STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1593

SVAP III Riverdale Commons LLC, a Delaware limited liability company,
Respondent,

vs.

Coon Rapids Gyms, LLC, dba Xperience Fitness, a Minnesota limited liability company,
Appellant.

Filed September 27, 2021
Affirmed
Johnson, Judge

Anoka County District Court
File No. 02-CV-20-3652

Nicholas H. Callahan, Barack, Ferrazzano, Kirschbaum & Nagelberg, L.L.P., Minneapolis, Minnesota (for respondent)

Kevin D. Hofman, Rory C. Mattson, Messerli & Kramer, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Bryan, Judge; and Frisch, Judge.

SYLLABUS

A commercial tenant may not defend against an eviction action alleging non-payment of rent by asserting the common-law doctrines of impossibility or frustration of purpose.

OPINION

JOHNSON, Judge

In March 2020, the governor issued an emergency executive order that required gymnasiums and fitness centers to be temporarily closed to the public because of the COVID-19 pandemic. A company that was leasing commercial space for use as a fitness center stopped paying rent while the fitness center was closed to the public. The landlord filed an eviction action based on the tenant's non-payment of rent. The tenant argued to the district court that its obligation to pay rent was excused by the common-law doctrines of impossibility and frustration of purpose and by the landlord's alleged prior breach of the lease. The district court granted the landlord's motion for summary judgment and issued a writ of recovery. We affirm.

FACTS

SVAP III Riverdale Commons L.L.C. (hereinafter SVAP) is a Delaware company that owns a shopping center known as Riverdale Commons, which is in the city of Coon Rapids. Coon Rapids Gyms L.L.C. (hereinafter CRG), is a Minnesota company that operates one or more fitness centers known as Xperience Fitness.

In December 2017, CRG entered into a written lease agreement for space in Riverdale Commons for use as a fitness center. CRG leased the premises for a ten-year term, beginning July 1, 2019.

On March 13, 2020, the governor issued Emergency Executive Order (EEO) 20-01, which declared a peacetime emergency due to the COVID-19 pandemic. Emerg. Exec. Order No. 20-01, *Declaring a Peacetime Emergency & Coordinating Minnesota's Strategy*

to Protect Minnesotans from COVID-19, at 2-3 (Mar. 13, 2020). On March 16, 2020, the governor issued EEO 20-04, which ordered that certain places of public accommodation be closed to the public no later than the following day, including "[g]ymnasiums, fitness centers, recreation centers, indoor sports facilities, indoor exercise facilities, exercise studios, and spas." Emerg. Exec. Order No. 20-04, *Providing for Temporary Closure of Bars, Restaurants, & Other Places of Public Accommodation*, at 2 (Mar. 16, 2020).

CRG complied with EEO 20-04 by temporarily closing Xperience Fitness. CRG gave notice to SVAP that, in light of the temporary closure, CRG's "performance will be delayed and/or suspended accordingly." While Xperience Fitness was temporarily closed, CRG continued to have access to the leased premises and kept its exercise equipment and other property on the premises. Xperience Fitness reopened in mid-June 2020, when CRG was allowed by EEO 20-74 to resume operations to a limited extent. *See* Emerg. Exec. Order No. 20-74, *Continuing to Safely Reopen Minnesota's Economy & Ensure Safe Non-Work Activities During the COVID-19 Peacetime Emergency*, at 6-11 (June 5, 2020).

CRG receives revenue from customers of Xperience Fitness in the form of monthly dues. In March 2020, CRG received monthly dues totaling $142,974 from customers of the Coon Rapids Xperience Fitness. In April and May of 2020, CRG suspended the collection of dues from customers of the Coon Rapids Xperience Fitness. In June 2020, when Xperience Fitness re-opened at reduced capacity, CRG collected $8,198 in dues from customers of the Coon Rapids Xperience Fitness.

The parties' lease agreement required CRG to pay rent in the amount of $63,031 per month between April and July of 2020. CRG did not pay any rent to SVAP for the months

of April, May, June, and July of 2020. On July 29, 2020, SVAP sent CRG a notice of default, which stated that the lease would be terminated unless CRG paid the overdue rent within 30 days. CRG resumed making monthly rent payments in August 2020 but did not cure the default by paying the rent owed for the months of April through July of 2020.

In September 2020, SVAP commenced this eviction action. In October 2020, both parties moved for summary judgment. CRG argued that its obligation to pay rent to SVAP for the months of April through July of 2020 should be excused based on the doctrines of impossibility and frustration of purpose and on SVAP's non-performance of its contractual obligation to provide premises that could be used as a fitness center. SVAP argued that it was entitled to possession of the premises because CRG had, without justification, not paid rent. SVAP also argued that CRG could not establish impossibility and frustration of purpose and that SVAP had complied with its lease obligations.

