STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1205

Gamma Lending Omega, LLC,
Respondent,

vs.

Talon First Trust, LLC, et al.,
Appellants,

Thomas Grace Construction, Inc.,
Defendant.

Filed April 22, 2019
Affirmed
Bratvold, Judge

Ramsey County District Court
File No. 62-CV-18-656

Christopher J. Knapp, Connie A. Lahn, Christopher L. Lynch, Barnes & Thornburg LLP, Minneapolis, Minnesota (for respondent)

John R. Neve, Neve Webb, PLLC, Edina, Minnesota (for appellants)

Considered and decided by Rodenberg, Presiding Judge; Reilly, Judge; and Bratvold, Judge.

U N P U B L I S H E D O P I N I O N

BRATVOLD, Judge

Appellant Talon First Trust LLC (Talon) executed three related contracts with Gamma Real Estate Capital LLC (GREC), which is not a party to this appeal, for the purchase of a commercial building. Among other things, Talon signed a loan agreement in which it promised to pay a five percent late charge if any payments were received more than five days after the due date and to indemnify GREC for attorney fees incurred in enforcing the contracts. GREC later assigned all of its rights and interest under the contracts to respondent Gamma Lending Omega LLC (Gamma). One year later, Talon defaulted and Gamma sued Talon and its owner, Talon OP L.P. (OP) (collectively, appellants), as the loan guarantor. In this appeal from the judgment entered in favor of Gamma, appellants argue that the district court erred in enforcing the late charge and in awarding attorney fees. Because we determine that the late charge is not an invalid liquidated-damages clause and that the district court did not abuse its discretion in awarding attorney fees, we affirm.

FACTS

In 2014, Talon purchased real property located in downtown St. Paul with a street address of 180 East 5th Street (the property) for $40 million. The property is a 13-story office tower, was built in 1916, and is mostly leased to commercial and government tenants. To finance the purchase, Talon mortgaged the property to GREC and executed a promissory note.

On January 27, 2017, GREC lent Talon $51.6 million under new terms to refinance Talon's indebtedness, pay fees, and make improvements to the property. As part of the loan, GREC and Talon executed three primary documents. First, GREC and Talon signed a new loan agreement (loan agreement), an amended promissory note, and an amended mortgage agreement (collectively, "the contracts"). GREC later assigned all of its rights, title, and interest in the property and under the contracts to Gamma.

The loan agreement contained several provisions relevant to the issues on appeal. The loan agreement was for $51.6 million and had a one-year term, with the principal due on the maturity date of January 26, 2018. Talon had the option of paying the principal before the maturity date, but no payment of the principal was required until the maturity date. Talon also had the option to extend the maturity date by six months up to two times, as long as it paid a $516,000 fee for each extension and did not default on any of its required payments.

Interest of 10.57% per annum was due in monthly payments. Talon agreed to pay an additional eight percent interest per annum (default interest rate) in certain circumstances, specifically "[w]hile an Event of Default beyond any applicable cure period exists or after acceleration, at the option of Lender." Talon also agreed to a late fee:

> In the event that any payment due under the terms hereunder, including the payment due on the Maturity Date, is not received by Lender within five (5) days of the date such payment is due (inclusive of the date when due), Borrower shall pay to Lender a late charge equal to five percent (5%) of such payment.

In addition, Talon agreed to indemnify GREC for enforcement costs, which expressly included attorney fees:

> Borrower shall pay . . . all out-of-pocket costs and expenses (including, without limitation, the reasonable fees, charges and disbursements of outside counsel and the allocated cost of inside counsel) actually incurred by Lender in connection with the enforcement or protection of its rights in connection with this Agreement, . . . or in connection with the Loan made hereunder . . . .

Talon defaulted on the loan by failing to pay the principal and accrued interest on the maturity date. On the third day after the maturity date, Gamma notified Talon of its default, which triggered the default interest rate, yielding a total interest rate of 18.57% per annum.

