STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0967

R&S Crossing, LLC,
Respondent,

vs.

AF Enterprises, LLC, et al.,
Appellants.

Filed January 27, 2020
Affirmed
Cochran, Judge

Dakota County District Court
File No. 19HA-CV-18-4481

Christopher R. Grote, Jenna K. Johnson, Ballard Spahr LLP, Minneapolis, Minnesota (for respondent)

Kassius O. Benson, Sarah B. Perlmutter, Kassius Benson Law, P.A., Minneapolis, Minnesota (for appellants)

Considered and decided by Reilly, Presiding Judge; Bjorkman, Judge; and Cochran, Judge.

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

COCHRAN, Judge

In this breach-of-contract and breach-of-guaranty action, appellants AF Enterprises, LLC, George Ficocello, and Ashok Patel challenge the district court's grant of summary judgment to respondent and the district court's denial of appellants' motion to vacate the

judgment under Minn. R. Civ. P. 60.02. Appellants argue that the district court (1) erred by granting summary judgment when there were genuine issues of material fact, and (2) abused its discretion in denying rule 60.02 relief. We affirm.

FACTS

In November 2016, appellant AF Enterprises, LLC (AF) entered into a 60-month commercial lease with landlord-respondent R&S Crossings, LLC (R&S) to rent a premises (the premises). Appellants George Ficocello and Ashok Patel signed a personal guaranty, which guaranteed full performance of AF's obligations under the lease.

In March 2018, R&S brought an eviction action in housing court against AF. The action was resolved in April pursuant to a written settlement. The settlement agreement provided that "[t]he parties stipulate and agree that they are settling only claims regarding the possession of the Leased Premises. The parties neither release [n]or waive any contract claims under the Lease [or] the Lease Guarantees." The settlement agreement also provided that AF agreed to "terminate the tenancy and vacate the premises by June 1, 2018."

In October 2018, R&S commenced a civil suit that asserted claims of breach of contract against AF (for breach of the lease) and breach of contract against Ficocello and Patel (for breach of the guaranty), and sought a declaratory judgment against all parties declaring the rights and obligations under the lease and guaranty. R&S alleged that AF vacated the premises on June 1, 2018, that AF breached the lease by failing to make monthly payments required under the lease since June 2018, and that Ficocello and Patel

breached the guaranty agreement by failing to satisfy the guaranty and make the payments that AF had failed to make.

Appellants filed an answer that admitted to the existence of the lease, admitted that AF made late rent payments during the lease term, and admitted that AF had not paid rent since June 2018. Appellants denied that they were obligated to make any payments under the lease after AF and R&S entered into the settlement agreement. They asserted a defense that alleged that the settlement agreement terminated their obligation to pay monthly rent because the agreement noted that AF "agrees to terminate the tenancy." They alleged that enforcing the lease after the settlement agreement was unconscionable and that the lease was "void for lack of consideration" after the settlement agreement. AF also asserted a counterclaim that alleged that R&S was liable for damages under Minn. Stat. §§ 504B.172, .178 (2018), due to its refusal to return a $5,000 security deposit.

On January 23, 2019, R&S moved for summary judgment. The district court held a hearing to address the motion on February 21, 2019. Neither appellants nor their attorney appeared for the hearing. R&S's counsel indicated to the district court that, although the appellants had not filed an answer to the December amended complaint or a response to the summary judgment motion, the e-filing system showed that appellants' counsel had accessed the summary judgment motion. The district court heard R&S's arguments for summary judgment and took the matter under advisement.

On February 22, 2019, the district court entered an order granting R&S's motion for summary judgment and dismissing the counterclaims. The order directed entry of judgment of sums due under the lease, directed R&S to submit an affidavit setting forth

any other sums due under the lease (including unpaid rent accrued while the litigation was pending, attorney's fees, and litigation expenses) to be determined at a later date, and granted a declaratory judgment providing that appellants remain liable for any obligations arising for the remainder of the lease term.

On March 15, 2019, appellants brought a motion to vacate the judgment under Minn. R. Civ. P. 60.02(a), which provides the district court the discretion to relieve a party from final judgment because of "[m]istake, inadvertence, surprise, or excusable neglect." Appellants asserted that they had several defenses to R&S's claims for breach of contract, including unjust enrichment, estoppel, and other challenges to the validity of the lease following the settlement agreement. Appellants also asserted that there was a reasonable excuse for failing to respond to the summary judgment motion.

The district court held a hearing on the motion to vacate on April 23, 2019. On April 25, 2019, the district court filed an order that denied the motion to vacate. The district court entered final judgment on June 19, 2019, which included the additional sums referenced in the order granting summary judgment.

AF, Ficocello, and Patel appeal, arguing that the district court erred in granting summary judgment and abused its discretion in denying the motion to vacate.

