

IN THE COURT OF APPEALS OF IOWA

No. 2-273 / 11-1490
Filed October 17, 2012

**MEL FOSTER CO. PROPERTIES INC. OF
IOWA,**

Plaintiffs-Appellants,

vs.

MODAY REALTY CO.,

Defendant-Appellee.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,
Judge.

Plaintiff appeals the district court's award of damages for breach of a
commercial lease. **REVERSED AND REMANDED.**

Richard A. Davidson of Lane & Waterman L.L.P., Davenport, for appellant.

Amanda Richards and Steven H. Jacobs of Betty, Neuman & McMahon,
P.L.C., Davenport, for appellee.

Heard by Eisenhauer, C.J., and Doyle and Tabor, JJ.

EISENHAUER, C.J.

After Moday Realty Co.'s liability to Mel Foster Co. Properties, Inc. of Iowa for breach of a commercial lease was summarily determined, a bench trial was held on the issue of damages. Foster was awarded \$58,090 for the 11.88 years remaining on the commercial lease. Foster appeals arguing the court's findings and conclusions are not supported by substantial evidence.¹ We reverse and remand.

I. Background Facts and Proceedings.

In 1958, Antonio Corsiglia entered into a long-term lease with Foster² for approximately fifteen acres of vacant land in Bettendorf, Iowa. In 1961, Foster assigned its interest in this master lease to Disco Corporation. Foster retained the right to develop one acre of property into two parcels. Disco assumed the obligation to pay rent to Corsiglia, and Foster was not required to pay rent to Corsiglia. In 1962, Disco assigned its interest in the master lease to Moday. Foster's only obligation was to pay property taxes³ and common area maintenance, but it owed no rent to Moday or Corsiglia.

¹ Foster also argues the court abused its discretion in granting a continuance to allow Moday to call expert witness Chad Witter and Witter's testimony should not have been admitted into evidence. We conclude the district court did not abuse its discretion in granting a continuance and ruling Witter's testimony admissible. Based on the circumstances existing at the time, the trial court pursued a reasonable course of action. See *Whitley v. C.R. Pharmacy Serv., Inc.*, 816 N.W.2d 378, 389-90 (Iowa 2012).

² Mel Foster Co. Properties, Inc. of Iowa was formerly known as Summit Center Corp. Summit Center entered into the leases with Corsiglia and Moday. For ease of reference, we will refer to the Summit-now-Foster business entity as Foster.

³ In *Corsiglia v. Summit Center Corp.*, 348 N.W.2d 647, 650 (Iowa Ct. App. 1984), we found "our review . . . does not convince us that the assignment of the lease to Moday Realty creates any obligation on Moday to pay taxes on those portions of property reserved and retained by Summit Center [now Foster]."

Moday eventually constructed buildings on its parcel, including a Target store space and a grocery store space. Foster constructed buildings containing 10,937 square feet on its two parcels: inline shops comprised of the “liquor store” space (three units at 1407, 1411, 1415 Kimberly Road, 8339 square feet) and the “Maxwell” space (one unit at 838 Lincoln Road, 500 square feet). These units were attached to the south end of Moday’s anchor buildings.⁴ Foster also constructed a freestanding building, the “First Glass” space, located across the parking lot on a 25,000 square foot lot (1495 Kimberly Road, 2098 square feet).⁵

In 2003, Target moved out of Moday’s anchor building. At the end of June 2004, the twenty-year lease for the liquor store space expired. Also in 2004, Foster learned Moday had ceased paying rent on the master lease to Corsiglia, and Foster took the vacant liquor store space off the market. Robert Fick, the president of Foster, discussed this decision:

Q. Can you tell the court . . . had the [liquor store space] been listed for rent before 2007? A. When we learned of all of the problems, we did not attempt to lease the space because we didn’t know how much longer—because of the legal situation with Moday and the Corsiglias, that it would be available.

. . . .

Q. And what was the reason for that? A. The eviction proceedings and the uncertainty that we wouldn’t have the space to lease legally.

Q. So if the [master] lease was in default, an eviction could have occurred at any time. A. Correct.

Q. And in leasing [Foster’s] property to any potential tenant, would that information have had to have been disclosed to the tenant? A. Absolutely.

