STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0958

Thomas Haung, et al.,
Respondents,

vs.

Jamal Aden, et al.,
Appellants.

Filed December 30, 2013
Reversed
Huspeni, Judge[*]

Ramsey County District Court
File No. 62-HG-CV-13-787

Timothy B. Poirier, Lowry Hill Law Offices, Minneapolis, Minnesota (for respondents)

Carl Newquist, Sarah Marie Kimball, Newquist & Herrick, Fridley, Minnesota (for appellants)

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and Huspeni, Judge.

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

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

HUSPENI, Judge

On appeal from an eviction judgment, appellant-tenants Jamal Aden, et al., argue that the district court (1) erred in ruling that tenants breached the lease, (2) should have appointed an interpreter for tenants, (3) exhibited partiality favoring respondent-landlords, Thomas Haung, et. al, and (4) improperly limited tenants' ability to present their case. We reverse the district court's determination that the tenants breached their lease, and, therefore, do not address tenants' other arguments.

FACTS

Tenants operated a store on premises they leased from landlords. Paragraph 11 of the lease precludes tenants from making "any alterations, repairs, additions, or improvements" to the premises "without prior written consent of the Landlord . . . ." After entering into the lease, tenants sought landlords' approval to install a new thermostat, to fix the air conditioning, and to replace the carpet with tile, but they received no response from landlords. Tenants then made each of these changes to the premises.

After the store was robbed twice, tenants sought landlords' permission to install a bulletproof enclosure around the store's cash register. Getting no response from landlords, tenants had the enclosure installed. When landlords learned of the enclosure, they sent tenants a letter stating that the enclosure violated paragraph 11 of the lease and directed tenants to remove it. When tenants did not do so, landlords started this proceeding to evict tenants.

After trial, the district court ordered judgment for landlords, ruling that tenants violated paragraph 11 of the lease. Tenants appealed, made a posttrial motion in district court, and moved this court to stay the appeal to allow the district court to address their posttrial motion. This court denied the motion, noting that posttrial motions are unauthorized in eviction proceedings. Later, this court granted landlords' motion to strike the portion of tenants' brief stating that tenants removed the enclosure and that portion of the brief referring to the posttrial motion.

D E C I S I O N

An eviction proceeding is a summary proceeding, Minn. Stat. § 504B.001, subd. 4 (2012), in which the only issue for decision is whether the facts alleged in the complaint are true. *Cimarron Vill. v. Washington*, 659 N.W.2d 811, 817 (Minn. App. 2003); *Fraser v. Fraser*, 642 N.W.2d 34, 40 (Minn. App. 2002). Appellate courts review a district court's findings of fact for clear error, Minn. R. Civ. P. 52.01; *Cimarron Vill.*, 659 N.W.2d at 817, and those findings are not disturbed on appeal unless they are "manifestly contrary to the weight of the evidence or they are not reasonably supported by the evidence as a whole." *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985).

Paragraph 11 of the lease prohibits "any alterations, repairs, additions, or improvements in or to the Leased Premises . . . without prior written consent of the Landlord . . . ." The district court noted that tenants "do not deny that the enclosure in question was constructed without prior written approval of Landlord[,]" and stated that "[t]here can be little doubt that the structure built by Tenants within the leased premises

constitutes either an 'alteration,' an 'addition,' or an 'improvement' of the leased premises." The district court, however, did not identify into which of these categories the enclosure purportedly fell.

Tenants challenge the determination that they breached the lease, arguing that the enclosure is not an "alteration[,]" "addition[,]" or "improvement." The lease does not define these terms, caselaw addressing those terms involves their use in contexts distinguishable from this eviction dispute, and the common definitions of these terms, especially that of "alteration," are so broad that, if they were applied here, they would require tenants to seek landlords' permission for any and all work done on or to the premises, regardless of the degree of impact that work had on the premises. *See American Heritage Dictionary of the English Language* (1969) at 37, 15, 662 (defining "alteration," "addition," and "improvement," respectively). This result would be absurd, and would run afoul of the idea that courts "will not" construe a contract to produce "a harsh and absurd result." *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). Indeed, landlords' failures to respond to tenants' prior requests to install a new thermostat, fix the air conditioning, and replace the carpet with tile, suggests that landlords did not, in fact, read the terms this broadly. Therefore, we decline to use the common definitions of the terms in question when addressing the parties' arguments, and instead, as set out below, we are guided by definitions of those terms that are both more narrow and more particular to the legal context.

