

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0963**

Wilmington Trust, National Association,
Respondent,

vs.

700 Hennepin Holdings, LLC,
Respondent,

Gregg Williams, as receiver for 700 Hennepin Holdings, LLC,
Respondent,

Anytime Restoration, Inc.,
Defendant,

Seven Acquisition, LLC,
Appellant.

**Filed March 7, 2022
Reversed and remanded
Segal, Chief Judge**

Hennepin County District Court
File No. 27-CV-20-11149

Mark W. Vyvyan, Kyle W. Ubl, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for respondent Wilmington Trust, National Association)

Thomas F. DeVincke, Malkerson Gunn Martin LLP, Minneapolis, Minnesota (for respondent 700 Hennepin Holdings, LLC)

Michael W. Kaphing, Taft Stettinius & Hollister LLP, Minneapolis, Minnesota (for respondent Gregg Williams)

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Considered and decided by Segal, Chief Judge; Ross, Judge; and Larkin, Judge.

SYLLABUS

When a receiver appointed under the receivership statute, Minn. Stat. §§ 576.21-.53 (2020), seeks to enforce provisions of an executory contract that was entered into before the receivership, the receiver is bound by a mandatory arbitration provision in the contract to the same extent that the party subject to the receivership would have been bound but for the receivership.

OPINION

SEGAL, Chief Judge

Appellant Seven Acquisition, LLC (Seven) is a tenant in a building subject to a mortgage held by respondent Wilmington Trust, National Association. Wilmington Trust brought a foreclosure action against its mortgagor, respondent 700 Hennepin Holdings, LLC (700 Hennepin), the owner of the building. Pursuant to a stipulation between Wilmington Trust and 700 Hennepin, the district court appointed a limited receiver, respondent Gregg Williams (the receiver), with the power to collect rent from Seven, among other powers.

Seven challenges a district court order granting the receiver's motion to direct the payment of rent by Seven. Seven asserts that the district court erred by determining that (1) the receiver was not bound by a mandatory arbitration provision in the lease between Seven and 700 Hennepin, and (2) Seven could not assert a defense of recoupment to the rent-payment motion. Because we conclude that the receiver is bound by the arbitration provision in the lease to the same extent as 700 Hennepin would have been but for the receivership, we reverse and remand.

FACTS

In January 2017, Seven entered into a lease to operate a restaurant in the building located at 700 Hennepin Avenue (the building) in downtown Minneapolis. 700 Hennepin purchased the building and assumed the lease with Seven in November 2017.

When 700 Hennepin purchased the building, it had an inspection performed by a structural engineer. The engineer noted that there were obvious signs of “water leaking at the roof level” and recommended that 700 Hennepin further investigate and repair the leak. 700 Hennepin did not act on the recommendation. Beginning in January 2018, the water leaks became increasingly frequent and intense, with water leaking into various areas of the restaurant.

Despite Seven’s request that 700 Hennepin make repairs to prevent the leaks, 700 Hennepin failed to do so. In 2019, a pipe burst and caused extensive water damage to the restaurant, requiring Seven to close for several days for repairs. Seven asked 700 Hennepin to provide the name of its insurer so that Seven could submit a claim for the water damage. 700 Hennepin did not provide the information. Seven then submitted the claim through its own insurer, causing a substantial increase in Seven’s annual insurance premiums.

Seven withheld rent payments because it believed that 700 Hennepin was responsible for the cost of the repairs and Seven’s revenue losses. 700 Hennepin then filed an eviction action in housing court, alleging that Seven owed over \$100,000 in rent. Seven initiated a separate action in district court seeking an order to compel arbitration of the dispute and enjoin the eviction action. The district court granted the relief sought by Seven,

based on its determination that the lease unambiguously required the parties to arbitrate the dispute.

The parties submitted the matter to arbitration, and the arbitrator determined that 700 Hennepin was responsible under the lease for maintenance and repairs to the building's roof, that it had failed to satisfy those obligations, and that Seven was entitled to an award of damages in excess of \$900,000 for business losses and the increase in Seven's insurance premiums. The arbitrator also awarded 700 Hennepin approximately \$140,000 in unpaid rent and determined that the eviction action should be dismissed. The district court confirmed the award and directed that judgment be entered in favor of Seven in the net amount of \$826,070.84.

