THE SUPREME COURT OF NEW HAMPSHIRE

U.S. District Court for the District of New Hampshire
Case No. 2025-0140
Citation: Collision Commc'ns v. Nokia Solutions and Networks OY, 2026 N.H. 4

COLLISION COMMUNICATIONS, INC.

v.

NOKIA SOLUTIONS AND NETWORKS OY & a.

Argued: November 6, 2025
Opinion Issued: February 5, 2026

Upton & Hatfield, LLP, of Concord (Russell F. Hilliard and Brooke Lovett Shilo on the brief, and Russell F. Hilliard orally), and Ropes & Gray LLP, of New York, New York (Steven Pepe, Kevin J. Post, Cassandra B. Roth, Jolene Wang, and Brian Lebow on the brief) for Collision Communications, Inc.

McCarter & English, LLP, of Boston, Massachusetts (John M. Allen, Thomas J. Finn, Paula Cruz Cedillo, and Dean A. Elwell on the brief), and Primmer Piper Eggleston & Cramer PC, of Manchester (Doreen F. Connor on the brief and orally) for Nokia Solutions and Networks OY.

GOULD, J.

[¶1] Pursuant to Supreme Court Rule 34, the United States District Court for the District of New Hampshire (McCafferty, J.) certified three questions of law for our consideration:

1. Is it possible to perform within one year the obligations imposed by a perpetual intellectual property license where that license is granted by a Delaware corporation with a principal place of business in New Hampshire to a Finnish corporation?
2. Does the doctrine of part performance apply to oral contracts containing obligations that cannot be performed within one year?
3. To recover under a promissory estoppel theory, must a plaintiff prove that injustice can be avoided only through enforcement of the promise?

For the reasons that follow, we answer question one in the affirmative. We exercise our discretion under Rule 34 to decline to answer questions two and three because our answer to question one renders questions two and three not "determinative of the cause then pending in the certifying court." Sup. Ct. R. 34.

[¶2] The following facts are taken from the district court's certification order. The plaintiff, Collision Communications, Inc. (Collision), brought this action against the defendant, Nokia Solutions and Networks OY (Nokia),[1] "alleging that the parties formed an enforceable $23 million oral agreement pursuant to which Collision granted Nokia a perpetual license for certain of Collision's proprietary software."

[¶3] Collision is a New Hampshire-based technology company that is incorporated in Delaware. Collision purchased a portfolio of patents and software from a military contractor. The software technology reduces interference in electronic telecommunications, and Collision's goal was to adapt the software for use in consumer cellular telecommunications. Nokia is a large multinational company based in Finland. Nokia makes, among other products, cellular base stations, "which are the devices affixed to cell towers that collect and disseminate cellular signals."

[¶4] In 2015, the parties started to discuss potentially integrating Collision's software technology into Nokia's base stations. Starting in February 2017, when it appeared the integration would be feasible, the parties began to negotiate the terms of a potential contract. The negotiations generally focused on two main components: "(1) Collision would integrate its technology with Nokia's base stations in exchange for payment of a 'non-recurring engineering'

[1] Former defendants, Nokia Corporation and Nokia, Inc., are no longer parties to this case.

fee" (NRE fee); and (2) Collision would license its technology to Nokia in exchange for a lump sum payment (license fee) "so that Nokia could sell base stations containing [the] technology to third-party customers."

[¶5] Representatives of Nokia and Collision spoke on the phone on June 6, 2017. According to Collision, during that phone call, Nokia's representative offered, and Collision's representative accepted, $3 million as the NRE fee and $20 million as the license fee. Nokia's representative testified that he did not recall whether the phone call occurred and that he never extended a formal offer. Collision understood that the parties had an oral contract, so it continued to work on the integration and ceased other business development efforts.

[¶6] In November 2017, Nokia presented Collision with a draft written contract, but instead of $20 million as the license fee, it proposed only $7 million. This change was based upon Nokia's assessment that it could develop its own version of the technology for $7 million. Collision did not accept the $7 million figure, but the parties attempted to negotiate an acceptable agreement thereafter.[2] Ultimately, one year later Nokia informed Collision that it was canceling the project.

[¶7] Collision then instituted this action against Nokia. Following a ten-day trial, "the jury returned a verdict in Collision's favor on its breach of contract and promissory estoppel claims, and awarded Collision $23 million in damages." Prior to trial, the district court and the parties contemplated that the resolution of Nokia's statute-of-frauds defense would require the jury "to make express factual findings regarding the terms of the June 6 contract." The parties agreed that, post-verdict, the court should determine whether the terms, as found by the jury, could have been performed within one year. The only question on the special verdict form relating to the terms of the contract, however, required the jury to determine whether Collision had agreed to provide perpetual support for the software. The jury found that it had not.

