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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-200**

Barnes & Noble Booksellers, Inc.,  
Appellant,

vs.

Gabbert & Gabbert Company, L. P.,  
Respondent.

**Filed February 12, 2008  
Affirmed  
Worke, Judge**

Hennepin County District Court  
File No. 27-CV-06-11292

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Considered and decided by Shumaker, Presiding Judge; Klaphake, Judge; and  
Worke, Judge.

**UNPUBLISHED OPINION**

**WORKE**, Judge

On appeal in this commercial-lease dispute, appellant argues that (1) the district  
court's reading of the parties' lease to allow respondent to subtract real property from the  
shopping-center tract is inconsistent with the lease terms and rules of contract

interpretation; and (2) the district court's conclusion that appellant failed to show sufficient harm for a permanent injunction is inconsistent with the court's findings of fact. Because the district court did not err in interpreting the lease, and the findings of fact adequately support the conclusion and denial of a permanent injunction, we affirm.

### **FACTS**

In July 1991, the predecessors-in-interest of appellant Barnes & Noble Booksellers, Inc., signed a lease to rent approximately 16,000 feet of retail space in the Galleria Shopping Center from respondent Gabbert & Gabbert Company, L.P. In 1994, appellant signed an amended lease (amended lease) to rent more than 19,000 feet of additional space.

The amended lease defines the "Shopping Center Tract" as "the tract of land described on Exhibit A-1" and defines the "Shopping Center" to include all improvements "from time to time located on the Shopping Center Tract." Section 13.3 of the amended lease prohibits respondent from making alterations, including changes to landscaping, signage, or parking, to a "restricted area" located directly in front of appellant's store, "designated . . . on Exhibit A-3."

Section 28. 1 of the amended lease provides that respondent

reserves the absolute right, subject to and only to Section 13.3 above, at any time and from time to time (a) to make changes or revisions in the site plan as shown on Exhibit A, including additions to, subtractions from, or rearrangement of the building areas and parking areas indicated on Exhibit A; and (b) to construct additional or other buildings or improvements on the Shopping Center Tract and to make alterations thereof or additions thereto and to build additional stores on any such building or buildings and to build adjoining same.

The amended lease also grants appellant “reasonable non-exclusive use” of common areas located in the shopping-center tract, including parking lots, and guarantees appellant a minimum number of parking spaces in the common areas. Section 8.4 of the amended lease specifically prohibits the lease of space in the shopping center for certain uses, including any bowling alley, amusement arcade, gymnasium, junkyard, skating rink, veterinary hospital or pet store, or “living quarters, sleeping apartments, or lodging rooms.”

In November 2005, respondent notified appellant that it intended to build a development consisting of a 225-room Westin Hotel, approximately 76 condominiums, and a parking ramp. The development would be constructed on an existing parking lot located near appellant’s store. Appellant objected on the ground that the development would have an adverse effect on parking for appellant’s customers, including a violation of the restricted-area, protected-parking lease provision in section 13.3, and would also violate the amended-lease restriction on “living quarters, sleeping apartments, or lodging rooms” in section 8.4.

In May 2006, respondent notified appellant that it was revising the development plan so that the restricted area would not be affected, but that it was “exercis[ing] its right to revise the site plan [under section 28.1] so as to subtract the portion of the parking area on which the Project is to be constructed.” Therefore, according to respondent, the proposed development would no longer be located in the shopping-center tract, so that the section-8.4 restrictions would not apply. Respondent began constructing the parking

ramp, and construction personnel blocked off a portion of the parking lot near appellant's store.

Appellant filed a complaint, seeking damages and to enjoin respondent from proceeding with the development. Appellant alleged that respondent's subtraction of the development site from the shopping-center tract breached the amended lease by, among other things, reducing the number of parking spaces available to appellant. Appellant also contended that respondent's actions constituted an anticipatory breach of the amended-lease prohibition on "living quarters, sleeping apartments, or lodging rooms" and breached an implied covenant of good faith and fair dealing.

Appellant moved for temporary injunctive relief. The district court granted the motion in part and denied it in part. The district court concluded that, because appellant was likely to succeed on the merits and stood to suffer relatively more harm if the hotel and condominium were not temporarily enjoined, respondent was enjoined from beginning construction on that part of the development. But the court concluded that because appellant was not likely to succeed on the merits of the parking-ramp issue and would suffer relatively less harm when the ramp was completed, because it would provide additional parking for appellant's customers, respondent could proceed with construction of the ramp. Following a trial on appellant's application for a permanent injunction, the district court granted respondent's motion to dismiss in part and denied it in part, dismissing unfair dealing claims relating to parking changes, visibility-based claims, and the section-8.4 claim, but declining to dismiss claims relating to violation of the restricted area and the configuration of the project.

