.Supp.2d 275, 286-87 (S.D.N.Y. 2009) (explaining that, under New York law, "[d]etrimental reliance is an element of equitable and promissory estoppel; there is no independent cause of action for detrimental reliance" (quotation omitted)).

§ 2-201(1), the 2010 credit application signed by both Jason and Melissa[4] constituted a "writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought." BBI asserted that none of the proceedings thus far had produced writings or other evidence demonstrating that BBI had released Melissa from her obligations.

¶ 12. Melissa filed a cross-motion seeking summary judgment as to all three counts. With respect to the breach-of-contract claim, Melissa principally argued that she should not be liable for BBI's invoices because the credit application did not constitute a binding contract for the sale of goods, but instead simply a form authorizing BBI to run a credit check in order to determine whether they wanted to sell goods to the St. Pierres.[5] In the alternative, Melissa argued that even if the credit application formed a contract, BBI and Jason had entered into a new contract for feed delivery, and when BBI entered into that contract, it waived its right to seek damages from Melissa except for the remaining balance at the end of 2018—$5,438.82—under the UCC provision governing contract modifications. See 9A V.S.A. § 2-209(4) (providing that "attempt

[4] In May 2010, Melissa and Jason signed a one-page credit application that bore BBI's letterhead. Above their signatures, they filled in their names, Jason's date of birth, their Enosburg Falls address, the name of their milk handler, an estimate of their annual milk income and number of milking cows, the name of their mortgage holder, and the amount of their monthly mortgage payments. They also stated the name of the bank where they maintained a checking account. Immediately above their signatures at the bottom of the page, the credit application specified that payments over thirty days late would be subject to a monthly service charge, that BBI's customer could be liable for attorney's fees should collection be necessary, that the information on the application was accurate, and that the applicant authorized a credit check. The application was silent as to what would cause the St. Pierres to owe BBI money.

[5] Melissa asserted that it was undisputed that the purpose of the credit application was for BBI to run a credit check on the St. Pierres and receive an updated address and other information about the St. Pierres. She also pointed out that, while the credit application specified that amounts owed for more than thirty days would be subject to an 18% annual interest rate, it did not specify the price or quantity of the goods at issue or set forth terms for delivery.

at modification or recission" of sales contract subject to UCC, while unsuccessful due to noncompliance with other requirements, "can operate as a waiver").

¶ 13. Arguing for dismissal of Counts Two and Three, Melissa contended that that it was undisputed that she accepted no goods or services from BBI after January 1, 2019, had no communications with BBI thereafter, and received no benefit from the goods delivered to Jason because she received no income from the farm while the divorce was pending. In opposing Melissa's summary-judgment motion, BBI merely incorporated its arguments in support of BBI's summary-judgment motion which, as noted above, was limited to its Count One breach-of-contract claim. Thus, BBI did not oppose Melissa's motion as to the unjust-enrichment and detrimental-reliance counts.

¶ 14. In January 2024, the civil division denied BBI's summary-judgment motion and granted Melissa's motion in part. The court's decision, in its entirety, read:

> Plaintiff's motion is denied. Plaintiff has completely failed to establish as undisputed the existence of any agreement to which defendant was a party, the terms of that agreement, breach, and damages. The mere fact that requests to admit were propounded establishes nothing. Plaintiff's statement of undisputed material facts, however, proves nothing more.
>
> Defendant's motion is granted in part. Defendant's statement of undisputed material facts, and the materials on which it relies, establish that whatever agreement there may have been prior to her departure from the subject farm and disengagement from farm operation, <u>plaintiff and defendant's late husband then entered into a novation that removed defendant from any further obligation to plaintiff for ongoing farm purchases</u>. The precise date of that novation and the amount of any obligations prior to that date that could conceivably be shown to have been joint obligations do not appear. Those questions, therefore, remain for trial—along with the fundamental question of whether defendant undertook and breached any obligation for farm purchases prior to the date of the novation.

(Emphasis added). The court's summary-judgment order made no express reference to Counts Two and Three.

¶ 15. The summary-judgment ruling was the first time the word "novation" appeared in the record of this case. Melissa had not argued that a novation occurred. For a novation to occur, there must have been a previously enforceable agreement. See Manley Bros. Co. v. Somers, 100 Vt. 292, 297, 137 A. 336, 338 (1927) ("A novation takes place when, there being a contract in existence, some new contract is substituted for it, either between the same parties or different parties, the consideration mutually being the discharge of the old contract." (emphasis added)). But the civil division expressly denied BBI's summary-judgment motion because, in the court's view, BBI had failed to establish the existence of such an agreement. The summary judgment was thus internally inconsistent: if the undisputed facts did not, as the court concluded, support the existence of an original contract, they necessarily could not support the existence of a novation.

