STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2097

New Division Development Company, LLC,
Appellant,

vs.

Lansing Family Hardware, et al.,
Respondents,

David Lansing,
Respondent.

Filed January 29, 2008
Affirmed
Halbrooks, Judge

Rice County District Court
File No. 66-CV-06-159

Thomas P. Harlan, Katherine E. Becker, 701 Fourth Avenue South, Suite 1700, Minneapolis, MN 55415 (for appellant)

Lansing Family Hardware, DHJJ, Inc., c/o 618 South Division Street, Northfield, MN 55057 (respondents)

David Lansing, 618 South Division Street, Northfield, MN 55057 (pro se respondent)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Minge, Judge.

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

HALBROOKS, Judge

Appellant New Division Development Company (NDDC) challenges the district court's judgment in favor of respondents Lansing Family Hardware, DHJJ, Inc., and David Lansing. Appellant initially filed an unlawful-detainer action, alleging that respondents breached a commercial lease. Appellant alleged that respondents failed to pay the required amount of rent, underpaid rent, and failed to acquire insurance coverage as specified in the lease. After a bench trial, the district court found that the commercial lease presented by respondents was controlling and orally modified the lease to cap rent at $4,250 per month. The district court also found that respondents had satisfied their obligation to acquire insurance as specified in the lease. The district court agreed with appellant that respondents had failed to make payments of rent but concluded this was a non-material breach. Respondents were allowed to redeem the lease, which they did. We affirm.

FACTS

I. The Property

Appellant is the owner of the property located at 618 Division Street South in Northfield. The property is a two-story, mixed-use residential and commercial building with a full basement and adjacent parking lot. This property was originally purchased by the Lansing Family Trust (the family trust) with a mortgage loan from Associated Bank, loan number 9001 (the 9001 loan). The family trust then leased the property to Lansing

Enterprises (LAEN) on January 17, 2002. LAEN owned and operated Lansing Family Hardware, which operated out of the property.

Associated Bank used the 2002 lease between LAEN and the family trust to secure the 9001 loan. The 9001 loan included language assigning the rents from the lease to Associated Bank and a variable interest rate as part of the mortgage. The lease stated LAEN's monthly rent payment would equal the monthly payment of principal plus interest that the family trust owed associated Bank pursuant to the mortgage. Subsequently, the family trust and LAEN orally agreed to cap monthly rent at $4,250. This oral agreement to cap rent was made prior to the time that the family trust assigned its rights under the lease to appellant.

II. Sale of the Property

In March 2005, the family trust began negotiations with appellant to sell the property for $1.3 million. Initially, appellant and the family trust agreed that appellant would assume the $650,000 that was remaining on the 9001 loan. The family trust would then carry back the remaining $650,000. But Associated Bank refused to allow the 9001 loan to be assumed and insisted that the loan be paid in full. The State Bank of Delano (State Bank) agreed to finance the purchase and provide a loan to appellant for $910,000. $650,000 of the loan was for repayment of the 9001 loan, with the remaining $260,000 to be used as a construction line of credit for development on the property. The term of the loan was one year, with appellant's payments to cover the interest only. Appellant purchased the property from the family trust in April 2005 for $1,300,000, using the State Bank loan and a loan from the family trust.

State Bank relied on information provided regarding Lansing Family Hardware, including the amount paid in rent each month, in making its loan to appellant. State Bank secured the loan through a mortgage and assignment of rents. The family trust also secured its loan through a mortgage but had no assignment of rents and agreed that its interests were subordinate to State Bank. As part of the sale, LAEN assigned its rights under the 2002 lease and sold Lansing Family Hardware to DHJJ. DHJJ's sole shareholder is respondent David Lansing. The assignment took place on March 21, 2005. The assignment was signed by David Lansing on behalf of DHJJ and Lee Lansing on behalf of LAEN. As part of the sale, the family trust assigned its rights under the lease to appellant on April 19, 2005.