[¶8] Following trial, the district court examined whether the statute of frauds applies based upon the jury's findings. See Tsiatsios v. Tsiatsios, 140 N.H. 173, 176 (1995). Based upon these findings and the parties' stipulation that the contract contained a perpetual license, the district court determined that "the only provision relevant to whether the statute of frauds applies to the June 6 contract is the perpetual license granted by Collision to Nokia pursuant to that contract." The district court then addressed whether the perpetual license contained obligations that could not have been performed in one year. The district court determined that this issue, along with two other pending issues, presents "difficult and potentially determinative questions of New

[2] Whether the ongoing negotiations were consistent with Collision's contention that the parties already had an agreement is not before us.

Hampshire law on which there is not binding precedent" from this court. Therefore, the district court certified the three questions to us set out above. On April 21, 2025, we accepted these questions. See Sup. Ct. R. 34.

[¶9] At the outset of our analysis, we address two threshold issues. First, notwithstanding the language of certified question 1, we do not understand that the district court has asked us to perform a choice-of-law analysis. We therefore assume, as the parties stipulated in the district court, that New Hampshire law applies. Second, the certification order is premised upon the proposition that RSA 506:2 is the statute of frauds applicable to the parties' contract. For the purpose of this proceeding, we accept this premise and do not address whether another variant of the statute of frauds applies.

[¶10] RSA 506:2 provides that:

> No action shall be brought . . . upon any agreement . . . that is not to be performed within one year from the time of making it, unless such promise or agreement, or some note or memorandum thereof, is in writing and signed by the party to be charged or by some person authorized by him.

RSA 506:2 (2010). In other words, the statute "requires all agreements not to be performed within one year to be in writing and signed by the party to be charged." Phillips v. Verax Corp., 138 N.H. 240, 245 (1994). The statute renders unenforceable "only those contracts which cannot be performed according to their terms within a year from the time of their inception." Id. at 246 (quotation omitted).

[¶11] In New Hampshire, a contract "will not run afoul of the statute of frauds if it was possible for performance to be completed within one year of the agreement without breach by either party." Proctor v. MacDonald, 141 N.H. 621, 624 (1997) (emphasis added). Thus, "[t]he test to determine whether a contract is to be performed within one year, within the meaning of [the statute], is to inquire whether it may be fully performed within that time, not whether the parties expected that it would be." Spaulding v. Mayo, 81 N.H. 85, 87 (1923).

[¶12] We accordingly must determine whether a "perpetual intellectual property license" agreement can be performed within one year. To do so, we first examine what an intellectual property license is. We have defined "license" in the context of real property as a "transient or impermanent interest which does not constitute an 'interest in land' . . . and is merely a revocable personal privilege to perform an act on another individual's property." Waterville Estates Assoc. v. Town of Campton, 122 N.H. 506, 509 (1982) (citations omitted). This definition is of little utility in the intellectual property context, however, because the rights conferred by an intellectual property

license may be permanent and irrevocable. See 1 Raymond T. Nimmer & Jeff C. Dodd, Modern Licensing Law § 9:17, at 1240 (2023) (noting that where parties contract for a perpetual license term, "the license cannot be terminated by the licensor or otherwise ended except for breach by the licensee"). We therefore conclude that, in general terms, an intellectual property license is "permission to use an intellectual property right within a defined time, context, market line, or territory." Rachel Gader-Shafran, Intellectual Property Law Dictionary Part II-22 (2005).

[¶13] Next, we must determine whether a perpetual intellectual property license imposes ongoing obligations upon the licensor. We conclude that, absent express language to the contrary, it does not. Nokia argues that perpetual intellectual property licenses entail active rights and obligations. As the district court noted, however, courts have historically characterized intellectual property licenses for analytical purposes as "no more than covenants not to sue: the license waives the licensor's right to sue the licensee for otherwise infringing actions but does no more than that." Nimmer & Dodd, supra § 1:6, at 9; see also Transcore v. Electronic Transaction Consultants, 563 F.3d 1271, 1275-76 (Fed. Cir. 2009) (citing cases explaining that "a non-exclusive patent license is equivalent to a covenant not to sue"). A covenant not to sue is "[a] covenant in which a party having a right of action agrees not to assert that right in litigation." Black's Law Dictionary 458 (12th ed. 2024). A promise never to sue, however, differs from a covenant not to sue of a limited temporal term in that it "'operates as a discharge just as does a release.'" Id. (quoting John D. Calamari & Joseph M. Perillo, The Law of Contracts § 21-11, at 878-79 (3d ed. 1987)); see Restatement (Second) of Contracts § 285, at 395 (1981) (stating that "[a] contract never to sue discharges the duty"); 76 C.J.S. Release § 53, at 683 (2018) ("A covenant not to sue, if unlimited, operates as a release and may be pleaded in bar of a subsequent action.").