A. Alteration

An "alteration" is "[a] substantial *change to real estate*, esp. to a structure, usu. not involving an addition to or removal of the exterior dimensions of a building's structural parts." *Black's Law Dictionary* 90 (9th ed. 2009) (emphasis added). "Real estate" is "real property" which, in turn, is "[l]and and anything growing on, attached to, or erected on it, *excluding anything that may be severed without injury to the land*." *Black's Law Dictionary* 1378, 1337 (emphasis added).

Here, during trial, the district court stated that exhibits 36-38, which are photos of the enclosure, show the enclosure to be "one big panel that is sort of free-standing and it has a glass window in it." After trial, the district court, based on tenants' testimony and the exhibits, noted that "this enclosure is not attached all the way at the ceiling or apparently to the front of the store [but is] a pretty significant modification of these premises." Because the enclosure is "free-standing," it can be removed—albeit in a disassembled state—without damage to the premises, meaning that the enclosure is neither real property nor a substantial change to real estate, and hence is not an "alternation" of the premises.

B. Addition

An "addition" is

> [a] structure that is *attached to or connected with* another building that predates the structure; an extension or annex. . . . Although some courts have held that an addition is merely an appurtenant structure that might not actually be in physical contact with the other building, most courts hold that there must be physical contact.

Black's Law Dictionary 43 (emphasis added); *cf. Webster's Third New Int'l Dictionary* 24 (defining an "addition" as "a part added to or joined with a building"). Because the district court noted the enclosure is "free-standing," it is not "attached to or connected with" the store. While the enclosure rests on the floor of the store, possibly invoking the second portion of the definition of "addition" recited above, to rule that mere contact with the floor renders something an "addition" would, under paragraph 11 of the lease, render all furniture "additions" for which tenants need written permission of landlords. We decline to adopt this absurd reading of paragraph 11. *See Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998) (stating that courts "will not" construe contract terms to produce "a harsh and absurd result").

C. Improvement

An "improvement" is "[a]n *addition to real property*, whether permanent or not; esp.; one that increases its value or utility or that enhances its appearance." *Black's Law Dictionary* 826 (emphasis added). If, as noted above, the enclosure is not an "addition," it cannot be an "improvement." That this enclosure is not an "improvement" is consistent with caselaw. *Cf. Behrens v. Kruse*, 121 Minn. 479, 481, 486, 140 N.W. 114, 115, 117

(1913) (ruling that a refrigerator 16' 9" wide, 3' 6" deep, and 7' 3" high was, under the mechanics' lien statute, not an improvement but a trade fixture).

Because this record does not support the district court's determination that the enclosure was an alteration, addition to, or improvement of the premises, the district court's rationale for ruling that tenants breached the lease is not supported, and we reverse the district court's ruling that tenants breached the lease.[1]

Reversed.

[1] Because we conclude that the lease was not breached, we need not address any of the additional issues raised by tenants. We note, however, three things. First, tenants' assertion that any breach was not material was not raised before the district court, and is not properly before this court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Second, issues first raised in posttrial motions are not properly before this court. *Antonson v. Ekvall*, 289 Minn. 536, 539, 186 N.W.2d 187, 189 (1971) (new trial motion); *Allen v. Cent. Motors*, 204 Minn. 295, 299, 283 N.W. 490, 492 (1939) (motion for amended findings); *Superior Shores Lakehome Ass'n v. Jensen-Re Partners*, 792 N.W.2d 865, 868 (Minn. App. 2011) (motion for reconsideration). Thus, because tenants' first sought an interpreter in their posttrial motion, that question is not properly before us. Third, our review of the record supports neither tenants' assertion of bias on the part of the district court, nor their assertion that the district court's attempt to expedite the trial prevented tenants from fully presenting their case.