⁴ The State originally rented one unit for a liquor store. When Iowa’s liquor stores were privatized, a private owner took over and eventually expanded to three units. Therefore, the liquor store space has three store fronts facing the same direction as the grocery store’s store front while the Maxwell space faces a different direction (south).

⁵ An Amoco gas station was the first tenant in this space.

Moday's post-2004 rent payments to Corsiglia were sporadic. In August 2005, Corsiglia sued Foster and Moday. In May 2006, Foster cross-claimed against Moday for indemnification and breach of contract damages caused by Moday's breach of the lease with Corsiglia.

In early December 2006, Corsiglia sent a "Notice to Quit" to Moday stating the master lease would terminate in fifteen days if Moday failed to cure its rental delinquency. Moday failed to cure the delinquency, and Corsiglia terminated the master lease. In early January 2007, Corsiglia notified Foster the master lease for the *entire* property had been terminated and evicted Foster and its tenants.⁶

In June 2007, Foster filed a motion for summary judgment seeking to establish liability against Moday. The court granted summary judgment to Foster on liability.

In August 2010, a bench trial on the issue of Foster's damages commenced. Foster's expert witness, Richard Koestner, is a certified real estate appraiser with thirty-two years of experience appraising real estate in the Quad Cities area. He provided an estimate of the market rent of the Foster spaces as of January 2008, to assist in determining Foster's leasehold interest. Koestner utilized the *Uniform Standards of Professional Appraisal Practice* while being "cognizant of the influences of economic, social, and political forces." He stated the units would probably rent to small businesses for three-year lease terms with renewals. Koestner testified the vacancy factor for the entire remaining term would be in the seven to twelve percent range.

⁶ *Duck Creek Tire Service, Inc. v. Goodyear Corners, L.C.*, 796 N.W.2d 886 (Iowa 2011), involves damages incurred by Moday's sub-subtenants as a result of Moday's failure to cure its rental delinquency.

Koestner examined comparable commercial leases in the area and used a “sales comparison approach” to determine market rents. Koestner assumed the Foster properties were in average condition⁷ and opined the marketing time, as of January 2008, would be twelve to eighteen months. Koestner concluded the liquor store and Maxwell spaces had a market rent of \$10 per square foot gross lease and the First Glass space had a market rent of \$11.50 per square foot gross lease. Koestner’s analysis factored in the lack of an anchor tenant in the Moday spaces.

Koestner testified the Foster property’s location “was pretty decent because there’s a lot of rooftops in that immediate area, there’s McClellan Heights, which has pretty good purchasing power.” Further:

I looked at the traffic patterns, you had around eleven to twelve thousand cars going by that piece of ground every day, so the visibility was good and the exposure was good. The parking was good, since it had been a supermarket there the land-to-building ratio was quite high, so there was some decent parking. So I think, you know, it had kind of a lot to offer.

On the other side, I believe the building was built in 1960 and it was a brick-block type of building. The units were a little bit longer . . . so it would take some kind of . . . renovation, like all spaces do, to try to get a new tenant

Fick, Foster’s president, testified the condition of Foster’s property in 2006-07 was average to good. At the time of the 2007 eviction, Foster had two tenants, Dr. Maxwell and First Glass, on month-to-month leases. Fick stated that while Moday’s buildings to the north were vacant in 2006-07, the area was not depressed. For example, the property across Kimberly Road had been redeveloped with a Home Depot and a Schnucks supermarket that would draw

⁷ The buildings were removed from the acreage before Koestner’s analysis of the rents.

traffic. Fick agreed with Koestner that the standard for local tenancies would be a three-year lease with renewals.

Fick used Koestner's market rents analysis and calculated the lost gross rent from the January 2007 eviction to the November 2018 lease end, or 11.88 years.⁸ Fick then deducted property taxes⁹ and the costs of annual maintenance (CAM),¹⁰ resulting in lost net rent of \$979,327.80. Fick also testified:

Q. [There has been discussion] the income amounts should be reduced to a present value number. Do you agree with that? That the future rental income from down the road would have to be brought back to today's date based on some calculation of present value? A. If you were going to use a net present value, I would assume you'd have to use some kind of inflation value [for rent] also to be fair.