[¶14] Both the district court and Nokia rely on our decision in Pro Done, Inc. v. Basham, 172 N.H. 138 (2019), to support the proposition that the implied covenant not to sue within a license agreement imposes a continuing obligation to forbear. In Pro Done, however, the agreement contained an express promise not to sue. Pro Done, 172 N.H. at 140. There, the defendants sold their ownership interests in business entities and entered into agreements labeled as "releases," but which also provided, in part, that the defendants "fully, finally and forever . . . covenant[] not to sue" the businesses or their members. Id. (quotation omitted). The defendants later filed a lawsuit in federal court against an owner and members of the original business entities. Id. The plaintiff, a successor to the original business entities, subsequently filed an action against the defendants, asserting that they breached the "release" agreement by suing members of the businesses. Id. at 140, 141.

[¶15] We held that, based upon the plain meaning of the terms of the "release" agreements, "the covenant not to sue constitutes a promise not to

bring an action" against the business entities or its members, the breach of which gives rise to a cause of action against the promissor. Id. at 142-43. In so holding, we observed that a bargained-for covenant not to sue is distinct from a release in that the latter creates a defense to an action brought on a released claim. Id. at 144. We described the origin of covenants not to sue and noted that "[o]ur early cases established that a covenant not to sue one joint obligor allowed the injured party to maintain claims against the other joint obligors," and conversely, that "a release of one joint obligor would extinguish the claims against all other joint obligors." Id. at 145-46. Thus, in distinguishing covenants not to sue from releases in these early cases, "we focused on the intent of the parties as evidenced by the language in the agreements." Id. at 146. We then stated that because we give the words of a contract their reasonable meaning to determine the parties' intent, "[w]hen language [in] the agreement contains an express promise not to sue, we cannot presume, contrary to the meaning of the language in the agreement, that the parties instead intended this promise to constitute a release." Id.

[¶16] Pro Done holds that where parties expressly promise not to sue, such a covenant "constitutes an agreement or promise of future forbearance from suing the other party on certain claims," which may give rise to an action for breach. Id. at 143. This is consistent with our other case law distinguishing covenants not to sue from releases. See Stateline Steel Erectors v. Shields, 150 N.H. 332, 333-34, 339 (2003) (concluding that where a party to a settlement agreed not to "sue, continue with or bring further litigations against" the plaintiff, the plain meaning of the terms supported that the agreement was a covenant not to sue, rather than a release (quotation omitted)); Moore v. Grau, 171 N.H. 190, 193, 194 (2018) (noting that a settlement agreement, which provided in part that "[a]ll Parties represent that no future lawsuits will be filed against any third parties," "reads as a covenant not to sue, rather than a release" (quotation omitted)). For the purpose of applying the statute of frauds, however, where a perpetual license agreement is merely analogized to a covenant not to sue, and the licensor did not expressly promise not to sue, we will treat the perpetual license agreement as "'operat[ing] as a discharge just as does a release.'"[3] Black's Law Dictionary, supra at 458 (quoting Calamari & Perillo, supra § 21-11, at 878-79). In such cases, we will not treat the agreement as imposing an ongoing obligation upon the licensor.

[¶17] Accordingly, upon the effective date of a perpetual license agreement that does not include an express promise not to sue, a licensor is "discharge[d] of an existing obligation or right of action." 29 Richard A. Lord, Williston on Contracts § 73:1, at 4 (4th ed. 2003) (defining release). Upon such

[3] Pro Done rejected the argument that a covenant never to sue operates as a release, but the court's rationale was that applying that principle to the agreement in that case would override an express contract term. See Pro Done, 172 N.H. at 146. Here, there is no such express term.

discharge, a licensor does not have any ongoing obligations to the licensee. Thus, such a perpetual license agreement is performed upon the effective date of the license.

[¶18] Nokia argues that "perpetual intellectual property licenses have definite durational terms longer than a year" and are thus subject to the statute of frauds. (Capitalization and bolding omitted.). Nokia additionally argues that "an oral contract with a definite durational term longer than a year is within the statute of frauds unless it is a 'personal services' contract," which perpetual intellectual property licenses are not. These arguments confuse the durational term of an agreement with the determination of when an obligation under the agreement is performed. As we concluded above, absent an express agreement to the contrary, a licensor's obligation under a perpetual intellectual property license is performed when the license is granted. Accordingly, it does not matter to our analysis whether a perpetual term is classified as a defined or indefinite durational term or whether the contract is a "personal services" contract.

[¶19] For the foregoing reasons, we answer the first question in the affirmative and hold that it is possible to perform within one year the obligations imposed on the licensor by a perpetual intellectual property license. That answer renders the district court's second and third questions not "determinative of the cause then pending in the certifying court." Sup. Ct. R. 34. We therefore exercise our discretion under Supreme Court Rule 34 and decline to answer the second and third questions.

Remanded.

MACDONALD, C.J., and DONOVAN and COUNTWAY, JJ., concurred.