The district court issued findings of fact, conclusions of law, order and judgment, granting the request for a permanent injunction in part and denying it in part. The court (1) issued restrictions on a dog park that was part of the proposed development, (2) enjoined respondent from reducing the number of parking spaces in the restricted area below 102, and (3) enjoined parking in the restricted area by non-Galleria customers. But the court concluded that respondent's "subtraction of the proposed development site from the shopping-center tract was done within the scope of [respondent's] authority under section 28.1 of the [amended] Lease, and therefore does not interfere with [appellant's] rights under the [amended] Lease." The court also concluded that construction of the hotel and condominium development would not violate section 8.4 because "the [amended] Lease only applies to the space within the shopping-center tract, and the hotel and condominium development site was validly subtracted" from the shopping-center tract. Therefore, the court determined that any application of the specific terms of section 8.4 of the amended lease to the development was moot. The court additionally concluded that the amended lease was not violated because the parking ramp would add more parking spaces for Galleria customers than the development would remove, and that any Galleria customer-parking changes or changes in the visibility of appellant's store did not violate an implied covenant of good faith and fair dealing. Finally, the court concluded that appellant had failed to demonstrate the lack of an adequate legal remedy because any harm suffered would be in the form of financial loss. The court, therefore, ordered that respondent could proceed with the rest of the development. This appeal follows.

## DECISION

### *Interpretation of the amended lease*

Appellant argues that the district court erred by interpreting amended-lease section 28.1(a) to allow the subtraction of property from the shopping-center tract. The primary purpose of interpreting a lease, as with other contracts, is to determine and enforce the intent of the parties at the time they entered into the contract. *Karim v. Werner*, 333 N.W.2d 877, 879 (Minn. 1983); see *Pettit Grain & Potato Co. v. N. Pac. Ry. Co.*, 227 Minn. 225, 229, 35 N.W.2d 127, 130 (1948) (construing lease). If its language is ambiguous, the interpretation of a contract is a question of law, which this court reviews de novo. *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 122 (Minn. 2007).

If the parties' contractual intent is expressed in clear and unambiguous language, this court relies on the contract's plain meaning. *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999). "We construe a contract as a whole and attempt to harmonize all clauses of the contract." *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525 (Minn. 1990). "Because of the presumption that the parties intended the language used to have effect, we will attempt to avoid an interpretation . . . that would render a [contractual] provision meaningless. *Id.* at 526; see also *Cement, Sand & Gravel Co. v. Agric. Ins. Co.*, 225 Minn. 211, 216, 30 N.W.2d 341, 345 (1947) (stating that the intent of contracting parties is ascertained by a synthesis of words in accordance with the obvious contractual purpose).

First, appellant maintains that the district court's interpretation of section 28.1(a) is inconsistent with the plain and ordinary language of that section. Section 28.1(a)

expressly allows respondent, “subject to and only to Section 13.3,” to “make changes or revisions in the site plan as shown on Exhibit A, including additions to, subtractions from, or rearrangements of the building areas and parking areas indicated on Exhibit A.” Exhibit A, appended to the amended lease, consists of four documents. Exhibit A-1 shows the complete block of real property bounded by France Avenue South, York Avenue South, West 69th Street, and West 70th Street. Exhibit A-1 depicts some areas that are shaded, which are labeled as “not included in shopping center tract” and other non-shaded areas, which are labeled “shopping center tract.” Exhibits A-2 and A-2a, which are not at issue in this appeal, show the interior space leased by appellant. And Exhibit A-3 shows the portion of the shopping center in which appellant’s store is located, as well as the parking area directly in front of the store; certain areas of the interior hallway and the parking lot are shaded and marked as “restricted area[s].”

Appellant contends that the language of section 28.1(a), which refers specifically to section 13.3 and confers the right to modify the “site plan as shown on Exhibit A,” applies only to Exhibit A-3, not to Exhibit A-1, because only Exhibit A-3 shows the designated restricted area mentioned in section 13.3. Therefore, appellant reasons, section 28.1(a) does not allow respondent to subtract property from the shopping-center tract. But a site plan has been defined as “[a] proposal for the development or use of a particular piece of real property.” *Black’s Law Dictionary* 1392 (7th ed. 1999). Section 1.9 of the amended lease defines “Shopping Center Tract” as “the tract of land described on Exhibit A-1.” And Exhibit A-1 depicts a larger tract of real property, including existing parking areas located away from the restricted area and near the perimeter of the

block. We conclude that Exhibit A-1 meets the definition of a “site plan” because it gives a broad picture of a development proposal of a particular piece of property, with reference to the shopping-center tract as shown on that exhibit. Therefore, the plain language of section 28.1(a) allows respondent to “make changes or revisions in the site plan as shown on Exhibit A” by subtracting certain property from the shopping-center tract as shown on Exhibit A-1, and the district court did not err in its interpretation of the amended lease.

