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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2292**

The Albert Lea Art Center,
Respondent,

vs.

Susanne M. Crane,
Appellant,

Michael Christian,
Defendant.

**Filed September 24, 2012
Affirmed in part and reversed in part
Wright, Judge**

Freeborn County District Court
File No. 24-CV-09-1092

Donald W. Savelkoul, Peterson, Savelkoul & Benda, LTD., Albert Lea, Minnesota (for respondent)

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Considered and decided by Wright, Presiding Judge; Connolly, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

WRIGHT, Judge

In this dispute involving a commercial-property lease, appellant-landlord argues that the district court erred by concluding that appellant-landlord constructively evicted respondent-tenant and violated respondent-tenant's right to quiet enjoyment. Appellant-landlord also challenges the damages awarded to respondent-tenant. For the reasons set forth below, we affirm in part and reverse in part.

FACTS

Respondent Albert Lea Art Center (ALAC) is a nonprofit corporation that organizes and promotes the arts community in Albert Lea. In 1986, ALAC purchased a three-story building in downtown Albert Lea for \$125,000. ALAC occupied part of the building and leased the remainder to other businesses. In 2005, the building required several costly repairs; and ALAC's resources had become limited.

Appellant Susanne M. Crane was an ALAC board member from 2003 until 2007. In 2005, Crane offered to purchase the building from ALAC, renovate the building, and provide ALAC a long-term lease for part of the building at a nominal rent. After a period of negotiation, Crane agreed to purchase the building for \$40,000, financed in part by ALAC. On November 14, 2005, Crane signed a 99 1/2 year lease, promissory note, and mortgage, all in ALAC's favor. ALAC continued to occupy its space on the main floor and to use part of the basement for storage. The remaining business tenants continued to occupy other space in the building.

The relationship between Crane and ALAC began to deteriorate. Approximately two years after the property sale, Crane attempted to evict ALAC for actions that she considered breaches of the lease. A district court dismissed the action, rejecting Crane's claim that ALAC had breached the lease. In December 2008, ALAC demanded that Crane place the utilities in her name and pay the building's utility bills subject to reimbursement by ALAC as required by paragraph 5 of the lease. Crane refused because she disputed the validity of that provision of the lease. The relationship between Crane and ALAC deteriorated further because Crane refused to provide ALAC more than one key to the building, removed ALAC's property from the walls of the common hallway and from the storage space in the building's basement, attempted to prevent ALAC board members from entering the building, converted the men's and women's restrooms into two unisex restrooms, and obstructed ALAC's access to one of the restrooms. Crane also obstructed ALAC's access to temperature controls for its space in the building, which prompted ALAC to obtain a temporary restraining order from the district court to avoid cancellation of an art show because of excessive heat and humidity.

ALAC initiated this action against Crane in May 2009, claiming waste, breach of lease, refusal of possession, and breach of fiduciary duty. ALAC sought foreclosure by action of its mortgage and equitable rescission of the deed.¹ ALAC also sought damages and compliance with the lease. ALAC moved for partial summary judgment as to the breach-of-lease claim for payment of the building's utilities. In December 2009, the

¹ Michael Christian, another commercial tenant of the building, also was named as a defendant in relation to the mortgage-foreclosure aspect of this action. Because ALAC withdrew its mortgage-foreclosure claim, Christian was dismissed from the action.

district court granted ALAC's motion in part, ordering Crane to reimburse ALAC for the utility payments from January 1, 2009 to December 3, 2009 and ordering Crane to assume responsibility for the utility payments thereafter. The district court denied ALAC's motion as to the utilities that ALAC paid before January 1, 2009 and reserved that question for trial. After Crane failed to comply with the district court's partial summary-judgment order to pay the utilities, the district court issued a contempt order against Crane on July 1, 2010.