In December 2020, the district court filed an order in which it granted SVAP's motion and denied CRG's motion. The district court noted that it was undisputed that CRG had not paid rent for the months of April through July 2020. The district court reasoned that CRG could not apply the doctrines of impossibility and frustration of purpose in an eviction action but may be able to assert them in an action by SVAP to recover unpaid rent. The district court also reasoned that SVAP did not breach the lease agreement because it "continually upheld its end of the Lease by providing possession of the Premises to the Tenant." The district court ordered the entry of judgment in favor of SVAP and ordered the issuance of a writ of recovery. CRG appeals.

ISSUES

I. May CRG, a commercial tenant, defend against SVAP's eviction action alleging non-payment of rent by asserting the common-law doctrines of impossibility or frustration of purpose?

II. May CRG defeat SVAP's eviction action on the ground that SVAP breached the lease agreement by not providing CRG with access to the leased premises for their intended purposes?

ANALYSIS

CRG argues that the district court erred by granting SVAP's motion for summary judgment. A district court must grant a motion for 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. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the non-moving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court applies a *de novo* standard of review to the district court's legal conclusions on summary judgment and views the evidence in the light most favorable to the party against whom the motion was granted. *Commerce Bank v. West Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

I.

CRG first argues that the district court erred on the ground that its evidence creates a genuine issue of material fact with respect to the doctrines of impossibility and frustration

of purpose. In response, SVAP argues that the doctrines of impossibility and frustration of purpose do not apply.

Because this is an eviction action, we begin our analysis with chapter 504B of the Minnesota Statutes. The applicable statute provides, "A landlord may bring an eviction action for nonpayment of rent . . . ." Minn. Stat. § 504B.291, subd. 1(a) (2020). The same statute provides that a tenant may defend against such an action by proving that rent actually has been paid. *See id.* (discussing rebuttable presumption in third, fourth, and fifth sentences). Also, "the tenant may, at any time before possession has been delivered," avoid a finding of non-payment "by paying . . . the amount of the rent that is in arrears, with interest, costs of the action, and an attorney's fee not to exceed $5." *Id.* In addition, if a landlord seeks eviction based on both a lease violation and non-payment of rent but does not prove the alleged lease violation, the tenant "shall be permitted to present defenses to the court that the rent is not owing." Minn. Stat. § 504B.285, subd. 5(c) (2020).

In addition, caselaw illustrates that a tenant may defend against an eviction action alleging non-payment of rent by proving that rent is not unpaid because it is not due. *See, e.g.*, *ACC OP (University Commons), LLC v. Rodriguez*, 906 N.W.2d 509, 511-12 (Minn. App. 2017) (holding that landlord could not evict tenant for non-payment of rent based on unpaid attorney fees exceeding statutory limit of five dollars); *Mac-Du Props. v. LaBresh*, 392 N.W.2d 315, 317-18 (Minn. App. 1986) (holding that tenant may not be obligated to pay rent because of condition precedent in lease stating that rent is due 30 days after issuance of certificate of occupancy), *rev. denied* (Minn. Oct. 29, 1986); *cf. University Cmty. Props., Inc. v. New Riverside Cafe*, 268 N.W.2d 573, 574 (Minn. 1978) (noting that

jury rejected tenant's affirmative defense "that nonpayment of rent was pursuant to an alleged oral agreement [that] allowed [tenant] to make repairs and offset that cost against rent"). But if rent is due and unpaid, the analysis is straightforward and clear: "Where the plaintiff shows defendant in possession under a lease, and failure to pay the stipulated rent, his cause of action under the statute is complete. The defenses that can be interposed are strictly limited." *Leifman v. Percansky*, 243 N.W. 446, 448 (Minn. 1932) (citations omitted).

The eviction statute expressly provides for only one affirmative defense in an eviction action based solely on non-payment of rent. Specifically, the statute allows a tenant to defeat such an action if the tenant proves "that the plaintiff increased the tenant's rent or decreased the services as a penalty in whole or part" because of the tenant's "good faith attempt to secure or enforce rights under a lease" or "good faith report to a governmental authority of the plaintiff's violation of a health, safety, housing, or building code or ordinance." Minn. Stat. § 504B.285, subds. 2, 3.

The absence of additional affirmative defenses is consistent with the limited nature and purpose of an eviction action. The eviction statute defines the term "eviction" to mean "a summary court proceeding to remove a tenant or occupant from or otherwise recover possession of real property." Minn. Stat. § 504B.001, subd. 4 (2020); *see also University Cmty. Props., Inc. v. Norton*, 246 N.W.2d 858, 860 (Minn. 1976) (stating that purpose of then-existing eviction statute was "to provide a summary proceeding to quickly determine the present right to possession of premises"). The summary nature of an eviction action is made clear by the fact that the summons must specify the date of a hearing, Minn. Stat.