Q. So it's kind of on the one hand, if you were going to bring it back to net present value on—based on net income, that the top line, the gross rents, ought to be adjusted upward—A. As well.

Q. For anything over that same period of time? A. Yes.

Q. So is it your belief those two are offsetting? A. Yes.

Q. You didn't include an inflation factor or an escalator of any kind on the rents, is that right? A. I did not.

Q. And likewise, [you] didn't include a net present value figure^[11] on discounting the future income stream on the net rents, is that right? A. I did not, no.

Although not deducted from his lost net rent total, Fick testified to using a vacancy factor of five to seven percent when evaluating properties. He also

⁸ First Glass space:

2098 sq. ft. @ \$11.50/sq. ft. gross x 11.88 years = \$286,628.76

Maxwell space:

500 sq. ft. @ \$10/sq. ft. gross x 11.88 years = \$59,400.00

Liquor Store space:

8339 sq. ft. @ \$10/sq. ft. gross x 11.88 years = \$990,673.20

⁹ Property Tax: \$8208/year x 11.88 years = \$97,511.04 taxes.

¹⁰ 10,937 sq. ft. (all Foster space) @ \$2.00/sq. ft. CAM x 11.88 years = \$259,863.12

¹¹ Fick testified Foster could borrow money at 5 to 5.5% and Foster could earn 1% if it put the net rent received into a cash account.

stated Foster would expend up to \$5 per square foot in paint, wall covering, and floor covering in order to lease the liquor store space (\$41,695).

Louis James testified for Moday. For twenty-six years, he has rented real estate spaces in malls and strip malls. Since 1986, James worked for Moday to obtain tenants for the shopping center at issue, and he visited the Quad Cities area twice a year. He discussed the shopping center after Target moved out:

The shopping center languished for a while. We still had, you know, the presence of the supermarket there, and we tried to lease it. We contacted many of the regional brokers We had some luck with some tenants—we eventually got Jacks, Penn-Daniels, they were taken over by ShopKo, and [then ShopKo went bankrupt].

James stated the mom-and-pop, start-up businesses “were drawn to the center because of the traffic and [with the two anchor stores vacant, they] don’t have the traffic anymore and . . . history shows us that they leave.” He opined Moday’s anchor stores were not in “average” condition and the parking lot was in poor condition. James also discussed rent per square foot:

Q. But you’d agree with me that those Foster buildings were functional, were they not? A. Well, you had tenants, I would say—yes.

Q. Ten dollars a square foot is not an exorbitant amount of rent in the market place today, is it? A. Well, that depends on so much We have centers that we would be happy to accept five dollars a foot from a small tenant. We have several distressed centers right now in our portfolio.

. . . .

Q. What is your opinion as to the rental value of the Mel Foster buildings—commencing in January of 2007 [eviction]?

A. Based on . . . [no] anchor tenant . . . first of all, when a tenant comes to a situation like that . . . they feel . . . justifiably so, they’re carrying most of the bargaining chips [I]t’s hard to say, but . . . I would accept if a tenant came in and wanted two thousand feet and was willing to pay me five bucks a foot as is plus the pass throughs, I consider myself fortunate.

. . . .

Q. You're saying five dollars a square foot? A. Plus.

Q. Plus CAM and taxes? A. Yes, for maybe two years, the most three, if I like the tenancy. With a condition of the way they were in 2007.

Chad Witter, Moday's business valuation expert, testified the Quad-City Times "called this a dying property . . . because it was falling apart. The location had no anchor tenant." Witter did not know the area's traffic counts. He recognized the Goodyear Tire business and a restaurant had been operating on the other side of the parking lot and presumed they were profitable businesses until they were also evicted in 2007. Witter's spreadsheet utilized \$67,200 in annual gross rents for the majority of the remaining lease term. After deducting significant expenses (including \$41,050 in renovations for the liquor store space and \$8400 property tax expense) and after applying a thirty percent present value factor, Witter concluded the present value of the net rent cash flows is \$25,683.¹² Witter testified:

Q. What were you asked to do? A. I was asked to look at the remaining lease term and determine damages, potential damages. And one way to do that is to look at what a third party would pay for the rights to that lease at a specific point in time.