B. The Motion to Amend

¶ 16. In February 2025, Melissa moved to amend her answer to add the defenses of waiver of claims by BBI and unclean hands. Melissa argued that discovery revealed that BBI conspired with Jason to falsely represent his assets in family court in the divorce proceeding. In its opposition to the motion to amend, BBI argued that equitable defenses, such as unclean hands, should not apply to a contract action. BBI's opposition said nothing of Counts Two and Three.

¶ 17. The civil division granted Melissa's motion to amend. Despite BBI's apparent concession that it was now only pursuing a contract claim (rather than the equitable claims it asserted in Counts Two and Three), the court noted it "does not agree that the parties are left primarily with a contract claim." The court, acting through a new judge who had rotated to Franklin County civil division, observed that her predecessor's summary-judgment order concluded that BBI "entered into some kind of novation with" Jason "that removed [Melissa] from any obligation." From the new judge's perspective, however, there were enough unresolved factual issues to justify the requested amendments, noting that it was possible that at the end of the evidence "these affirmative defenses will not apply."

C. The Bench Trial

¶ 18. A bench trial occurred over two days in July 2025. At the outset of the trial, the newly rotated judge observed that the summary-judgment ruling "was a little bit short in terms of it didn't go through the facts in detail to say exactly how [the previous judge] got where [the previous judge] got." Melissa's attorney indicated that, based on the summary-judgment ruling, Melissa would not be "relitigating the issue of whether a novation occurred" because that was "a fact that has already been decided by the court." The court agreed: "I think that that's the law of the case at this point from [the summary-judgment] order." The summary-judgment decision thus materially affected the presentation of evidence. Despite this, BBI never conceded that a novation occurred during the trial.

¶ 19. In its closing argument, BBI argued that Melissa had the burden of proving the existence of a novation and failed to do so because she did not demonstrate that BBI agreed to release her. BBI "move[d] that the Court reconsider the prior decision regarding the novation" based on the evidence admitted at trial. In her closing argument, Melissa reiterated that due to the summary judgment ruling: "What we were here to try today was . . . not whether a novation was supported by the evidence because, in fact, we did not put on evidence of whether a novation occurred. We are not here to try that issue."

¶ 20. The trial court also asked the parties to address Counts Two and Three. Melissa argued that the court entered summary judgment on those claims. The trial court agreed and BBI did not argue otherwise. The court then took the matter under advisement.

D. The Final Judgment

¶ 21. In September 2025, the trial court issued a written order addressing all outstanding issues. As relevant here, it made the following additional findings of fact. BBI did not agree to remove Melissa as a debtor in 2018. Around December 2019, Jason and BBI entered an agreement under which BBI allowed Jason to accumulate a very large balance on his account with the understanding that, when the St. Pierre's divorce was final, Jason "alone" would pay off the debt to BBI. Pursuant to this agreement, Jason "took on the sole obligation to pay all the outstanding invoices owed by the St. Pierre farm." Based on these findings, the court concluded that the 2019 agreement between Jason and BBI for Jason to pay BBI at the end of the divorce, in combination with the 2018 agreement between Jason and Melissa for Melissa to be relieved from obligations on the farm, constituted a novation. As a result, it explained, "the evidence did support that a novation occurred." On this basis, it denied BBI's motion to reconsider that aspect of the summary-judgment decision.

¶ 22. Finally, the court noted that while BBI "did not ask for reconsideration" of the summary-judgment order with respect to its unjust-enrichment claim, it would address the issue "because the facts at trial made out a potential claim for unjust enrichment." It first concluded that BBI waived the right to assert unjust enrichment at trial by failing to oppose Melissa's motion for summary judgment on that claim. The court further explained that if it did reconsider the unjust-enrichment claim, it would "still deny it" because BBI had "unclean hands" related to the handling of the credit account and the submission of the affidavit in the divorce action.

II. The Appeal

¶ 23. On appeal, BBI challenges several of the court's factual findings as clearly erroneous. It argues that the trial court erred—both at summary-judgment and in its final decision on the merits—in concluding that a novation occurred. BBI also contends that the trial court erred in declining to consider its unjust-enrichment claim on waiver grounds and in concluding that, even if appropriately considered, the claim was barred by the doctrine of unclean hands.