Five days after the maturity date, Gamma sued appellants. Gamma later amended the complaint and alleged that appellants owed approximately $2.5 million as a five percent late fee, in addition to owing the principal ($51.6 million), unpaid interest on the principal, the last monthly payment for tax and insurance, and default interest accruing at $26,613.78 per day. Gamma also alleged that it was incurring legal fees and other costs to enforce the contracts. The amended complaint had eight counts. Relevant to this appeal, Gamma claimed in its first two counts that Talon had breached the contracts. Gamma also asserted other claims, including that it had the right to foreclose on the mortgage, seek appointment of a receiver, and receive a valid assignment of all rents. Gamma also filed an emergency motion for the appointment of a receiver to manage the property, which the district court granted.

Gamma and appellants filed cross motions for summary judgment. Appellants moved for partial summary judgment, seeking a declaration from the district court that the five percent late fee was an unenforceable liquidated-damages penalty. Gamma sought to foreclose on the mortgage and asked for summary judgment on its contract claims, seeking a money judgment of all sums that appellants owed under the contracts, including the $2.5 million late fee and $160,847.11 in attorney fees and costs. Appellants opposed summary judgment and argued that Gamma's claimed attorney fees were excessive and unreasonable.

After a hearing, the district court granted Gamma's motion in part, determining that Gamma could foreclose on the mortgage and proceed with a sheriff's sale of the property.[1] The district court also determined that appellants were liable to Gamma under the contracts for the principal balance of $51.6 million, unpaid interest on the principal, unpaid tax and insurance escrow payments, default interest, and reasonable attorney fees that Gamma incurred in enforcing the contracts. The district court took under advisement appellants' challenges to the validity of the late fee and the reasonableness of Gamma's attorney fees.

The district court later denied appellants' partial motion for summary judgment, enforced the $2.5 million late fee, and awarded Gamma $145,838.86 in attorney fees. The district court directed entry of judgment against appellants in the total amount of $54,868,368.62. This appeal follows.

D E C I S I O N

Summary judgment may be granted when "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01.[2] On appeal, we view the evidence "in the light most favorable to the party against

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[1] After the district court's order was issued, Gamma went forward with the sheriff's sale. On June 28, 2018, the property was sold by public auction. Gamma was the only bidder and purchased the property at its starting bid of $51,995,000. Talon's statutory period of redemption started on the date the sheriff's sale was confirmed and expired on December 29, 2018. The record does not reveal whether Talon redeemed the property.

[2] The district court applied the former version of rule 56, which was recently "revamped" to more "closely follow" the federal rules. Minn. R. Civ. P. 56 2018 advisory comm. cmt.

whom summary judgment was granted." *Commerce Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015). This court reviews a district court's summary judgment decision de novo to "determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010).

Appellants and Gamma observe that the loan agreement includes a choice-of-law clause, which provides that New York law governs the agreement; yet, the parties and the district court refer exclusively to Minnesota law and agree that, for the purposes of the late fee and attorney-fee provisions, the law in both states is substantially the same. New York and Minnesota follow the general approach provided in the Restatement (First) of Contracts, section 339. *Compare Truck Rent-A-Center, Inc. v. Puritan Farms 2nd, Inc.*, 361 N.E.2d 1015, 1018 (N.Y. 1977), *with Gorco Constr. Co. v. Stein*, 99 N.W.2d 69, 74 (Minn. 1959). We conclude that the parties are correct and, therefore, do not engage in a conflicts analysis.

I. The district court did not err in enforcing the five percent late fee.

Appellants do not dispute that Talon defaulted on the loan agreement, however, appellants argue that the district court erred in enforcing the five percent late fee because

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When promulgating amendments to rule 56, effective on July 1, 2018, and applicable to pending cases, the supreme court specifically indicated that amended language on the standard for granting summary judgment reflects recent Minnesota caselaw. *Order Promulgating Amendments to Rules of Civil Procedure*, No. ADM04-8001 (Minn. Mar. 13, 2018). Because the legal standard is unchanged, this court cites to the current version of rule 56.01, even though the district court's decision was issued before the amended rule took effect.

it "is an unlawful penalty." Gamma asks this court to uphold the late fee, arguing that it is a valid liquidated-damages clause because it is a "stipulation on damages negotiated between sophisticated businesses in an arms-length transaction [that] is presumptively reasonable." To resolve this issue, we must construe and give effect to the loan agreement, which is a question of law when the contract is not ambiguous. *St. Jude Med., Inc. v. Medtronic, Inc.*, 536 N.W.2d 24, 27 (Minn. App. 1995), *review denied* (Minn. Oct. 27, 1995). We review questions of law de novo. *Id.*