Shortly before the confirmation of the award, Wilmington Trust, the mortgagee of 700 Hennepin, commenced a foreclosure action in district court against 700 Hennepin. Wilmington Trust did not initially name Seven as a party in the foreclosure action. The district court, based on a stipulation between Wilmington Trust and 700 Hennepin, signed an order appointing the receiver and granting him, among other powers, "[t]he power to oversee all collection of rents and cash flow." The receiver then sent a letter to Seven seeking payment of \$44,199.95, which the receiver claimed as the amount of rent due since the date the receiver was appointed. Seven disputed the rent claim and asserted that a landlord default had occurred because the roof still leaked and Seven was continuing to incur losses as a result.

In response, Wilmington Trust amended the foreclosure action to name Seven as a party. The amended complaint alleged that Seven was in default under the lease because

it failed to make rent payments and that “upon completion of the foreclosure of [the commercial mortgage], Seven’s tenancy will be foreclosed and Seven shall have no further rights to possession of the Property.” The receiver then filed a “Motion for Order Directing Payment of Rent.”

Seven opposed the motion on two grounds. First, Seven argued that the receiver’s claims were subject to the terms of the lease and that the lease required that the dispute be submitted to arbitration for resolution, not to the court. Second, Seven argued that it was entitled to assert the common-law defense of recoupment to the receiver’s claim for rent.

The district court rejected both arguments and granted the receiver’s motion to direct the payment of rent. The district court reasoned that the receiver could not be required to submit the rent dispute to arbitration because the receiver was not a party to the lease and had not agreed to the arbitration provision. The district court explained that compelling arbitration “would necessarily abrogate the Receiver’s ability to exercise his court-appointed authority” to collect rents and protect Wilmington Trust’s “property interests as a mortgag[ee].” Following the same line of reasoning, the district court concluded that Seven could not assert recoupment as a defense to the receiver’s claim for rent because the arbitration-award judgment was against 700 Hennepin, Seven’s landlord, not the receiver.

Seven appeals the district court’s order directing the payment of rent.

ISSUE

Did the district court err in determining that the receiver was not subject to the arbitration clauses in the lease?

ANALYSIS

Seven asserts as its primary issue in this appeal that the district court erred when it failed to require the receiver to submit its claim for rent to arbitration as required by the lease between Seven and 700 Hennepin. Seven contends that this court need not address its second issue—that the district court erred by determining that Seven was not entitled to assert a defense of recoupment—if we rule in Seven’s favor that the dispute is arbitrable. The issues in this appeal are subject to de novo review by this court. *See Glacier Park Iron Ore Props., LLC v. U.S. Steel Corp.*, 961 N.W.2d 766, 771 (Minn. 2021) (stating that determining whether a party has agreed to arbitrate a dispute presents a question of contract interpretation subject to de novo review); *Aaron Carlson Corp. v. Cohen*, 933 N.W.2d 63, 69 (Minn. 2019) (stating that issues of statutory interpretation are reviewed de novo).

Seven maintains that the receiver is required to submit the dispute to arbitration because the receiver’s rights against Seven arise from the lease between Seven and 700 Hennepin, and the receiver has no greater rights than those accorded 700 Hennepin under the lease. Seven contends that, if 700 Hennepin would have been required to submit the demand for the payment of rent to arbitration, then the receiver is likewise bound. Seven argues that the district court erred in its interpretation of the receivership statute, Minn. Stat. §§ 576.21-.53, and that the statute does not give the court the authority to override the arbitration provision in the lease.