. . . .

Q. Mr. Witter, would you agree . . . we're trying to calculate what [Foster] lost because of the breach of their lease by Moday as opposed to what they could sell this for if they tried to put it on the open market? A. I believe the value of the lease is comparable to what they lost.

. . . .

Q. This is a contract case. We're talking about breach of contract damages, is that correct? A. I'll take your word for it.

. . . .

¹² Witter calculated gross rent of \$651,600 (\$23,400 in 2007, 2008 and \$67,200 from 2009 to 2017, \$0 for 2018):

First Glass space:	\$ 8.58/sq. ft. gross (\$18,000 annual) x 11 years = \$198,000
Maxwell space:	\$10.80/sq. ft. gross (\$ 5,400 annual) x 11 years = \$ 59,400
Liquor Store space:	\$ 5.33/sq. ft. gross (\$43,800 annual) x 9 years = \$394,200

Q. But in 2007 when they were evicted because of Moday's default, they owned these buildings and they had the right to rent them out for another 11.88 years, is that correct? A. Yes.

Q. They'd already made the investment in these buildings in years past, is that accurate? A. Yes.

Q. So wouldn't you be looking to maximize their return for the last 11.88 years during the lease had to run on it? A. Yes.

Testimony and exhibits established Foster's historical yearly gross rents:

2000 Foster Gross Rent	\$69,717
2001 Foster Gross Rent	\$59,100
2002 Foster Gross Rent	\$71,600
2003 Foster Gross Rent	\$61,800
Target moves out of Moday's space	
First Glass leases 2098 sq. ft. (\$8500 in 2003)	
\$1000/month May 1 to Nov. 30	
\$1500/month as of Dec. 1	
2004 Foster Gross Rent	\$53,600
First Glass continues lease 2098 sq. ft.	
@ \$1500/month (\$18,000/yr.) \$8.58 sq. ft.	
June: Liquor Store lease on 8339 sq. ft. ends	
@ \$6.75/sq. ft. (\$56,288/yr.) (per court)	
Foster learns of Moday's default & stops	
efforts to find liquor store space tenant	
2005 Foster Gross Rent	\$20,500
First Glass continues lease 2098 sq. ft.	
@ \$1500/mo. (\$18,000/yr.) \$8.58 sq. ft.	
Aug.: Corsiglia sues Moday & Foster	
No rent from 8339 sq. ft. liquor store space	
2006 Foster Gross Rent	\$23,400
First Glass continues lease 2098 sq. ft.	
@ \$1500/mo. (\$18,000/yr.) \$8.58 sq. ft.	
Jan.: Maxwell leases 500 sq. ft.	
@ \$450/mo. (\$5400/yr.) \$10.80 sq. ft.	
No rent from 8339 sq. ft. liquor store space	
January 2007 - Master Lease Terminated	

In November 2010, the district court ruled:

The remaining term of the [Foster] lease at the time of termination was until November 17, 2018, or 11.88 years. [Foster] claims its damages for the loss of the lease [are] \$979,327.80. [Moday] claims [Foster's] damages were no more than \$25,683.

...
[Foster's] calculation assumes active marketing of the properties, full occupancy during the entire remaining term of the lease and no changes in rental rates or expenses during the remaining term of the lease between the parties. Those assumptions are unreasonable given the lack of active marketing of the properties, the history of vacancy of the subject properties, and the likelihood of increasing property taxes on commercial real estate.

...
Of course, the opinion of [Moday's] expert is also subject to criticism. In [Witter's] damage calculation . . . assumptions of expenses are significantly higher than historical expenses indicate. Additionally, [Witter] reduces the sum of annual damages to present value based on application of an arbitrary discount figure [30%] for which the Court can discern no factual basis and which the Court finds to be grossly overstated.