Damages for a breach of contract may be fixed in a liquidated-damages clause, which makes a sum "payable to a party when actual damages are difficult to ascertain or prove." *In re Qwest's Wholesale Serv. Quality Standards*, 702 N.W.2d 246, 262 (Minn. 2005). Courts will enforce a negotiated liquidated-damages clause to "promot[e] prompt performance of contracts" and avoid settling difficult damages issues that involve "uncertainty, delay and expense." *Meuwissen v. H.E. Westerman Lumber Co.*, 16 N.W.2d 546, 550 (Minn. 1944). The Minnesota Supreme Court has stated that courts "look with candor, if not with favor, upon a contract provision for liquidated damages when entered into deliberately between parties who have equality of opportunity for understanding and insisting upon their rights, since an amicable adjustment in advance of difficult issues saves the time of courts, juries, parties, and witnesses and reduces the delay, uncertainty, and expense of litigation." *Gorco*, 99 N.W.2d at 74.

The burden is on the party challenging the liquidated-damages clause to demonstrate that it is an unenforceable penalty. *See id.*; *see also In re Bowles Sub Parcel A, LLC*, 792 F.3d 897, 902 (8th Cir. 2015) (stating that, under Minnesota law, the burden is on the party seeking to strike a liquidated-damages clause to show it is an unreasonable penalty). A liquidated-damages clause is unenforceable if it fixes damages for a breach "without regard to the extent of the harm" and is "punitive rather than compensatory." *Gorco*, 99 N.W.2d at 74. In determining the validity of a liquidated-damages clause, the parties' intent is not the controlling factor. *E.D.S. Constr. Co. v. N. End Health Ctr., Inc.*, 412 N.W.2d 783, 786 (Minn. App. 1987), *review denied* (Minn. Nov. 18, 1987).

Rather, the "controlling factor" is reasonableness of the liquidated-damages clause; we must ascertain whether the amount of liquidated damages is reasonable "in light of the contract as a whole, the nature of the damages contemplated, and the surrounding circumstances." *Gorco*, 99 N.W.2d at 74. A court will not enforce a liquidated-damages clause unless the amount is "a reasonable forecast of just compensation" for damage caused by a breach, and the damage caused by breach "is incapable or very difficult of accurate estimation." *Id.* at 74-75 (citing Restatement (First) of Contracts § 339 (1932)).

To determine the validity of the five percent late fee in the loan agreement between Talon and Gamma, we first examine the reasonableness of the amount of liquidated damages by analyzing the factors outlined in Minnesota law and then review the caselaw that appellants cite from foreign jurisdictions.

A. The loan agreement imposes a late fee that is a reasonable forecast of damages that were difficult to accurately estimate in advance.

1. Nature of the damages contemplated

At the time that Talon and GREC signed the loan agreement, the anticipated damages included: loss of goodwill and lost profits from carrying a $52 million default on its books,[3] administrative costs related to the default and property-related issues,[4] and expenses associated with repairing and reselling the property after foreclosure.[5] As already mentioned, Minnesota caselaw states that the nature of damages anticipated by a liquidated-damages clause must be reasonable as well as difficult to estimate in advance. *Id.* at 74. This court has already recognized it is reasonable for parties to anticipate loss of goodwill and lost profits when agreeing to a liquidated-damages clause. *See Dean Van Horn Consulting Assocs., Inc. v. Wold*, 367 N.W.2d 556, 560 (Minn. App. 1985), *review denied* (Minn. July 17, 1985). We also conclude that it is reasonable for parties to anticipate increased administrative costs related to the default as well as other expenses, such as repairs to the property that are the subject of the contract.

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[3] Gamma submitted an affidavit in support of its summary judgment motion as evidence of the loss of goodwill. Gamma's principal attested that "[h]aving a significant loan default on its books may harm the market reputation and, ultimately, the profits of Gamma and its affiliates. The risk and extent of those damages increase with the size of the loan." Appellants did not offer evidence to contest this point.