ALAC amended its complaint in October 2010, seeking rescission of the lease and, alternatively, declaratory relief. A bench trial followed in April and August 2011, during which ALAC withdrew its foreclosure, waste, and rescission-of-deed claims. The claims that remained at the close of trial were breach of lease, refusal of possession, and breach of fiduciary duty. The forms of relief that ALAC sought at trial were damages, rescission of the lease, and declaratory relief. In support of its breach-of-lease and refusal-of-possession claims, ALAC asserted at trial that Crane's actions constituted a constructive eviction of ALAC and violated ALAC's right to quiet enjoyment. At trial, ALAC presented a letter from Crane in which Crane estimated that the market value of ALAC's space is between \$1,200 and \$1,600 monthly; ALAC's expert witness provided a similar estimated market value of the space. Based on the estimated market value, ALAC's expert calculated ALAC's damages for the remaining 93 years of the lease, discounted to present value at a three-percent interest rate. This amount equals \$450,414.99.

The district court ordered rescission of the parties' lease based on its conclusions that Crane constructively evicted ALAC from the entire building, partially evicted ALAC from portions of the building, breached the written lease, and violated ALAC's right to quiet enjoyment. The district court determined that ALAC is entitled to recover \$450,414.99 in damages from Crane, representing the value of the remaining 93 years of the lease, and \$7,193.51 in damages for ALAC's overpayment of utilities from November 2005 to December 2008. The district court also concluded that Crane did not breach her fiduciary duty to ALAC. Because the district court rescinded the parties' lease, it did not address ALAC's alternative request for declaratory relief. This appeal followed.

D E C I S I O N

We review a district court's findings of fact in a bench trial for clear error, Minn. R. Civ. P. 52.01; *Untiedt v. Grand Labs., Inc.*, 552 N.W.2d 571, 574 (Minn. App. 1996), *review denied* (Minn. Oct. 15, 1996), and we review the district court's legal conclusions de novo, *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002).

I.

Crane challenges the district court's conclusion that she constructively evicted ALAC from the leasehold premises and violated ALAC's right to quiet enjoyment. A constructive eviction occurs when a landlord interferes with a tenant's beneficial enjoyment of leasehold premises such that the tenant is justified in abandoning the premises. *Colonial Court Apartments, Inc. v. Kern*, 282 Minn. 533, 534, 163 N.W.2d

770, 771 (1968). Constructive eviction does not require actual ouster or dispossession by the landlord. *Id.* But “[i]t is settled law that a tenant may not invoke the defense of constructive eviction unless he vacates the premises.” *Strupp v. Canniff*, 276 Minn. 558, 559, 150 N.W.2d 574, 575 (1967); accord *Loining v. Kilgore*, 232 Minn. 347, 349, 45 N.W.2d 554, 555 (1951) (“There can be no constructive eviction without a surrender of possession.”). Here, it is undisputed that ALAC did not vacate the leasehold premises. Thus, the district court erred by concluding that Crane constructively evicted ALAC from the building.

A breach of the covenant of quiet enjoyment arises “[w]hen an outstanding superior title is asserted in hostility to the title of the covenantee.” *Rasmussen v. Hous. & Redevelopment Auth.*, 712 N.W.2d 802, 805 (Minn. App. 2006) (quotation omitted), *review denied* (Minn. July 19, 2006). Under Minnesota law, the covenant of quiet enjoyment applies only to adverse title claims, not to “mere trespasses or actions of wrongdoing by third parties.” *Miles v. City of Oakdale*, 323 N.W.2d 51, 57 (Minn. 1982). In *Miles*, the Minnesota Supreme Court held that flooding caused by improper drainage on the appellants’ property did not constitute a breach of the covenant of quiet enjoyment by the previous owners of the property. *Id.* The *Miles* court observed that, although the flooding might constitute a trespass by the city, it is not an adverse claim to title because it does not interfere with the appellants’ legal estate or title to the property. *Id.* Similarly, although Crane’s conduct might constitute a trespass against ALAC, Crane has not asserted an adverse claim to title as title rests with her. Therefore, the district

court erred by concluding that Crane’s conduct constitutes a breach of the covenant of quiet enjoyment.

The district court relied on two additional bases to support its decision to rescind the parties’ lease—namely, its conclusions that Crane breached the lease and partially evicted ALAC from portions of the building. The district court cited no law to support its conclusion that the breach of the lease or a partial eviction supports the rescission of the lease rather than damages arising from the breach. Although Crane does not challenge the rescission of the lease on these two additional grounds, we address this issue in the interests of justice. *See State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (“[I]t is the responsibility of appellate courts to decide cases in accordance with law, and that responsibility is not to be diluted by counsel’s oversights, lack of research, failure to specify issues or to cite relevant authorities.” (quotation omitted)); *Greenbush State Bank v. Stephens*, 463 N.W.2d 303, 306 n.1 (Minn. App. 1990) (applying *Hannuksela* in civil case), *review denied* (Minn. Feb. 4, 1991); *see also* Minn. R. Civ. App. P. 103.04 (permitting appellate review of “any other matter as the interest of justice may require”).