¶ 24. We first note that the summary-judgment ruling regarding novation—while crucial to an understanding of how the issues we now address took shape—is not reviewable on appeal. This is because, at BBI's request, the trial court reconsidered that determination based on the evidence presented at trial and reached the same conclusion. That decision thus superseded the summary-judgment ruling regarding novation. Cf. Lofts Essex, LLC v. Strategis Floor & Décor Inc., 2019 VT 82, ¶ 11, 211 Vt. 204, 224 A.3d 116 (" '[T]he trial court's judgment on the verdict after a full trial on the merits supersedes the earlier summary judgment proceedings.' " (quoting Stratton Corp. v. Engelberth Constr., Inc, 2015 VT 69, ¶ 14, 199 Vt. 289, 123 A.3d 393)); State v. Bruno, 157 Vt. 6, 10 n.4, 595 A.2d 272, 275 n.4 ("Defendant cannot simply rely, in his appeal, on pretrial error which he has asked the trial judge to reconsider and correct, without assessing the effect of this reconsideration.").

¶ 25. As explained below, we conclude that the trial court, saddled with an erroneous summary-judgment ruling that a novation had occurred, erred in adhering to that ruling. With regard to the unjust-enrichment claim, we conclude that BBI failed to preserve its arguments for our review on appeal. Given our conclusions, we need not reach BBI's remaining challenges to the findings.[6]

A. Novation

¶ 26. On appeal from a judgment entered following a bench trial, we defer to the trial court's determinations regarding the credibility of witnesses and the persuasive effect of the evidence. Lofts Essex, 2019 VT 82, ¶ 17. The court's factual findings "will not be disturbed on appeal unless clearly erroneous when viewed in the light most favorable to the prevailing party."

[6] BBI argues that the following factual findings are clearly erroneous: (1) BBI submitted a "false affidavit" to the court in connection with the St. Pierre's divorce; (2) BBI "knowingly" kept the St. Pierre grain account "at an inflated level to shield assets in [the] divorce"; (3) Mr. Bourdeau understood that the purpose of the credit account was to hold funds that would eventually be applied to the grain account; and (4) Melissa and Jason owned the farm business and all its related assets "together as 50/50 owners" and Melissa "inherited" Jason's share after his death. The first three challenges are raised only in connection with BBI's unjust-enrichment arguments, and we do not reach them because we conclude that those claims are unpreserved. BBI contends that its fourth factual challenge is relevant to its novation argument because the reality of the ownership "undermines any possible rationale for [BBI] to have released [Melissa], and underscores why novation was not given and why it would not be appropriate from a practical point." We do not reach this challenge because the court's findings regarding the ownership of the farm and the effect of Jason's death on that ownership are not relevant to our conclusions regarding novation.

Id. (quotation omitted). Under this standard, "[w]e will affirm the court's findings of fact if there is credible evidence in the record to support them even if substantial contradictory evidence exists." Bourdeau Bros., Inc. v. Boissonneault Fam. Farm, Inc., 2020 VT 35, ¶ 5, 212 Vt. 231, 236 A.3d 1263. We consider pure questions of law without deference to the trial court. Hirchak v. Hirchak, 2024 VT 81, ¶ 15, 220 Vt. 432, 331 A.3d 1051. Provided the court applied the correct legal standard, however, "we will uphold its conclusions of law if reasonably supported by its findings." Id. (quotation omitted).

¶ 27. "A novation takes place when, there being a contract in existence, some new contract is substituted for it, either between the same parties or different parties, the consideration mutually being the discharge of the old contract." Manley Bros., 100 Vt. at 297, 137 A. at 338. Because a novation is itself a contract, it requires a "meeting of the minds" among the parties: an offer "intended to create a legally binding relationship on acceptance" coupled with an acceptance of that offer. Sweet v. St. Pierre, 2018 VT 122, ¶ 12, 209 Vt. 1, 201 A.3d 978 (holding that enforceable contract requires meeting of the minds among the parties); see Peters v. Poro's Est., 96 Vt. 95, 107, 117 A. 244, 249 (1922) (describing novation as "an agreement, like any other contract"); see, e.g., Bacon v. Bates, 53 Vt. 30, 32 (1880) (affirming existence of novation where "the minds of the three parties met, and agreed to the substitution of the plaintiff as the payee, in the place and stead of [original payees], in regard to such indebtedness"). "To constitute a meeting of the minds, the acceptance must in every respect meet and correspond with the offer, neither falling short of nor going beyond the terms proposed, but exactly meeting them at all points" and where there is no such acceptance "subsequent words or acts of the parties cannot create a contract." Sweet, 2018 VT 122, ¶ 12 (quotation omitted). Thus, our cases recognize that a "critical requirement" in demonstrating a novation "is proof of a mutual understanding and consent among all concerned that there has been a transfer of the obligation involved from one party to another." Frank W. Whitcomb Constr. Corp. v. Cedar Constr. Co., 142 Vt. 541, 544, 459 A.2d 985, 987