[4] To illustrate its increase in administrative costs, Gamma offered an affidavit by its principal, who attested that, since the default, at least four of its employees had "expended significant time and resources assessing the condition and needs of the mortgaged property, addressing issues raised by the Receiver, evaluating and addressing issues raised by the tenants of the mortgaged property, and responding to issues raised by contractors performing required work on the mortgaged property." This, in turn, "divert[ed] [Gamma] from activities that could be earning profits." Appellants did not offer any evidence on this issue.

[5] Regarding post-foreclosure expenses, Gamma submitted an affidavit from its principal, who attested that the building on the property is 100 years old and Gamma's "out-of-pocket costs to repair and maintain [it] and to prepare for re-sale are likely to continue even after the foreclosure sale." Again, appellants did not offer any evidence on post-foreclosure property repairs or maintenance.

Gamma asserts that these anticipated damages were difficult to estimate at the time of contracting. The district court agreed with Gamma and identified a list of "potential unknown damages," such as property repairs and lost investment opportunities, and concluded that "damages are not easily assessed." Appellants assert that some of Gamma's damages, such as property repairs, are "mathematical" and easy to determine. Appellants also assert that "Gamma did not introduce any evidence to show that it has incurred any extraordinary costs in connection with the default that it will not otherwise recover" from appellants.

But appellants have the burden to invalidate the five percent late fee. Minnesota caselaw has recognized that loss of goodwill and lost profits associated with a deterioration in goodwill are difficult to estimate in advance. *See Meuwissen*, 16 N.W.2d at 550. We also have previously recognized that "items such as goodwill and loss of profits" demonstrate the necessity of liquidated-damages clauses. *See Dean Van Horn Consulting*, 367 N.W.2d at 560. Appellants do not demonstrate why the difficulty of estimating Gamma's damages yields a different result here.

Appellants instead argue that, because the late fee became fixed at the time of default and the amount of actual damages would depend on when it paid the debt, the late fee did not reasonably forecast damages.[6] Talon is correct that liquidated damages must "bear some reasonable proportion to the damages contemplated," *see Meuwissen*,

[6] In support of this assertion, appellants cite *Dobson Bay Club II DD, LLC v. La Sonrisa de Siena, LLC*, 393 P.3d 449, 456 (Ariz. 2017). We do not find this caselaw persuasive for reasons discussed below.

16 N.W.2d at 551, but Minnesota has enforced fixed sums as liquidated damages and no Minnesota case has held that liquidated damages must increase over time.

For example, in *Meuwissen*, a corporation purchased a lumberyard from defendant-sellers for $8,000, and the sales contract contained a "goodwill and stipulation against competition" provision which, in part, required the sellers not to engage in the lumber business near the lumberyard for ten years. *Id.* at 547-48. If any of the sellers violated this agreement, he or she owed $8,000 in liquidated damages. *Id.* at 548. About three years after the sale, one seller breached the agreement. *Id.* at 548-49. The supreme court upheld the liquidated-damages clause, concluding that it was sufficient that the liquidated-damages amount bore "some reasonable proportion to the damages contemplated." *Id.* at 551.

Here, we reach the same conclusion. At the time they entered into the loan agreement, Talon and GREC did not know, nor could they have anticipated, what the market conditions would be on the loan's maturity date, or what would be the loss of goodwill or administrative costs associated with default. We conclude that a five percent late fee bears "some reasonable proportion to the damages contemplated" when Talon and GREC signed the loan agreement.

2. Contract as a whole

The district court observed that the loan agreement was for a large sum of money and was "collateralized by a complex property" in the mortgage agreement, which contributed to its determination that the late fee was reasonable. We agree with the district court. But more fundamentally, the amount of liquidated damages set out in the loan agreement is proportional to the outstanding debt. The loan agreement imposed a five percent late charge on "any payment due" on the maturity date if payment is not received within five days. And there is nothing inherently unreasonable about a five percent late charge. *Cf. First Nat'l Bank v. Cargill Elevator Co.*, 192 N.W. 111, 112 (Minn. 1923) (upholding mortgage note that provided for a five percent collection fee if the note was not paid when due).