Thus . . . the court must make its own determination of damages Obviously, the historical evidence of actual rental receipts and expenses is important to the court's determination. However, the court must be mindful that [Moday] quit making its rent payments to [Corsiglia] approximately three years before [Foster's] leasehold was terminated. The court also must give consideration to the loss of the anchor tenants in the adjoining buildings and the effect of those losses on the commercial viability of the leasehold interest of [Foster].

The court notes that the last rental rate for the 500 square foot [Maxwell] space . . . was \$10.80 per square foot. The last rate for the 2098 square foot [First Glass] space . . . was \$8.5[8] per square foot and for the 8339 square foot [liquor store] space . . . \$6.75 per square foot. Therefore, the respective annual gross rental for those properties was \$5400, \$[18,000], and \$56,288.25, for a total of \$79,6[8]8.25. However, the most [Foster] ever actually received in rent was \$61,800 in 2003.¹³ [Foster's] gross rental receipts decreased after that with the loss of tenants occasioned by [Moday's] loss of anchor tenants in the larger, adjoining buildings in

¹³ We note this is consistent with Witter's testimony but inconsistent with the record. The record shows total gross rents of \$77,910 (1996), \$78,190 (1997), \$78,048 (1998), \$76,512 (1999), \$69,717 (2000), \$59,100 (2001), and \$71,600 (2002).

the complex. The gross rental receipts decreased to \$53,600 in 2004, to \$20,500 in 2005, and to \$23,400 in 2006.

The court concludes the probable . . . gross annual rental receipts [Foster] would have received if its lease had not been terminated would have been \$22,000 given the condition of the property and the surrounding commercial environment. From the court's review of the expenses [incurred by Foster] over the same period, the court concludes the annual expenses exclusive of depreciation most probably would have been \$16,500. Thus, the court concludes the net annual rental income exclusive of depreciation would have been \$5500. Over 11.88 years that would total \$65,340.

The question then becomes a determination of the present value of the lost rental income to [Foster.] Of course, [Foster] already has lost approximately 3.88 years of such income since the termination of its lease leaving approximately [eight] years of future damages. The gross amount of future damages then would be \$44,000. The court determines the present value of such future damages is \$36,750.^[14] Therefore, the present value of [Foster's] total damages is \$58,090.

This appeal followed.

II. Scope of Review.

“A breach of contract claim tried at law to the district court is reviewed by us for correction of errors at law.” *NevadaCare, Inc. v. Dep't of Human Servs.*, 783 N.W.2d 459, 465 (Iowa 2010). “The trial court's findings of fact have the effect of a special verdict and are binding if supported by substantial evidence.” *Land O'Lakes, Inc. v. Hanig*, 610 N.W.2d 518, 522 (Iowa 2000). Evidence is substantial “when a reasonable mind would accept it as adequate to reach a conclusion.” *Id.* However, we are not bound by the district court's legal conclusions and application of legal principles and will reverse if the district court has applied erroneous rules of law that materially affected its decision.

¹⁴ Foster points out \$44,000 over 8 years payable at \$5500 per year over 8 years reduced to present value at 5.5% equals \$36,756.32.

NevadaCare, 783 N.W.2d at 465. We view the evidence in a light most favorable to the trial court's judgment. *Land O'Lakes*, 610 N.W.2d at 522.

III. Loss of Fair Rental Value Damages.

A lease is one form of contract. *Dopheide v. Schoeppner*, 163 N.W.2d 360, 366 (Iowa 1968). Damages are awarded to compensate the innocent party "for the loss which a fulfillment of the contract would have prevented." *Id.* (ruling "rental value" and "value of the use of the premises" are synonymous). Recovery "is ordinarily measured by the rental value of the property" and "rental value" is not equated with gross rental payments but rather means the "benefit of the bargain" as applied to the facts of the case. *Watson v. Lewis*, 272 N.W.2d 459, 465 (1978). Foster claimed damages for the loss of the fair rental value. *See id.*

As the Iowa Supreme Court instructed in *Northrup v. Miles Homes, Inc.*, 204 N.W.2d 850, 857 (Iowa 1973): "If it is speculative and uncertain whether damages have been sustained, recovery is denied. If the uncertainty lies only in the amount of damages, recovery may be had if there is proof of a reasonable basis from which the amount of damages can be inferred or approximated." Accordingly, "some speculation is acceptable [and] while a loss may be hard to ascertain . . . the wronged party should not be penalized because of that difficulty." *Hammes v. JCLB Prop., LLC*, 764 N.W.2d 552, 558 (Iowa Ct. App. 2008).