(1983). "The knowing acceptance of all parties is crucial," id., "for it is a well-settled principle that novation is never to be presumed" Peters, 96 Vt. at 108, 117 A. at 249. "To constitute a novation by the substitution of a new debtor there must be a mutual agreement between three parties"—namely, "the creditor, his immediate debtor, and the intended new debtor"—"by which the liability of the last named is accepted in place of the original debtor in discharge of the original debt." Manley Bros., 100 Vt. at 297, 137 A. at 338. "There must be a clear and definite intention on the part of all concerned that such is the purpose of the agreement." Id. "The existence of such an intention" is a question of fact. Peters, 96 Vt. at 108, 117 A. at 249. It "need not be express, but may be inferred from the circumstances." Id. at 107, 117 A. at 249.

¶ 28. We have scrutinized the trial record for any evidence that BBI ever decided to release Melissa from whatever contractual obligation she may have owed BBI. There is none. While it is clear that BBI expected Jason to pay the debt, the expectation to be paid by one person does not on its own extinguish the contractual obligations, if they exist, of others to also pay. Hard v. Burton, 62 Vt. 314, 323, 20 A. 269, 272 (1890) (discussing novation and explaining that "an unperformed like promise made to the same party by one of two already bound for the same debt will not discharge the other debtor" absent showing that "the parties making and accepting the new promise intended or stipulated that such discharge should be the consequence of the making and accepting of the new several promise").

¶ 29. The trial court found that, around December 2019, BBI agreed that Jason would "t[ake] on the sole obligation to pay all the outstanding invoices owed by the St. Pierre farm" and "agreed to allow [Jason] to accumulate a very large balance on his account with the understanding that when his divorce was final, [Jason], and [Jason] alone, would pay off the debt to BBI." Reviewing this finding in the light most favorable to Melissa, as the prevailing party, we are nonetheless compelled to conclude that it is clearly erroneous. Lofts Essex, 2019 VT 82, ¶ 17 (outlining standard of review). There is simply no evidence in the record to support it. Bourdeau Bros., 2020 VT 35, ¶ 5 (outlining standard of review).

¶ 30. During the bench trial, the court admitted numerous exhibits and heard testimony from Melissa, BBI's president, and several BBI employees. None of this evidence can be construed to support a finding that BBI agreed to release Melissa from her contractual obligations. BBI's operations manager testified that he was responsible for the business's "day-to-day operations," including approving invoices for payment and some of the basic bookkeeping. He stated that he had never received any form of correspondence or contact from Melissa "where she indicated that she wanted to be released from the St. Pierre account," and that, to the best of his knowledge, no one had ever requested that Melissa be released from the account. A second BBI employee—described as functionally the assistant manager—testified that her duties included customer service, accounts payable, and accounts receivable. She indicated that neither Melissa nor any other person had ever approached her with a request for Melissa to be released from the St. Pierre account and that, as far as she was aware, no one else at BBI had received such a request either and there was never any agreement to release Melissa from the account. BBI's president testified to the same. He also explained that, in order for Melissa to be released from the account, he would have had to identify a security for the balance on the account and, "if we could have agreed to that, then we would have opened a new account" for Jason with a new credit application—a process that BBI had conducted for other accounts in the past where a "family situation" led to a change in ownership for a farm. In addition, Melissa herself testified that she did not recall anyone from BBI, at any point in time, telling her that she was released from the obligations set forth in the credit application.