We reject appellants' description of the liquidated-damages clause as a "$2.5 million late fee." While, in many contracts, a liquidated-damages clause involves a fixed sum, this is not the case in Talon's loan agreement with Gamma. Instead, the five percent late fee could yield different amounts because it was imposed on any late payment, whether of principal or interest. It is true that the late fee in this case has been fixed at $2.5 million, based on Talon's failure to pay both the principal and interest on the maturity date. Appellants became liable for $2.5 million in late fees because they did not timely repay *any* of the outstanding principal of $52 million.

Appellants argue that the five percent late fee is unreasonable in this case because anticipated damages for default are covered by other provisions in the loan agreement and mortgage. In support, Talon looks to sections 7.2(b) and 7.3 of the mortgage agreement. Section 7.2(b) gives Gamma a right to possess the property in the event of a default, and also provides that Gamma may collect all rent fees and apply them to building expenses, such as repairs. Section 7.3 provides that Gamma has the right to cure a default by foreclosure or collection, including any costs and fees associated with collection. Appellants argue that these provisions cover the same potential damages that are addressed by the five percent late fee.

We conclude that the other contract provisions cited by appellants address some but not all of Gamma's anticipated damages due to default. For example, sections 7.2 and 7.3 do not remedy Gamma's loss of goodwill, lost profits, or increased administration costs associated with Talon's default on the loan. Appellants emphasize that Gamma could have recovered its damages after foreclosure by selling the property. But this argument fails because Minnesota caselaw does not allow a retrospective analysis of actual damages to determine the validity of a liquidated-damages clause. *See Frank v. Jansen*, 226 N.W.2d 739, 745 (Minn. 1975) ("If a provision is construed to be one for liquidated damages, the sum stipulated forms, in general, the measure of damages in case of a breach, and the recovery must be for that amount. No larger or smaller sum can be awarded even though the actual loss may be greater or less." (quoting 22 Am. Jur. 2d *Damages* § 536)). At the time the parties entered into the loan agreement, Gamma did not know what the market value or condition of the property would be one year later, and did not know the outcome of a sheriff's sale in the event of a foreclosure. Moreover, Talon does not explain how the sale of the property would address Gamma's damages for loss of goodwill, lost profits, and increased administrative expenses.

Appellants also argue that Gamma recovered all anticipated damages through the default-interest provision, which added a rate of eight percent per annum to the preexisting interest rate of 10.57% per annum, and amounted to $26,613.78 per day. Appellants assert that "when the contract allows the lender to recover both above-market interest and a late fee on the same debt, liquidated damages can be deemed improperly penal." Some courts have construed a default-interest provision as a liquidated-damages clause where the contract did not otherwise include a liquidated-damages clause.[7] We are unaware of any Minnesota caselaw stating that a liquidated-damages clause is an invalid penalty because the contract also has a default-interest provision.

For two reasons, we conclude that the default-interest provision in this loan agreement does not address the same damages that Talon and GREC contemplated in contracting for the five percent late fee. First, Talon agreed to pay both default interest and a five percent late fee in the loan agreement. Second, appellants have failed to establish that the late fee pushed the amount of damages—$2.5 million—beyond what is reasonable for loss of goodwill, lost profits, and increased administrative costs due to Talon's default. *See generally Dean Van Horn Consulting Assocs., Inc. v. Wold*, 395 N.W.2d 405, 407-09 (Minn. App. 1986) (affirming district court's decision to modify and enforce liquidated-damages clause).

Appellants next argue that because the loan agreement allowed for an extension of the maturity date, "Gamma cannot credibly claim" that it would suffer an immediate $2.5 million loss in the event of a default. But this argument is unconvincing in light of the loan agreement, which required advance notice of an extension request and a $516,000 fee for each six-month extension. Not only would Gamma collect a significant fee for any

[7] For example, a federal court applying Minnesota law applied a liquidated-damages analysis to a contract provision that imposed an additional five percent interest rate in the event of a default and, in doing so, upheld the default-interest provision. *See Bowles*, 792 F.3d at 900-02 (determining that the default-interest provision was not an invalid penalty under a liquidated-damages analysis).

extension, there also would be no default on Gamma's books in the event of an extension. Notably, Talon did not request an extension.