D E C I S I O N

Appellants argue that the district court erred by granting summary judgment regarding AF's obligations under the lease—and therefore Ficocello and Patel's obligations under the personal guaranty—and by denying the appellants' motion to vacate

the judgment under Minn. R. Civ. P. 60.02(a). We first address the argument concerning summary judgment and then turn to the order denying the motion to vacate.

I. The district court did not err in granting summary judgment in R&S's favor.

Appellants argue that the district court erred in granting summary judgment because the lease was ambiguous when considered with the terms of the settlement agreement. R&S disagrees that there is any ambiguity or that there is any disputed issue of material fact precluding summary judgment. R&S maintains that the settlement agreement expressly provided that the agreement only settled claims regarding possession of the premises and that appellants remained liable for rent under the lease even after they vacated the premises. Consequently, R&S argues that the district court did not err in granting summary judgment because there was no dispute that appellants breached their obligations under the lease and guaranty.

A district court must grant summary judgment if the "movant shows that 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. Appellate courts review the grant of summary judgment de novo to determine "whether there are genuine issues of material fact and whether the district court erred in its application of law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). To preclude summary judgment, a "genuine issue" of material fact must be established by substantial evidence. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997). A reviewing court views the evidence in the light most favorable to the party against whom summary judgment was granted. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). "All doubts

and factual inferences must be resolved against the moving party." *Montemayor*, 898 N.W.2d at 628. Summary judgment is "inappropriate when reasonable persons might draw different conclusions from the evidence presented." *Id.* (quotation omitted).

There is no doubt that, under the terms of the lease viewed in isolation, appellants remained liable for rent until the expiration of the lease term and therefore that failure to pay rent constituted a breach of the lease. By its terms, the lease required AF to pay monthly rent and certain other additional charges during the 60-month lease term. Thus, in our de novo review, we must consider whether the district court erred by concluding that there was no genuine issue of material fact regarding whether the settlement agreement terminated appellants' rent obligations under the lease and the guaranty. We are not persuaded by appellants' arguments that a genuine issue of material fact existed.

A settlement agreement is itself a contract. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 581-82 (Minn. 2010). The goal of interpreting a contract is to determine the intent of the parties. *Id.* at 582. The construction and effect of a contract is a question of law unless the contract is ambiguous. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003). Whether a contract is ambiguous is also a question of law. *Id.* "The terms of a contract are ambiguous if they are susceptible to more than one reasonable interpretation. A contract's terms are not ambiguous simply because the parties' interpretations differ." *Staffing Specifix, Inc. v. Tempworks Mgmt. Servs., Inc.*, 913 N.W.2d 687, 692 (Minn. 2018) (citation omitted). If a contract is ambiguous, parties may introduce parol evidence to determine intent, and summary judgment is not appropriate. *Dykes*, 781 N.W.2d at 582; *see also Donnay v. Boulware*, 144 N.W.2d 711,

716 (Minn. 1966) ("It is generally recognized that summary judgment is not appropriate where the terms of a contract are at issue and any of its provisions are ambiguous or uncertain.").

To support their argument that the district court erred in concluding that the settlement agreement did not terminate AF's obligations under the lease, appellants point to a provision in the agreement that provides that "[t]enant agrees to terminate the tenancy and vacate the premises on or before June 1, 2018." In response, R&S highlights the first provision of the settlement agreement, which provides that "[t]he parties stipulate and agree that they are settling only claims regarding the possession of the Leased Premises. The parties neither release [n]or waive any contract claims under the Lease [or] the Lease Guarantees." Based on this provision, R&S argues that the lease was not terminated by the settlement agreement and that appellants remained obligated to pay rent under the lease. After reviewing both the settlement agreement and the provisions of the lease, we conclude that the settlement agreement unambiguously did not relieve AF of its rent obligation under the lease.

It is a "basic rule of contract interpretation" that a contract must be interpreted to give effect to all of its provisions. *Metropolitan Airports Comm'n v. Noble*, 763 N.W.2d 639, 645 (Minn. 2009). Here, the first provision of the settlement agreement expressly and unambiguously states that "[t]he parties stipulate and agree that they are *settling only claims regarding the possession* of the Leased Premises. The parties neither release [n]or waive any contract claims under the Lease [or] the Lease Guarantees." (Emphasis added). We find no ambiguity in the provision and conclude that the agreement clearly and

unambiguously states the intent of the parties to settle "only claims regarding the possession of the Leased Premises."