Foster argues the district court ignored the cause of the decline of the property from 2004 to 2007—Moday's breach of the master lease, and asserts Moday is getting the benefit of its own misdeeds in the court's valuation when it is Moday who damaged the marketability of the property. Foster claims its

damages for loss of fair rental value start in October 2004, when Moday breached the master lease. Foster also argues the district court's finding of "probable gross annual rental receipts" of \$22,000 per year for the entire 10,937 square feet is not supported by substantial evidence when the small portion actually rented immediately prior to the eviction (First Glass/Maxwell—2598 square feet) was generating \$23,400 in yearly gross rents.

After our review of the record, we conclude the district court's finding of \$22,000 per year gross annual rents does not fall within the range of probable gross rental values established by the rental history and by the testimony of the witnesses. The court's \$22,000 award divided by 10,937 available square feet is approximately \$2 per square foot.

Moday's own witnesses testified to higher annual gross rents. James opined \$5 per square foot *plus pass throughs* would be a reasonable gross rate in 2007, or \$54,685 annual gross rent on 10,937 square feet *without* adding in the pass throughs.¹⁵

Witter's exhibit used \$23,400, the actual rent for the First Glass/Maxwell space, as the annual rent for those spaces from 2007 to 2017 (\$8.58 per square foot First Glass and \$10.80 per square foot Maxwell). Starting in 2009 and continuing through 2017, Witter also added in \$43,800 annual rent for the liquor store space (\$5.33 per square foot). Therefore, Witter calculated \$67,200 annual

¹⁵ James testified to rents of \$5/sq. ft. plus CAM and taxes. He did not opine a rate for CAM. Annual rent of \$5/sq. ft. plus \$2/sq. ft. CAM (per Fick testimony) = \$7/sq. ft. annual rate. \$7/sq. ft. x 10,937 sq. ft. (Foster total space) = \$76,559 annual rent. If the annual property taxes of \$8208 (per Fick testimony) are included, the total is \$84,767 in annual rent.

gross rent on 10,937 square feet, or \$6.14 per square foot for the majority of the remainder of the lease.

Foster's expert, Richard Koestner, also testified to higher annual gross rents. He opined \$10 per square foot for the Maxwell/liquor store space (\$88,390 annual gross rent) and \$11.50 per square foot for the First Glass space (\$24,127 annually).

Accordingly, we conclude the district court's ruling of \$22,000 per year gross annual rents is not supported by substantial evidence. However, there is no question actual damages have been sustained by Foster. On remand, the district court should recalculate Foster's damages for loss of fair rental value by considering the following:

A. First Glass Space. First Glass leased the space at \$8.58 per square foot (\$18,000/year) from 2003 until the 2007 eviction. Therefore, First Glass continued its month-to-month rental during the vacancy in Moday's anchor tenant spaces and after Moday's 2004 breach. There is no evidence First Glass would have left before the master lease terminated. This conclusion is buttressed by the evidence Goodyear and a restaurant also remained tenants in Moday's non-anchor building until evicted. See *id.* at 558 (stating some speculation is acceptable and the wronged party should not be penalized). Foster is entitled to a *minimum* gross rental of \$213,840 for this space (\$18,000/year x 11.88 years) and can be awarded more in the district court's discretion based on the existing record.

B. Maxwell Space. Dr. Maxwell paid \$5400 per year in 2006, at a time when Moday had breached the master lease. There is no evidence Maxwell

would have left before the master lease terminated. This conclusion is buttressed by the evidence Goodyear and a restaurant also remained tenants in Moday's non-anchor building until evicted. See *id.* Foster is entitled to a *minimum* gross rental of \$64,152 for this space (\$5400 x 11.88 years) and can be awarded more in the district court's discretion based on the existing record. Due to the reasonable time necessary to rent this space, we do not believe additional gross annual rents prior to 2006 are warranted.