The lease here contains two arbitration provisions, one governing the remedies available to the landlord in the event of a tenant default, and the second governing the remedies available to the tenant in the event of a landlord default. The provision governing

the landlord's remedies (the arbitration provision) provides, in relevant part, that if the landlord claims that the tenant is in default and the tenant disputes the default in good faith, then "Landlord shall not exercise any of its remedies provided herein but shall, as its sole remedy, submit such dispute to binding arbitration." The corresponding section for the tenant similarly provides that, in the event the tenant claims the landlord is in default and the landlord disputes the alleged default in good faith, then "Tenant shall not offset or deduct any amounts from any installments of Rent but shall, as its sole remedy submit such dispute to binding arbitration." A later section of the lease establishes the applicable procedures for any resulting arbitration.

Seven argues that the receiver's claim for unpaid rent asserts a "tenant default" under the lease,¹ which Seven has in good faith disputed. Seven contends that the lease thus requires the receiver, "as its sole remedy," to "submit such dispute to binding arbitration to be conducted under the arbitration provisions as set forth in this Lease." Seven emphasizes that the district court interpreted these same provisions in Seven's action against 700 Hennepin and determined that the lease is "clear and unambiguous" and "is a binding agreement which requires the parties to arbitrate their current disputes."

The receiver argues, and the district court agreed, that he is not subject to the arbitration provision because: (1) the district court has the exclusive authority to determine all controversies relating to the receivership property, and (2) the receiver "is not a party

¹ A "tenant default" is defined in the lease as including Seven's failure "to pay any installment of any amount payable by [Seven] to Landlord hereunder" within ten days of the due date if it remains unpaid for at least five days after notice of late payment has been provided by the landlord to Seven.

to the Lease and never agreed to arbitrate claims related to the Receivership Property.” The receiver argues, in the alternative, that his claim is not within the scope of the matters subject to the arbitration provision. We address each argument below.

Scope of the District Court’s Authority Under the Receivership Statute

In support of his argument that the district court had the authority pursuant to the receivership statute to override the arbitration provision of the lease, the receiver asserts that the statute gives the district court the “exclusive authority to determine all controversies, including the Receiver’s claim for rent.” The statute provides:

The court has *the exclusive authority* to direct the receiver and the authority over all receivership property wherever located including, without limitation, *authority to determine all controversies* relating to the collection, preservation, improvement, disposition, and distribution of receivership property, and all matters otherwise arising in or relating to the receivership, the receivership property, the exercise of the receiver’s powers, or the performance of the receiver’s duties.

Minn. Stat. § 576.23 (emphasis added). The receiver claims that this section empowers the district court to override provisions in an executory contract.

Seven argues, however, that, under Minn. Stat. § 576.45, subd. 1, a receiver succeeds not only to the rights, but also the *duties* of the party subject to receivership. That section of the receivership statute provides: “Unless a court orders otherwise, a receiver succeeds to all of the rights and duties of the respondent under any executory contract.”

Minn. Stat. § 576.45, subd. 1. The “respondent” under this subdivision is 700 Hennepin, and leases are expressly included within the definition of executory contracts in the

receivership statute.² Seven maintains that submitting the rent dispute to arbitration constitutes a duty under the lease and that, because 700 Hennepin would have been required to arbitrate such a dispute, the receiver is likewise bound to submit the dispute to arbitration.

The receiver opposes Seven's argument, claiming that it ignores the proviso at the start of Minn. Stat. § 576.45, subd. 1, "[u]nless a court orders otherwise." The receiver maintains that, in this case, the district court "ordered otherwise" and that the order was within the court's authority under the receivership statute.

We are not persuaded by the receiver's contention. We note, first, that the authority of the courts under the receivership statute is limited by Minn. Stat. § 576.22(d), which provides that "[u]nless explicitly displaced by this chapter, the provisions of other statutory law and the principles of common law remain in full force and effect and supplement the provisions of this chapter." This provision makes clear the intended limits of the authority of the courts when imposing a receivership. And here, established law dictates that a receiver "stands in the shoes" of the party whose property is subject to the receivership.

² Minn. Stat. § 576.21(s) defines "respondent" as "the person over whose property the receiver is appointed." And Minn. Stat. § 576.21(d) defines "executory contract" as

a contract, *including a lease*, where the obligations of both the respondent and the other party to the contract are unperformed to the extent that the failure of either party to complete performance of its obligations would constitute a material breach of the contract, thereby excusing the other party's performance of its obligations under the contract.