Because loss of goodwill, lost profits, and increased administrative costs are not addressed in the mortgage or by other provisions in the loan agreement, we conclude that appellants fail to establish that other contract provisions remedy the same harm addressed by the five percent late fee.

3. Surrounding circumstances of the loan agreement

The district court found that Gamma and Talon are both sophisticated entities that "agree[d] to pay damages of a fixed amount," and they have a "much better sense" than the courts of what damages can occur. The record supports the district court's assessment of the parties. Talon had experience with large loans, and legal counsel assisted Talon in loan negotiations. In fact, Talon and GREC specifically discussed the liquidated-damages provision during contract negotiations. Appellants do not disagree that Talon is a sophisticated entity that was represented by counsel during contract negotiations. Appellants do not point to any surrounding circumstances that show the loan agreement should not be enforced.

Additionally, the record establishes that GREC was aware of Talon's financial situation at the time it issued the 2017 loan. More than $29 million of the new loan was required to pay off Talon's preexisting debt from its 2014 purchase of the property. This history likely created some additional risk. Finally, Gamma offered evidence that late charges are common in loan agreements. Gamma "regularly" includes late charges in its loan agreements. Talon itself charges a late fee of at least five percent to its tenants if rent is not paid "within five days after it becomes due."

In sum, based on the reasonableness factors discussed in Minnesota caselaw, appellants have not met their burden to demonstrate that the five percent late fee is unreasonable. We agree with the district court's conclusion that the liquidated-damages clause is reasonable in light of the nature of the damages, the contract as a whole, and the surrounding circumstances.

B. Cases from foreign jurisdictions

Appellants cite three cases from other jurisdictions to support its argument that the five percent late fee is an unenforceable liquidated-damages penalty. Appellants' cited cases are not binding precedent in Minnesota. *See Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984) (concluding that foreign cases are not binding precedent but may have persuasive value). Therefore, we review these cases to determine if they have persuasive value.

In *Dobson Bay*, the Arizona Supreme Court considered a real estate loan between a bank and a borrower that included a five percent late fee in the event of a default, among other default provisions. 393 P.3d at 450-51. Borrower defaulted and disputed the late fee. *Id.* at 451. *Dobson Bay* determined that the late fee was an unenforceable liquidated-damages penalty. *Id.* at 456.

We do not find *Dobson Bay* persuasive for two reasons. First, the late fee in *Dobson Bay* was contractually restricted to "handling and processing" a delinquent payment and "to compensate [the bank] for the loss of the use of such delinquent payment." *Id.* at 453.

Dobson Bay determined that "handling and processing" fees were easy to calculate, and "substantially addressed elsewhere" in the loan documents. *Id.* at 454, 456. Here, the loan agreement had no similar restriction on the five percent late fee.

Second, *Dobson Bay* applied the Restatement (Second) of Contracts and stated that "a liquidated damages provision is enforceable, but only at an amount that is reasonable in the light of the *anticipated or actual loss* caused by the breach and the difficulties of proof of loss." 393 P.3d at 452 (emphasis added) (quoting Restatement (Second) of Contracts § 356 (1981)). *Dobson Bay* articulated a test in which a court must consider "(1) the anticipated or actual loss caused by the breach, and (2) the difficulty of proof of loss." *Id.* *Dobson Bay* is correct that, under the second restatement, courts consider actual harm, particularly where the "difficulty of proof of loss is slight." Restatement (Second) of Contracts § 356 cmt. b. (1981). But Minnesota has not adopted the Restatement (Second) of Contracts, section 356, and Minnesota caselaw has not held that courts may consider actual damages in determining the validity of a liquidated-damages provision. *See, e.g.*, *Frank*, 226 N.W.2d at 745 (noting that, in general, a liquidated-damages provision forms the measure of damages and "[n]o larger or smaller sum can be awarded even though the actual loss may be greater or less." (quoting 22 Am. Jur. 2d Damages § 536)).