We also conclude that the settlement agreement is not ambiguous based on the provision that "[t]enant agrees to terminate the tenancy and vacate the premises on or before June 1, 2018." While the use of the phrase "terminate the tenancy" in isolation may appear to relieve AF of any obligation under the lease, the language of the lease is inconsistent with that interpretation. The default provisions of the lease specify that if AF vacated the premises, R&S could relet the premises without accepting AF's surrender of the premises, and could require AF to pay R&S for any deficiency between the rent collected from the new tenants and the rent provided for under the lease. The lease also provides that R&S could "terminate" the lease, take possession of the premises, remove AF, and determine loss and damages under two alternative measures of damages. One measure of damages contemplates that R&S would attempt to relet the premises, and that until the premises was relet, AF would pay rent each month as provided by the lease. Thus, it appears that the use of the word "terminate" in the settlement agreement was not intended to relieve AF of its obligation to pay rent under the lease going forward.

Considering the clear statement of intent in the settlement agreement, and the default provisions of the lease, we conclude that no genuine issues of material fact exist regarding whether the settlement agreement terminated AF's rent obligations under the lease. Neither the settlement agreement nor the lease are ambiguous. We also conclude that the district court did not err as a matter of law in interpreting the contract to require AF to pay monthly rent after the settlement agreement—as described above, we reach the same conclusion in

our de novo review. Because no genuine issues of material fact existed and because the district court properly applied the law in interpreting the contracts, we conclude that the district court did not err in granting summary judgment to R&S on its breach-of-lease and breach-of-guaranty contract claims based on the conclusion that AF breached the lease by failing to pay rent obligations owed under the lease.

We also conclude that the district court did not err by dismissing appellants' counterclaim against R&S alleging a wrongful retention of AF's security deposit. Appellants' briefing on this point is inadequate and, consequently, waived. *See State Dept. of Labor and Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997). But we also note that the counterclaim is meritless. The counterclaim asserted was based on statutes that apply only to residential leases. *See* Minn. Stat. §§ 504B.172, .178; *see also Kaeding v. Auleciems*, 886 N.W.2d 658, 664 (Minn. App. 2016) (noting that section 504B.178 "governs security deposits in residential rental agreements"). Because these statutes do not apply to the commercial lease at issue here, the district court did not err in dismissing the claims.

II. The district court did not abuse its discretion by denying appellants' motion to vacate the judgment.

Appellants argue that the district court abused its discretion by denying their motion to vacate under Minn. R. Civ. P. 60.02(a). Rule 60.02(a) provides that the court may relieve a party from a final judgment and order a new trial or grant other relief in the event of "[m]istake, inadvertence, surprise, or excusable neglect." Whether relief under this rule is appropriate is "committed to the sound discretion of the district court and is based upon all

the surrounding circumstances of each case." *Cole v. Wutzke*, 884 N.W.2d 634, 637 (Minn. 2016).

A party seeking to set aside summary judgment under Rule 60.02(a) must:

> (1) Possess a reasonable defense on the merits, (2) have a reasonable excuse for the failure or neglect involved, (3) have acted with due diligence after notice of the entry of judgment, and (4) show that no substantial prejudice will result to the other party.

Carter v. Anderson, 554 N.W.2d 110, 115 (Minn. App. 1996), *review denied* (Minn. Dec. 23, 1996) (emphasis omitted). These factors are known as the *Finden* factors, based on the opinion in *Finden v. Klaas*, 128 N.W.2d 748 (Minn. 1964). A party seeking relief under Minn. R. Civ. P. 60.02(a) must establish *all* four *Finden* factors. *Cole*, 884 N.W.2d at 637; *see also Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016) (rejecting the notion that a party seeking relief under Minn. R. Civ. P. 60.02 need not "categorically establish all four" of the *Finden* factors (quotation omitted)). The district court determined that appellants failed to establish the first and second *Finden* factors, and that relief was therefore not warranted under Rule 60.02(a).

Appellants argue that the district court abused its discretion when it concluded that they failed to establish the first two *Finden* factors. Based on our careful review of the record, we conclude that the district court correctly determined that appellants failed to establish the first *Finden* factor—that they possessed a reasonable defense on the merits. Given that appellants failed to establish this *Finden* factor, we need not address their arguments on the second factor because failure to establish one *Finden* factor is fatal to a motion to vacate under Minn. R. Civ. P. 60.02(a). *Id.*

In their motion to vacate, appellants raised three specific defenses: unjust enrichment, equitable estoppel, and a theory that the lease was unconscionable under the circumstances. In denying the motion to vacate, the district court rejected these defenses, concluding that appellants relied "on conclusory statements, often sounding in equity." We address each defense raised by appellants in turn.

A. Unjust Enrichment

"Unjust enrichment is an equitable doctrine that allows a plaintiff to recover a benefit conferred upon a defendant when retention of the benefit is not legally justifiable. It is commonly referred to as a quasi-contract or a contract implied-in-law claim." *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 838 (Minn. 2012). But unjust enrichment does "not apply when there is an enforceable contract that is applicable." *Id.* The supreme court has explained:

> To establish an unjust enrichment claim, the claimant must show that the defendant has knowingly received or obtained something of value for which the defendant in equity and good conscience should pay. Unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term 'unjustly' could mean illegally or unlawfully.