(Emphasis added.)

See Merrill v. Zimmerman, 188 N.W. 1019, 1022 (Minn. 1922) (noting that “by virtue of his appointment as receiver” the receiver “stands in [the receivership entity’s] shoes”); *see also Kelley v. Coll. of St. Benedict*, 901 F. Supp. 2d 1123, 1128 (D. Minn. 2012) (observing that the receiver “stands in the shoes of the receivership entity” (quotation omitted)); 65 Am. Jur. 2d *Receivers* § 233 (2021) (setting out the black letter principle that a receiver generally “stands in the shoes of the person or entity in receivership and can assert only those claims which the person or entity could have asserted” and “has no greater rights or powers than the person or entity in receivership would have” (footnotes omitted)).

Second, we do not agree with the receiver’s argument that the phrase at the beginning of Minn. Stat. § 576.45, subd. 1, “[u]nless the court orders otherwise,” authorized the district court to override the arbitration provision. The district court here made no particularized determination based on the circumstances of this case. Instead, the district court essentially concluded that *no* receiver is bound by an arbitration provision unless the receiver has personally agreed to the provision. If this was the case, the exception would swallow the rule and the “duties” portion of Minn. Stat. § 576.45, subd. 1, would be rendered largely meaningless, contrary to the canons of statutory construction. *Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (noting that “[a] statute should be interpreted, whenever possible, to give effect to all of its provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant” (quotation omitted)); *see also* Minn. Stat. § 645.16 (2020) (providing that “[e]very law shall be construed, if possible, to give effect to all its provisions”).

We thus conclude that the scope of authority granted courts under the receivership statute is not so broad as to authorize the district court's order here, particularly in light of the strong preference in the law favoring arbitration. *See City of Brooklyn Center v. L. Enf't Lab. Servs., Inc.*, 635 N.W.2d 236, 241 (Minn. App. 2001), *rev. denied* (Minn. Dec. 11, 2001); *see also Johnson v. Piper Jaffray, Inc.*, 530 N.W.2d 790, 798 (Minn. 1995) (stating that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration" (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983))).

Receiver Never Agreed to the Arbitration Provision

The receiver's next argument is that he cannot be compelled to submit to arbitration because he is not a party to the lease and never agreed to the arbitration provision. The receiver cites to the supreme court's opinion in *Glacier Park*, 961 N.W.2d at 771, to the effect that parties cannot be required to submit to arbitration in the absence of a valid agreement to arbitrate. The receiver's reliance on *Glacier Park* is inapposite. As explained above, the receiver stands in the shoes of 700 Hennepin in this case and, because 700 Hennepin agreed to arbitrate disputes over a tenant default, the receiver is likewise bound even though the receiver, himself, is not a party to the lease.³

³ The district court makes note of the fact that, under the "actual terms of the lease, there is no mention of a receiver being subject to the agreement between Seven and 700 Hennepin." A section of the lease, however, expressly addresses Seven's rights with respect to a mortgagee of the building. This section specifically states that Seven shall not be required to sign any subordination agreement in favor of a mortgagee unless it includes a provision that, "so long as no Tenant Default exists," Seven's rights under the lease "shall not be terminated or otherwise disturbed by virtue of [the] . . . mortgagee succeeding to the interest of Landlord hereunder through foreclosure." Thus, notwithstanding the fact that

Additionally, while there is no Minnesota caselaw directly on point, a number of courts in other jurisdictions have determined that a receiver may be compelled to arbitrate based on a binding arbitration clause in a contract assumed by the receiver. We find the reasoning in these cases persuasive.