¶ 31. By treating the erroneous summary-judgment ruling as the law of the case, the court failed to afford the parties a fair opportunity to litigate whether Melissa was a party to a contract with BBI and, if so, the terms of that contract. Because it was presupposed that there had been an enforceable contract between Melissa and BBI, BBI never needed to prove there was such a contract, and why it may apply to feed Jason ordered after Melissa left the farm. Similarly, Melissa had no occasion to develop a record relating to potential defenses.[7]

¶ 32. We are sympathetic to the trial judge's efforts to honor the summary-judgment ruling as the law of the case. The law-of-the-case doctrine " 'posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.' " Morrisseau v. Fayette, 164 Vt. 358, 364, 670 A.2d 820, 824 (1995) (quoting Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 816 (1988)). It serves a salutary purpose, "promot[ing] the finality and efficiency of the judicial process by protecting against the agitation of settled issues." Christianson, 486 U.S. at 816 (quotation omitted). But it is "a rule of practice from which the court may depart in a proper case." Kneebinding, Inc. v. Howell, 2018 VT 101, ¶ 31, 208 Vt. 578, 201 A.3d 326 (quotation omitted); see, e.g., Myers v. LaCasse, 2003 VT 86A, ¶ 14, 176 Vt. 29, 838 A.2d 50 (observing that "[t]he interests of justice are . . . better served by allowing a second trial judge to reconsider a prior erroneous grant of summary judgment" where "necessary to a just and comprehensive resolution of the issues before the court"). Vermont's Rules of Civil Procedure "afford our courts significant flexibility to revise past rulings in subsequent interlocutory orders prior to the final judgment." Kneebinding, 2018 VT 101, ¶ 32 (citing V.R.C.P. 54(b) (providing that order which does not enter final judgment on all claims "is subject to revision at any time before the entry of judgment adjudicating all the

[7] For example, BBI may have argued that Melissa's pleadings had established the existence of a contract enforceable against her, 9A V.S.A. § 2-201(3)(b), or that the "merchant exception" applied under the UCC, 9A V.S.A. § 2-201(2). Similarly, Melissa had no occasion to argue the absence of a sufficient confirmatory writing; whether she was a party to any such contract; and whether some deliveries were made under a different contract to which she was not a party. Indeed, at the outset of the trial, her attorney made clear she did not intend to prove the existence of a novation because that had been settled at summary judgment.

claims")). Here, the trial court, having recognized the summary judgment ruling lacked explanatory detail, over-relied on the ruling it inherited.

¶ 33. In sum, because there was no evidence at trial that BBI agreed to extinguish Melissa's contractual obligations—if there were any remaining—to pay for feed BBI delivered after she left the farm, we reverse. The record clearly demonstrates, and indeed BBI admits, that BBI expected Jason to pay the balance owed on the BBI-St. Pierre account. The record also shows that Melissa was not a party to the new agreement BBI entered into with Jason by which BBI agreed to continue to supply Jason with feed. But the record lacks evidence to suggest that BBI intended to relinquish any claim it may have against Melissa. Whether it has a viable contract claim against Melissa and whether Melissa has viable defenses will need to be resolved on remand.

B. Unjust Enrichment

¶ 34. In the alternative, BBI asks that this Court enter judgment in its favor on its unjust-enrichment claim. It argues that the summary-judgment order did not dispose of its equitable claims, and that the court erred in concluding that it waived the right to assert its unjust-enrichment claim at trial by failing to oppose Melissa's motion for summary-judgment on Counts Two and Three and that, in any event, that the doctrine of unclean hands barred any recovery on this point. We do not reach these contentions because we conclude that BBI failed to preserve them for our review.

¶ 35. To properly preserve an issue for our review on appeal, a party must raise it below "with specificity and clarity in a manner which gives the trial court a fair opportunity to rule on it." Doe v. Camacho, 2024 VT 72, ¶ 40, 220 Vt. 226, 329 A.3d 156 (quotation omitted). BBI fell far short of this standard here. As set forth above, BBI did not contest Melissa's motion for summary judgment with respect to the equitable claims asserted in Counts Two and Three. And in response to Melissa's motion to amend, BBI argued the proposed new defenses were inapplicable to a claim for breach of contract and said nothing about its equitable claims, suggesting it had abandoned them.

¶ 36. Then, when the trial court raised the status of BBI's equitable claims at the end of the bench trial and surmised that Melissa's request for summary judgment on those claims had been granted, it asked "[d]oes anyone offer anything else?" BBI's attorney again did not raise the argument it now presses on appeal—that the summary-judgment order did not resolve its equitable claims. Although the court gave BBI ample opportunity to raise any related arguments at that point, BBI did not do so. We will not address its arguments for the first time on appeal. Id.

III. Conclusion

¶ 37. We reverse the civil division's finding that a novation occurred, and remand for adjudication of Count One only. On remand, the civil division may, in its discretion, proceed by motion in light of the evidentiary record already established or choose to hold additional evidentiary hearings.

Reversed and remanded for further proceedings consistent with this opinion as to Count One.

FOR THE COURT:

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Associate Justice