Rescission is an equitable remedy that “not only terminates the contract but abrogates it and undoes it from the beginning.” *Johnny’s, Inc. v. Njaka*, 450 N.W.2d 166, 168 (Minn. App. 1990); *accord Marso v. Mankato Clinic Ltd.*, 278 Minn. 104, 116-17, 153 N.W.2d 281, 290 (1967). Rescission is justified when there has been a material breach of contract and the injury caused by the breach “is irreparable, or where the damages would be inadequate or difficult or impossible to determine.” *Johnny’s, Inc.*, 450 N.W.2d at 168; *accord Marso*, 278 Minn. at 116-17, 153 N.W.2d at 290. When a

contract is rescinded, the parties must be put in the same position in which they would have been had the contract never existed. *Johnny's, Inc.*, 450 N.W.2d at 168; *Marso*, 278 Minn. at 116-17, 153 N.W.2d at 290.

Here, the district court found that Crane materially breached the parties' lease. The record supports this finding. But the district court did not find that the injury caused by Crane's breach was irreparable or that the damages would be inadequate, difficult, or impossible to determine. To the contrary, the district court awarded damages for Crane's failure to make utility payments as required under the lease. And the district court found that damages arising from the breach that related to ALAC's damaged property and loss of access to portions of the building were either unproven or speculative, not that they would be inadequate, difficult, or impossible to determine. *See Part II. & n.6, infra* (addressing damages arising from Crane's breach of the parties' lease). Moreover, the district court neither addressed ALAC's request for declaratory relief nor explained why declaratory relief would have been insufficient.

Because neither the record nor the district court's findings of fact and legal conclusions adequately support the district court's rescission of the parties' lease, we reverse the district court's rescission of the parties' lease along with damages awarded on this basis and reinstate the parties' lease.²

II.

Crane next argues that the district court erred when calculating ALAC's damages. Consequential damages are available to a tenant whose lease is breached by the landlord.

² We are mindful that, if the parties are unable to resolve their dispute, paragraph 19 of the parties' lease provides a mechanism by which ALAC may terminate the lease.

See, e.g., *Romer v. Topel*, 414 N.W.2d 787, 789 (Minn. App. 1987) (affirming district court’s award of consequential damages to tenant), *review denied* (Minn. Jan. 20, 1988). “Consequential damages are the damages which naturally flow from the breach of a contract, or may reasonably be contemplated by the parties as a probable result of a breach of the contract.” *Imdieke v. Blenda-Life, Inc.*, 363 N.W.2d 121, 125 (Minn. App. 1985), *review denied* (Minn. Apr. 26, 1985). The harmed party has the duty to take reasonable measures to mitigate damages and has the burden to demonstrate consequential damages “with a reasonable degree of certainty and exactness.” *Cnty. of Blue Earth v. Wingen*, 684 N.W.2d 919, 924 (Minn. App. 2004) (quotation omitted). To be recoverable, such damages must not be speculative, remote, or conjectural. *Cardinal Consulting Co. v. Circo Resorts, Inc.*, 297 N.W.2d 260, 267 (Minn. 1980).

A.

The district court awarded ALAC \$450,414.99, which it concluded is the value of the remaining 93 years of the parties’ lease, discounted to present value at a three-percent interest rate. But in light of our conclusion in section I., *supra*, the parties’ lease remains valid and ALAC continues to enjoy the benefits of the lease—namely, the right to occupy its current space for nominal rent.³ Thus, although ALAC may be entitled to consequential damages based on Crane’s breach of the lease, those damages cannot

³ Even if the parties’ lease were rescinded, the rescinding party is not entitled to consequential damages after a contract has been rescinded. *Hatch v. Kulick*, 211 Minn. 309, 310, 1 N.W.2d 359, 360 (1941). “Rescission abolishes the contract and all its incidents. . . . In result, the victim is not damaged by the other party’s wrong. He escapes scatheless by rescinding and recovering not damages (*i.e.*, compensation for wrong) but simply that with which he parted by reason of the contract.” *Id.* 211 Minn. at 310-11, 1 N.W.2d at 360.

include the value of the lease.⁴ Accordingly, we reverse the district court's award of \$450,414.99 to ALAC for the value of the lease.⁵

B.