III. The Relationship Between Appellant and DHJJ

Appellant's stated purpose for the purchase of the property was development. While appellant developed the property, respondents were to continue occupying the property. Appellant began collecting rents from DHJJ in May 2005. The amount appellant billed respondents increased over the first six months of appellant's ownership of the building. Respondents paid the increased amounts but believed that the amounts were substantially higher than they were required to pay. Respondents paid these amounts because they intended to purchase the hardware-store portion of the property and wanted to keep the relationship with appellant amicable.

In November 2005, the relationship between appellant and respondents deteriorated. Respondents continued to pay the increased rent but did so under objection. On March 1, 2006, respondents received a notice from the family trust that appellant was

in default of its mortgage. The family trust asserted its rights to collect rents because of appellant's default. Respondents began to pay rent to the family trust in March 2006. Respondents paid the family trust $4,250 in monthly rent under the agreement to cap rent payments.

In April 2006, State Bank served a demand for rent payments on Lansing Family Hardware after respondents failed to pay rent to appellant. State Bank was unaware of the demand for rents made by the family trust. Respondents objected to the amount demanded by State Bank and refused to make payments. Despite respondents' lack of payments, appellant was obligated to make interest payments on the loan. Appellant made these payments and received an assignment of State Bank's right for rent due.

IV. Insurance Coverage

In addition to payment of rent, respondents had an obligation to maintain insurance as specified in the lease. Respondents were obligated to maintain general-liability insurance in the amount of $800,000 and coverage for risk of loss of rents in the amount of $250,000. Prior to the sale and assignment to DHJJ, LAEN maintained an insurance policy from Federated Insurance. The policy provided dual coverage, with business-owner-liability coverage in the amount of $1,000,000 and premise-liability coverage for $900,000. The policy was due to expire on February 15, 2006, but was extended a year and transferred to DHJJ prior to expiration. The policy named appellant as additional insured/mortgage holder. Appellant was notified by Federated Insurance that DHJJ had these two forms of coverage on March 31, 2006.

Because LAEN was no longer the primary insured, Federated Insurance sent appellant a notice of cancellation of the first policy in early March 2006. The cancellation did not include DHJJ's new policy. But because appellant mistakenly thought that all insurance on the property was cancelled, it obtained its own insurance without notifying respondents. After receiving notification from respondents regarding the new policy, appellant cancelled its additional insurance in May 2006.

D E C I S I O N

Appellant argues that the district court erred in finding that the purported 2005 lease introduced by appellant was never executed. Appellant further contends that the district court erred in finding that the 2002 lease was controlling and argues that the actions of the parties and conflicting documents do not support the district court's findings. Because the record supports the findings made by the district court, we affirm.

A lease is a type of contract. *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999). "Generally, the existence of a contract, as well as the terms of that contract, are questions of fact to be determined by the fact-finder." *TNT Props., Ltd. v. Tri-Star Developers LLC*, 677 N.W.2d 94, 101 (Minn. App. 2004). "If there is reasonable evidence to support the district court's findings [of fact], we will not disturb them." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999).

Here, the district court found that LAEN and the family trust entered into a ten-year lease on January 17, 2002. The district court also found that the purported 2005 lease was not properly executed.

> [Appellant] introduced a page with the signature of David Lancing [sic] and Lee Lansing which [appellant] argue[s] is a valid execution of the new lease. This page, however is actually an execution of an assignment of the 2002 Lease from the Family Trust to DHJJ. [Respondents'] Exhibits 40 and 41 demonstrate that the purported execution of the 2005 Lease is actually an assignment of the 2002 lease. The second page of Exhibit 41 is identical to the purported execution page of the 2005 lease. The [district] [c]ourt finds that this page was later attached to the purported 2005 Lease, a mere draft of a lease, in an attempt to make it appear that the 2005 Lease was actually executed. Because the 2005 Lease was not validly executed, the 2002 Lease controls.

The district court made a credibility determination that the purported 2005 lease presented by appellant does not contain an accurate representation of signatures by David Lee Lansing and Joseph Lee Lansing. The purported 2005 lease presented by appellant to the district court includes a signature page that is identical to the signature page from the 2005 assignment agreement. But the district court determined that the purported 2005 lease signature page is a photocopy of the original signature page from the 2005 assignment agreement. We give due regard to the district court's credibility determinations. *Powell v. MVE Holdings, Inc.*, 626 N.W.2d 451, 457 (Minn. App. 2001), *review denied* (Minn. July 24, 2001).