§ 504B.321, subd. 1(c) (2020), and the district court must "hear and decide the action" at that hearing, unless a continuance is granted, Minn. Stat. § 504B.335(a) (2020), but a continuance in an action alleging non-payment of rent may be "no more than six days unless all parties consent to longer continuance," Minn. Stat. § 504B.341(a) (2020). The scope of an eviction action is especially narrow if the tenant has only a leasehold interest in the property and has no basis for alleging an ownership interest or equitable interest.[1]

In this case, SVAP sought to evict CRG based on CRG's non-payment of rent. CRG does not attempt to identify a provision in the eviction statute that would allow it to avoid eviction on the grounds of impossibility or frustration of purpose, despite its non-payment of rent for the months of April through July of 2020. The only relevant factual issue is whether CRG has or has not paid rent that is due to SVAP. *See* Minn. Stat. § 504B.291, subd. 1(a); *Leifman*, 243 N.W. at 448.

CRG also has not cited any caselaw for the proposition that a tenant may defeat an eviction action by establishing the common-law doctrines of impossibility or frustration of purpose. It appears that the supreme court has recognized only two common-law affirmative defenses to an eviction action. First, in *Fritz v. Warthen*, 213 N.W.2d 340 (Minn. 1973), the supreme court held that a residential tenant may defend against an

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[1]Eviction actions that follow a mortgage foreclosure or cancellation of a contract for deed sometimes raise additional issues that are not present in this case. *See, e.g.*, *Deutsche Bank Nat'l Trust Co. v. Hanson*, 841 N.W.2d 161, 164-66 (Minn. App. 2014); *Bjorklund v. Bjorklund Trucking, Inc.*, 753 N.W.2d 312, 317-20 (Minn. App. 2008), *rev. denied* (Minn. Sept. 23, 2008); *Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352, 355-59 (Minn. App. 2006); *Fraser v. Fraser*, 642 N.W.2d 34, 39-41 (Minn. App. 2002); *Amresco Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444, 445-46 (Minn. App. 2001).

eviction action by asserting that rent payments should be excused because the landlord breached the statutory covenant of habitability. *Id.* at 340-43; *see also Ellis v. Doe*, 924 N.W.2d 258, 261 (Minn. 2019) (describing defense recognized in *Fritz* as "common-law right"). Second, in *Central Housing Associates, LP v. Olson*, 929 N.W.2d 398 (Minn. 2019), the supreme court held that residential tenants "have a common-law defense to landlord evictions in retaliation for tenant complaints about material violations by the landlord of state or local law, residential covenants, or the lease." *Id.* at 409. The common-law defenses recognized in *Fritz* and *Olson* plainly do not apply in this case. Those defenses are limited to residential leases; they do not extend to commercial leases. *See Olson*, 929 N.W.2d at 409; *Fritz*, 213 N.W.2d at 341-42. In addition, the defenses recognized in *Fritz* and *Olson* do not incorporate the doctrines of impossibility or frustration of purpose.

We are disinclined to recognize for the first time common-law affirmative defenses of impossibility or frustration of purpose in an eviction action alleging non-payment of rent. In *Olson*, the supreme court stated that it is "generally reluctant to recognize a new common-law right or remedy." 929 N.W.2d at 408. This court is even more reluctant to do so. We have stated many times that "the task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court." *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *rev. denied* (Minn. Dec. 18, 1987); *see also Otto v. Commissioner of Pub. Safety*, 924 N.W.2d 658, 661 (Minn. App. 2019); *Forslund v. State*, 924 N.W.2d 25, 35 (Minn. App. 2019). Furthermore, the present eviction statute does not expressly allow defendants to plead "all matters in excuse, justification, or avoidance," as

was true when the *Fritz* opinion was issued. *See Fritz*, 213 N.W.2d at 342 (quoting Minn. Stat. § 566.07). Rather, the present eviction statute omits such language and states that "the defendant may answer the complaint" "[a]t the court appearance specified in the summons," *i.e.*, the hearing at which "the court shall hear and decide the action." Minn. Stat. § 504B.335(a). Accordingly, we decline CRG's request that we recognize impossibility and frustration of purpose as affirmative defenses to an eviction action based on non-payment of rent. In light of that conclusion, we need not analyze the requirements of the doctrines of impossibility or frustration of purpose or the evidence that might be relevant to those doctrines.