Crane also challenges the district court's conclusion that, subject to paragraph 5 of the lease, she is responsible for paying the building's utilities and receiving reimbursement from ALAC. Crane asserts that the district court erroneously awarded ALAC damages for unreimbursed utility payments in the amount of \$7,193.51. The record establishes, and Crane does not dispute, that ALAC paid the building's utility expenses from November 2005 through December 2008. She also does not dispute that the parties' lease requires Crane to pay all utilities and requires ALAC, in turn, to reimburse Crane based on the percentage of the building's square footage leased to ALAC. Rather, Crane contends that, as a result of fraud or mistake, the utilities provision of the lease does not reflect the actual agreement of the parties as evinced by the parties' negotiations and earlier drafts of the lease.

Generally, the parol evidence rule excludes evidence outside the written agreement—including oral discussions before or contemporaneous with the execution of the agreement—if such evidence contradicts the plain terms of the agreement. *Material Movers, Inc. v. Hill*, 316 N.W.2d 13, 17 (Minn. 1982). Similarly, the doctrine of merger provides that statements made by the parties before or at the time of the execution of a

⁴ We also observe that any valuation of the parties' lease beyond January 2016 is speculative because the lease provides that, beginning in January 2016, ALAC's rent may be increased to "defray the cost of occupancy."

⁵ In light of this decision, we need not reach Crane's argument that the district court erred by denying her motion to exclude testimony from ALAC's expert witness as to the market value of the lease.

contract are superseded by the written contract. *Lehman v. Stout*, 261 Minn. 384, 390-91, 112 N.W.2d 640, 644-45 (1961). But neither the parol evidence rule nor the doctrine of merger is applicable to exclude evidence of fraudulent representations by one party that induce another to enter into a written contract. *Sullivan v. Eginton*, 406 N.W.2d 599, 601 (Minn. App. 1987); *Johnson Building Co. v. River Bluff Dev. Co.*, 374 N.W.2d 187, 193 (Minn. App. 1985), *review denied* (Minn. Nov. 18, 1985).

The utilities provision of the parties' lease states that "[Crane] agrees to furnish all utilities and pay all electric, gas, water, fuel and sewer company charges, as well as all charges for any additional services or other utilities used on or assessed against the Premises. [ALAC] shall reimburse [Crane] for utilities based on the percentage of square footage of rental space occupied by [ALAC], compared to the total space on the first floor of the building." Because this language is unambiguous, evidence of representations made by ALAC before execution of the lease is irrelevant unless it demonstrates fraudulent representations by ALAC that induced Crane to enter the lease. The district court found no evidence of fraud. We agree. The record reflects that the utilities provision was amended to require Crane to pay all utilities subject to reimbursement by ALAC based on the percentage of its first-floor occupancy. This amendment was made at a meeting of ALAC's board approximately two months before the parties executed the lease. Crane attended that meeting, and the meeting minutes do not demonstrate that Crane objected to the amended provision. The board's attorney for the transaction, who also attended that meeting, testified that Crane never expressed questions or concerns as to that amendment. And Crane testified that she did not read the

final lease before signing it. *See Currie State Bank v. Schmitz*, 628 N.W.2d 205, 210 (Minn. App. 2001) (observing that when a party to a written contract has the ability to read the contract and fails to do so, the party is nonetheless bound by it absent misrepresentation, trick, or artifice).

On this record, Crane's evidence outside the written agreement is not relevant, and the unambiguous language of the lease supports the district court's conclusion that Crane is responsible for reimbursing ALAC for utility payments in the amount of \$7,193.51.

Affirmed in part and reversed in part.⁶

⁶ On appeal, ALAC has not challenged the district court's finding that damages relating to ALAC's damaged property and loss of access to portions of the building were either unproven or speculative, nor has ALAC sought a remand for the district court to address its request for declaratory relief. Accordingly, we do not address these alternative forms of relief.