In *Market Center*, a bankruptcy court addressed the debtor's default on a loan secured in part by a commercial property. *In re Mkt. Ctr. E. Retail Prop., Inc.*, 433 B.R. 335, 342-43 (Bankr. D.N.M. 2010). The loan note provided for a five percent late fee on the unpaid sum at the time of default in addition to default interest. *Id.* at 344, 355 n.18. We conclude that *Market Center* is inapposite because the loan note stated that the late fee's purpose was limited to "handling and processing a delinquent payment" and associated expenses. *Id.* at 363. The bankruptcy court stated that handling and processing expenses were "not difficult to estimate" and were provided for elsewhere in "another provision" of the note. *Id.* at 364. *Market Center* also applied the Restatement (Second) of Contracts. *Id.* at 360.

In Talon's third-cited opinion, the California Court of Appeals refused to enforce a late charge of ten percent on the overdue final payment of the loan principal. *Poseidon Dev., Inc. v. Woodland Lane Estates, LLC*, 62 Cal. Rptr. 3d 59, 65-66 (Cal. Ct. App. 2007). Like *Dobson Bay* and *Market Center*, *Poseidon* also involved a late-charge provision that specified it would address "processing and accounting charges" and "the purpose of the late charge provision was to compensate [the lender] for administrative expenses." *Id.* at 65. *Poseidon* determined that a ten percent late fee on the final payment was not "a reasonable estimate of the damages contemplated by a breach." *Id.* at 66.

We determine that appellants' reliance on foreign caselaw is misplaced and we find the caselaw unpersuasive for the reasons stated. Thus, we conclude that the district court did not err in determining that the five percent late fee is valid.

II. The district court did not abuse its discretion in determining the amount of attorney fees.

Appellants argue that the district court "abused its discretion in deciding to award Gamma almost $150,000 in attorneys' fees and costs for one month of work on a case that is simply not that complex." Appellants do not dispute that they owe attorney fees and costs under the loan agreement, but seek a remand for "a reduction in the award." This court "will not reverse the district court's decision on attorney fees absent an abuse of discretion." *Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 331 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). "Because the district court is the most familiar with all aspects of the action from its inception through post trial motions, it is in the best position to evaluate the reasonableness of requested attorney fees." *Kelbro Co. v. Vinny's on the River*, *LLC*, 893 N.W.2d 390, 399 (Minn. App. 2017).

In determining reasonable attorney fees, the district court may consider "all relevant circumstances." *State by Head v. Paulson*, 188 N.W.2d 424, 426 (Minn. 1971). These circumstances include factors, such as "[t]he time and labor required," "the fees customarily charged for similar services," and "the experience, character, reputation, and ability of counsel." *Kittler & Hedelson v. Sheehan Prop., Inc.*, 203 N.W.2d 835, 839 (Minn. 1973). Attorney hours worked that are "excessive, redundant, or otherwise unnecessary should be excluded from fee request hours." *Shepard v. City of St. Paul*, 380 N.W.2d 140, 143 (Minn. App. 1985) (quotation omitted).

Appellants generally argue that Gamma's "billing rates . . . are higher than the fees customarily charged for similar legal services." As an example, appellants note that its legal team's billing rates were lower than the rates for attorneys with a similar level of experience on Gamma's team.

The district court evaluated the attorney fees requested by Gamma by examining Gamma's submission in light of the relevant factors as established in Minnesota caselaw. First, the court determined that the fees that Gamma's counsel charged are customary based on Minneapolis peer-comparison data in the record. The district court also considered the "reputation . . . , years of experience, and area of expertise" of Gamma's legal counsel. The district court then evaluated the time entries with an eye for "redundant or unnecessary" entries. After a careful review and analysis of the time entries, the district court found some of Gamma's requested legal fees to be redundant and unnecessary, and, accordingly, reduced the fees from a request of over $160,000 requested to an award of $145,838.86.

Appellants contend that the district court erred in awarding fees for two particular tasks because attorney time was duplicative: preparing and filing the complaint and obtaining the appointment of a receiver. The district court, which directly dealt with Gamma's attorneys and their filings, was in the best position to determine whether the fees requested for these tasks were duplicative. *See Kelbro*, 893 N.W.2d at 399. In fact, as noted above, the district court reviewed Gamma's fee request in detail and eliminated approximately $14,000 as duplicative. We conclude that the district court did not abuse its discretion in awarding $145,838.86 in attorney fees to Gamma.

In sum, we affirm the district court's decision to enforce the five percent late fee and its award of attorney fees to Gamma.

Affirmed.