Thus, CRG may not defend against SVAP's eviction action by asserting the common-law doctrines of impossibility or frustration of purpose.[2]

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[2]We note, however, that nothing in this opinion would prevent CRG from asserting impossibility or frustration of purpose in another type of action, such as an action by SVAP to recover damages for CRG's unpaid rent, an action by CRG for reformation or rescission, or an action by CRG alleging ejectment. *See, e.g.*, *Berg v. Wiley*, 226 N.W.2d 904, 906-07 (Minn. 1975) (holding that tenant may not use eviction statute to take repossession of leased premises after lock-out but stating in *dicta* that tenant's "proper remedy . . . was an ejectment action"); *Strupp v. Canniff*, 150 N.W.2d 574, 575-76 (Minn. 1967) (per curiam) (considering but rejecting tenant's constructive-eviction defense to landlord's action for damages); *Cohen v. Conrad*, 124 N.W. 992, 993-94 (Minn. 1910) (considering but rejecting tenant's defense to landlord's action for damages that rent was not owing because lease was void). Because of the limited scope of an eviction action, a judgment entered in an eviction action "is not a bar to an action involving the title to the property [or] an action to maintain or enforce equitable rights therein." *William Weisman Holding Co. v. Miller*, 188 N.W. 732, 733 (Minn. 1922).

II.

CRG also argues that the district court erred on the ground that its evidence creates a genuine issue of material fact with respect to its claim that SVAP breached the lease agreement by not providing CRG with access to the leased premises for the intended purposes. In response, SVAP argues that it fully performed its lease obligations.

Again, CRG does not attempt to identify a provision in the eviction statute that would allow it to avoid eviction on the grounds asserted, despite its non-payment of rent for the months of April through July of 2020. Again, the only relevant factual issue is whether CRG has or has not paid rent that is due to SVAP. *See* Minn. Stat. § 504B.291, subd. 1(a); *Leifman*, 243 N.W. at 448.

In addition, caselaw illustrates that CRG may not avoid eviction by proving that SVAP breached the lease agreement. CRG's argument is similar to the argument of the tenant in *Leifman*, who sought to prove that he had been constructively evicted because he was prevented from using some of the premises described in the lease agreement. *Id.* at 447. The supreme court rejected the tenant's argument on the ground that the tenant continued to use the leased premises, stating: "There can be no constructive eviction without the abandonment by the tenant of the leased premises. In such case the tenant remains liable for all rent which accrues during his occupancy." *Id.* CRG's argument also is similar to the argument of the tenant in *Carlson Real Estate Co. v. Soltan*, 549 N.W.2d 376 (Minn. App. 1996), *rev. denied* (Minn. Aug. 20, 1996). In that case, the tenant defended against an eviction action by arguing that the landlord committed a prior breach of certain lease provisions, which prevented the tenant from using the leased premises. *Id.*

at 379-80. This court rejected the tenant's argument, stating that "although [the landlord's] breach might well have justified [the tenant] in terminating the lease, the breach does not justify [the tenant] in continuing the relationship under a new or modified charter." *Id.* at 380. We stated further that the tenant's proper remedies for the landlord's prior breach are "damages or termination of the lease." *Id.* In this case, CRG has not abandoned the premises. Rather, CRG seeks to retain possession of the premises but to be excused from its obligation to pay rent for the months of April through July of 2020. CRG's defense is foreclosed by *Leifman* and *Carlson Real Estate*.

Furthermore, CRG's argument that SVAP breached the lease agreement is without merit. CRG identifies only one provision of the lease that allegedly was breached: section 1.6. The primary purpose of section 1.6 is to restrict CRG's use of the leased premises to "only the operation of a fitness center and workout facility with amenities and services consistent with a typical gym operation." CRG relies on a sentence in section 1.6 that states, "Landlord represents and warrants to Tenant" that certain use restrictions in three exhibits to the lease "are the only restrictions affecting Tenant's use" and that "such Use Restrictions do not prohibit the use of the Premises for the Permitted use." SVAP did not breach that provision of section 1.6 because the specified use restrictions are the only *contractual* restrictions affecting CRG's use of the leased premises. Nothing in the lease agreement makes SVAP responsible for the temporary changes in law arising from the emergency executive orders. Indeed, another provision of the lease states that CRG is required to "comply with any and all requirements of any public authority, and with the terms of any State or Federal law, statute or local ordinance or regulation applicable to

Tenant for its use, safety, cleanliness or occupation of the Premises." Accordingly, SVAP did not take any action that prohibited or restricted CRG's use of the leased premises.

Thus, CRG may not defeat SVAP's eviction action on the ground that SVAP committed a prior breach of the lease agreement unless CRG has abandoned the leased premises, and there is no genuine issue of material fact as to whether SVAP breached the lease agreement.

DECISION

In sum, the district court did not err by granting SVAP's motion for summary judgment.

Affirmed.