ServiceMaster of St. Cloud v. GAB Business Servs., Inc., 544 N.W.2d 302, 306 (Minn. 1996) (citations and quotations omitted).

Unjust enrichment is an affirmative claim, not a defense. Moreover, a contract (the lease) existed here, and thus, unjust enrichment is inapplicable. Because unjust enrichment is neither a defense to R&S's claims nor applicable under these circumstances, the district

court did not abuse its discretion by determining that appellants' assertion of this "defense" did not demonstrate a reasonable defense on the merits.

B. Equitable Estoppel

"Equitable estoppel prevents the assertion of otherwise valid rights where one has acted in such a way as to induce another party to detrimentally rely on those actions." *Pollard v. Southdale Gardens of Edina Condo. Ass'n, Inc.*, 698 N.W.2d 449, 454 (Minn. App. 2005) (quotation omitted). A party seeking to invoke the doctrine must prove: "(1) that promises or inducements were made; (2) that they reasonably relied upon the promises; and (3) that they will be harmed if estoppel is not applied." *Id.* The application of the doctrine is ordinarily a question of fact, "unless only one inference may be drawn from the facts." *Id.*

There is no evidence to support the claim of equitable estoppel in the record—only a conclusory claim by appellants in their motion to vacate that "promises were made that the eviction dispute was settled and an accord and satisfaction was reached." Appellants did not submit an affidavit demonstrating the claimed promises. Nor did they submit any other evidence to support their claim that R&S made promises.

Relying on *Charson v. Temple Israel*, 419 N.W.2d 488 (Minn. 1988), appellants argue that their mere assertion that promises were made is sufficient "specific information" to establish a reasonable defense on the merits. We conclude that *Charson* is distinguishable and does not support appellants' position. The party seeking to vacate a judgment under Minn. R. Civ. P. 60.02(a) must "establish to the satisfaction of the court that it possesses a meritorious claim." *Charson*, 419 N.W.2d at 491. "[T]he existence of

a meritorious claim must ordinarily be demonstrated by *more than conclusory allegations in the moving papers*." *Id.* (emphasis added). In *Charson*, the record as a whole established the existence of a meritorious claim. *Id.* at 492. Here, the only evidence of promises made by R&S surrounding the settlement agreement is a conclusory allegation in appellants' moving papers.

Because there is no evidence in the record to support appellants' claim that equitable estoppel provides a reasonable defense to R&S's claims, we conclude that the district court did not abuse its discretion in dismissing this alleged defense in denying appellants' motion to vacate.

C. Unconscionable Contract

Finally, appellants assert that the lease is unenforceable because its terms are unconscionable. "Whether a contract provision is unconscionable is a question of law for the court." *Osgood v. Medical, Inc.*, 415 N.W.2d 896, 901 (Minn. App. 1987), *review denied*, (Minn. Feb. 12, 1988). "A contract is unconscionable if it is such as no man in his senses and not under delusion would make on the one hand, and no honest and fair man would accept on the other." *Overholt Crop. Ins. Serv. Co., Inc. v. Bredeson*, 437 N.W.2d 698, 702 (Minn. App. 1989) (quotation omitted). Appellants' briefing on this issue is scant. They make no argument regarding the applicable law. The record is also devoid of any evidence supporting appellants' claim that the lease is unconscionable. It appears that appellants argue that the lease is unconscionable because they are required to pay "damages" in the form of rent after vacating the premises.

But appellants are not required to "pay damages in exchange for nothing" as they assert in their brief. When they entered into the lease agreement with R&S, they enjoyed the benefit of possessing the property and operating a business there. The lease contemplated that, if AF breached, it was liable for rent under the contract until R&S leased the property to a new tenant. The lease mitigates the damages by reducing AF's liability under the lease by the rents collected from new tenants once R&S relets the premises. Without any evidence of unconscionability, and considering only the general arguments made by appellants, we cannot say that no reasonable person would enter into the lease, and therefore conclude that the district court did not abuse its discretion in concluding that unconscionability was not a reasonable defense to R&S's claims.

In summary, the district court did not abuse its discretion in determining that AF did not possess a reasonable defense on the merits and that AF did not present any evidence that would have prevented entry of summary judgment. Because appellants did not present sufficient evidence to demonstrate that they possessed a reasonable defense on the merits, it was not appropriate to vacate the summary judgment under Minn. R. Civ. P. 60.02(a). *See Gams*, 884 N.W.2d at 620.

Affirmed.