For example, the Oklahoma Court of Civil Appeals rejected the same argument the receiver makes here—that a receiver was not bound by an arbitration agreement that predated the receivership because the receiver did not sign the agreement. *Medeiros Rev. Tr. v. Morgan Stanley Smith Barney LLC*, 446 P.3d 533, 536-37 (Okla. Civ. App. 2019). In rejecting that argument, the court explained that “[t]he receiver is the representative of the court regarding the right of possession of property, but the right to receive it derives from the entity that has been placed in receivership. A receiver’s claims are subject to the claims and defenses possessed by all interested parties.” *Id.* at 536 (citation omitted). The court then concluded that, by making a claim for the benefit of a receivership entity that had contracted with another entity, the receiver’s interest was subject to the agreements in that contract, which included an arbitration provision. *Id.* at 537. Because the agreement to arbitrate was entered into by the receivership entity prior to the receiver’s appointment, the receiver was also bound to honor the arbitration provision. *Id.*

the word “receiver” does not appear, the lease contemplated the very situation that occurred, foreclosure of 700 Hennepin’s mortgage. And the lease explicitly provides that Seven’s rights, which would include the arbitration provision, “shall not be terminated or otherwise disturbed” by a foreclosure action.

The Indiana Supreme Court has similarly concluded that “the receiver succeeds to the rights of the [receivership entity] as he finds it, and that includes any arbitration obligations the [receivership entity] has incurred.” *ISP.com LLC v. Theising*, 805 N.E.2d 767, 775 (Ind. 2004).⁴

Here too, while the source of the receiver’s authority to collect rent in the place of 700 Hennepin arises from the receivership statute, the actual rent payments are only owed by reason of the lease. Thus, as in the above-cited cases, the receiver here is making a claim on behalf of the receivership entity based on a contract entered into by the receivership entity prior to the receivership. And we reach the same conclusion—that a receiver in these circumstances is subject to an arbitration provision to the same extent the receivership entity would be if no receiver had been appointed.

Scope of Matters Subject to Arbitration

The receiver’s final argument is that, even if he is subject to the arbitration provision in the lease, his claim is for unpaid rent, not to terminate the lease or Seven’s right to possession of the leased space. The receiver contends that the arbitration provision, by its terms, is only triggered by actions to “cancel and terminate” the lease or “terminate Tenant’s right to possession only without terminating [the] lease.” He argues that the

⁴ See also *Javitch v. First Union Sec., Inc.*, 315 F.3d 619, 627 (6th Cir. 2003) (concluding that receiver is “bound” to arbitration clauses “to the same extent that the receivership entities would have been absent the appointment of the receiver”); *Ommen v. Milliman, Inc.*, 941 N.W.2d 310, 316 (Iowa 2020) (“The liquidator, standing in [the receivership entity’s] shoes, may not avoid a contractual arbitration agreement”), *cert. denied*, 141 S. Ct. 1462 (2021); *Rich v. Cantilo & Bennett, LLP*, 492 S.W.3d 755, 762 (Tex. Ct. App. 2016) (“[T]he Receiver, standing in the shoes of [the company], is bound by the arbitration agreement to the same extent that [the company] is bound.”).

dispute, therefore, falls outside the scope of the arbitration provision because he was seeking to collect rent, rather than to exercise either of those remedies.

The receiver's argument, however, fails to take into account the fact that Wilmington Trust amended its foreclosure action and, through the amended action, is seeking to terminate the lease and Seven's right to possession of the leased space. Thus, regardless of whether the receiver's interpretation of the lease—that the arbitration provision is only triggered by an effort to terminate the lease or Seven's right to possession—is correct, those claims have been asserted against Seven in this case. Moreover, under established law, “[a]ny doubts about arbitrability should be resolved in favor of arbitration.” *Kilcher v. Dale*, 784 N.W.2d 866, 870 (Minn. App. 2010). We thus reject the receiver's argument concerning the scope of the arbitration clause.⁵

DECISION

The receiver in this case is subject to the arbitration provision in the lease agreement between Seven and 700 Hennepin, the receivership entity. The district court therefore erred in granting the receiver's motion to direct the payment of rent, and we reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.

⁵ With regard to the second issue asserted by Seven, whether Seven is entitled to assert a defense of recoupment, we agree with Seven that we need not address this issue in light of our determination that the receiver's claims must be submitted to arbitration.