Appellant also asserts that its interpretation is supported by the canon of contract construction, *expressio unius est exclusio alterius*, which means “the expression of one thing implies the exclusion of all not expressed.” *In re Ruth Easton Fund*, 680 N.W.2d 541, 550 (Minn. App. 2004). Appellant points out that although section 28.1(b) expressly permits respondent “to construct additional or other buildings or improvements on the Shopping Center Tract and to make alterations thereof,” that section does not mention “subtraction.” And section 28.1(a), which permits “subtractions from . . . the building areas and parking areas indicated on Exhibit A,” does not refer to the shopping-center tract. Therefore, appellant reasons that the amended lease does not permit respondent to subtract property from the shopping-center tract. But when the terms of a contract are clear and unambiguous, this court does not resort to maxims of contract construction. *Colangelo v. Norwest Mortgage, Inc.*, 598 N.W.2d 14, 18 (Minn. App. 1999), *review denied* (Minn. Oct. 21, 1999). Because we conclude that the language of the amended lease is clear and unambiguous, we will not apply a maxim of construction to create, and

then construe, ambiguity, especially when doing so would produce a result at odds with the plain language of the contract.

Appellant further maintains that the proposed development would violate amended-lease section 8.4, which prohibits leasing space in the shopping center for “living quarters, sleeping apartments, or lodging rooms.” But because we conclude that the district court did not err by determining that the amended lease allows respondent to subtract the development site from the shopping-center tract, we agree with the district court that the issue of whether the development would violate section 8.4 need not be addressed.

Finally, appellant argues that interpreting the amended lease to allow subtraction of the development site from the shopping-center tract would weaken or render meaningless other lease provisions: section 45.2, which prevents respondent from allowing a direct competitor of appellant to operate in the Galleria Shopping Center; section 42.2, under which appellant may look only to respondent’s interest in the shopping center to recover any judgment against respondent; and sections 3.2 and 13.1, which grant appellant the nonexclusive use of common areas in the shopping-center tract. But the district court’s order only allows “subtraction of the proposed development site from the shopping center tract” and does not affect appellant’s amended-lease rights as to the area remaining in the shopping-center tract. And we decline to address the merits of any future action concerning possible additional development when such an action has not been brought before the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

## *Injunction*

Appellant argues that the district court's findings of fact do not support its conclusion of law that appellant failed to demonstrate that it would suffer irreparable harm in the absence of an injunction. A party seeking a permanent injunction must show that it lacks a legal remedy and that an injunction is necessary to prevent great and irreparable harm. *Cherne Indus. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979). The denial of a permanent injunction lies within the sound discretion of the district court and will not be disturbed absent an abuse of that discretion. *Id.* at 91. This court will not set aside a district court's findings concerning entitlement to injunctive relief unless they are clearly erroneous. *Forest v. Katzmarek Iron Works, Inc.*, 311 Minn. 512, 512, 246 N.W.2d 867, 867 (1976). But "[t]he district court must make sufficient findings to permit meaningful appellate review." *Metro. Sports Facilities Comm'n v. Minnesota Twins P'ship*, 638 N.W.2d 214, 220 (Minn. App. 2002), *review denied* (Minn. Feb. 4, 2002). Whether a district court's findings support its conclusions of law is a question of law for this court to determine. *Donovan v. Dixon*, 261 Minn. 455, 460, 113 N.W.2d 432, 435 (1962).

The district court concluded that "any damage [appellant] would suffer would be in the form of financial loss." The court supported this conclusion with its finding that appellant's business records showed that "the number of visitors per month and the sales and revenues at [appellant's] Galleria store began a pattern of decline several months before construction of the parking ramp began." Appellant does not challenge the evidentiary basis for this finding, but argues that the finding relates only to a lack of

money damages and does not preclude appellant from making a showing of irreparable harm. Thus, appellant maintains that the order contains insufficient findings to support the district court's order denying a permanent injunction, and this court should remand for further proceedings.

We agree that the district court's finding on declining sales and revenues supports a conclusion that appellant would not suffer financial loss as a result of the proposed development. But the district court's order contains additional findings, including that: (1) the related limited-liability companies, which own the parking ramp, hotel, condominium, and shopping center, all executed reciprocal easement agreements, which give the Galleria control of parking at the ramp, allow shopping-center customers to park on all sites, and acknowledge priority of the restricted area; (2) the parking ramp would contain over 900 spaces, to be shared on a nonexclusive basis between Galleria customers and hotel guests, with condominium owners having separate, below-ground parking; and (3) the parking ramp would be connected to the Galleria by an underground tunnel that would exit at the common area adjacent to appellant's store. The court concluded, based on these findings, that the development would not violate the terms of the amended lease because "the new parking ramp will add more parking spaces for Galleria customers than the entire development project will remove" and that "[t]he visibility of [appellant's] store will not be so significantly reduced by the Westin hotel and condominium development as to violate the implied covenant of good faith and fair dealing." The district court's findings are sufficient for our review and adequately support its

conclusion that appellant will not suffer irreparable harm if the development proceeds.

The district court did not abuse its discretion by denying a permanent injunction.

**Affirmed.**