C. Liquor Store Space. Foster argues its decision to pull this space off the market due to Moday's 2004 default was a reasonable course of action. We agree and conclude Foster should not be penalized when Moday is the defaulting party. Koestner testified Foster would need approximately eighteen months to lease this space with active marketing. Therefore, without Moday's 2004 breach, Foster would have used all of 2005 and six months of 2006 to lease the space. Foster's loss of annual gross rent would therefore start on July 1, 2006, and continue to November 17, 2018 (12.38 years).

Damages are awarded for loss of fair rental value and the record supports a vacancy rate of 7% for this space, leading to 11.51 years of lost gross rent.¹⁶ An annual gross rent within the range of \$5.33 (Witter) to \$10 (Koestner) per square foot on the 8339 square foot space is supported by the evidence (range of \$44,447 to \$83,390 annual gross rent). This results in overall gross rents (including vacancy) for 11.51 years in the range of \$511,585 to \$959,819, in the district court's discretion.

¹⁶ 12.38 years x 7% = 0.87. Subtracting 0.87 from 12.38 years is 11.51 years.

Finally, according to Fick, Foster would have spent \$41,695 to renovate the space prior to the new tenant's occupancy. This amount must be deducted, but no other deductions for renovation are warranted.¹⁷

D. Expense Deduction. The district court found "annual expenses exclusive of depreciation most probably would have been \$16,500."¹⁸ However, Fick, Foster's president, testified to higher annual expenses: \$2 per square foot CAM on 10,937 square feet or \$21,874 annual expense for CAM. Additionally, Fick included a deduction of \$8208 in annual property tax. These expense deductions total \$30,082 per year. On remand, the court shall deduct \$357,374 (\$30,082 annual expense x 11.88 years) in determining Foster's loss of fair rental value damages.

IV. Present Value.

In *Gleason v. Kueker*, we stated:

Present value analysis is the method used to determine the value today of future losses or expenses. It accounts for the reality that money has the power to earn money. Plaintiffs can realize earnings through the investment of an advance lump sum award, which effectively over-compensates them for [the damages] if the award is not discounted.

A countervailing consideration, however, is inflation, which devalues future damage awards Therefore, the modern consensus is that present value reductions should take into account future inflationary pressures. In other words, the rate by which an award is discounted should be offset by an anticipated inflation rate

[One] approach assumes that the discount rate is completely neutralized or offset by the inflation rate.

¹⁷ Based on the remand guidelines, the minimum gross rent lost due to Moday's breach is \$747,882 (\$511,585 (liquor store minimum) plus \$213,840 (First Glass minimum) plus \$64,152 (Maxwell minimum) minus \$41,695 (liquor store renovation)).

¹⁸ Witter's spreadsheet lists 2007 expenses of \$19,533, including property tax. Foster's historical expenses, including property tax, were: \$18,560 (2005), \$35,658 (2004), and \$16,538 (2003).

.....
Although our highest court has not explicitly mandated a particular methodology, it has affirmed the use of the total offset approach where there is evidence from which to conclude that the discount and inflation rates are the same. Additionally, the court has rejected use of the legal rate of interest to reduce future damages to their present value, adopting instead the rate found . . . from the evidence to be fairly expected from reasonably safe investments which a person of ordinary prudence, but without particular financial experience or skill, could make in the locality.

641 N.W.2d 553, 555-57 (Iowa Ct. App. 2001) (internal quotation marks and citations omitted).

Turning to the facts of this case, Foster argues the district court erred in reducing future damages by 5.5% per year to arrive at a present value figure. We agree. Fick testified Foster could *borrow* at 5.5% a year, but could *invest* at 1% per year. Fick also testified the inflation in rents for the property would be offset by a reduction to present value. We have not applied an inflation factor to the above rent. We conclude the record supports an assumption the “discount rate is completely neutralized or offset by the inflation rate.” See *id.* at 556. Accordingly, on remand, no present value reduction of Foster’s damages is warranted.

V. Conclusion.

We reverse and remand for calculation of the loss of fair rental value damages based on the existing record and consistent with this opinion.

REVERSED AND REMANDED.