David Lansing testified that the 2002 lease was the controlling lease in March 2005. He also testified that the assignment of the 2002 lease was executed on March 21, 2005. But there is no testimony that supports an assertion that respondents signed the 2005 lease. And on appeal from a bench trial, it is not this court's task to reconcile conflicting evidence. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002). The record supports the

district court's finding that the purported 2005 lease was never executed and its determination that the 2002 lease is controlling.

Appellant asserts that even if the 2002 lease is controlling, respondents are estopped from asserting that the 2002 lease is the controlling lease. Appellant argues that the 2002 lease did not cover portions of the property that appellant began to renovate. Appellant contends that the purported 2005 lease covered those portions of the property and enabled appellant to properly begin its renovations. Because respondents allowed these improvements, appellant asserts that they should be prevented from now arguing that the 2002 lease controls. But in examining the two lease documents, there is no language in the 2002 lease preventing renovations of certain parts of the property, as appellant suggests. While the purported 2005 lease is more specific in listing portions of the property individually, there is no language in the controlling 2002 lease that prohibits appellant's improvements. There is no support in the record for appellant's argument, and respondents are not estopped from arguing that the 2002 lease controls.

Appellant also argues that the district court erred in concluding that the 2002 lease was orally modified to cap rent at $4,250. Appellant asserts that this finding is clearly erroneous and that there is a lack of support in the record for the district court's conclusion that the oral modification occurred before appellant purchased the property.

We review the question of whether there is a modification of a contract for clear error. *Hentges v. Schuttler*, 247 Minn. 380, 383, 77 N.W.2d 743, 746 (1956). "[This court's] function in reviewing a case based upon the claim . . . of subsequent parol modification of a written contract, such as this, is to look to the evidence as a whole to

determine whether the verdict of the [fact-finder] was reasonably supported by evidence that is clear and convincing." *Id.*

Here, the record demonstrates that Lee Lansing, as president of LAEN, engaged in negotiations with appellant for sale of the property in March 2005. Lee Lansing testified that he sent a facsimile to appellant that confirmed that the rent was capped at $4,250. Respondents introduced a facsimile at trial which stated, "The Hardware Store should be able to pay enough 'lease' to service the debt (not to exceed $4,250/month) on a Triple Net basis." Lee Lansing also testified that he sent a letter to appellant that listed the rent as "likely" $4,000/month.

The district court concluded that payments were capped at $4,250 and that the agreement to cap rent was reached before the lease was assigned to appellant. Although there is evidence in the record that respondents paid more than this amount from June 2005 to February 2006, the district court found that respondents made these payments under protest. When payments were later made to the family trust, the district court found they were made at the $4,250 "cap" amount. The record supports the district court's conclusions that the 2002 lease was orally modified to cap rent payments at $4,250 prior to the assignment to appellant.

Appellant's final argument is that the district court erred in concluding that respondents satisfied their insurance obligations in the 2002 lease. Appellant contends that respondents failed to maintain insurance that was sufficient in amount and for the required risks. Appellant asserts that this failure is a breach of the lease.

The applicable provision in the 2002 lease states:

> 2.2 To Insure Against Fire-Loss of Rents. That [lessee] will during the said term insure and keep insured in the name of the Lessor the said building from loss of damage by fire in at least the sum of $800,000 (and also insure and keep insured the Lessor against loss of rents hereunder resulting from fire in at least the additional sum of $250,000).

This provision, as appellant argues, requires respondents to carry insurance that explicitly covers loss of rents as a result of fire. The district court found that respondents provided insurance-declaration pages that provided a "business owner's liability policy in the amount of $1,000,000." The district court also found that the declaration pages named appellant as an additional insured for premise-liability coverage in the amount of $900,000. David Lansing testified that he contacted Federated Insurance and was told that respondents had greater coverage than was necessary under the terms of the 2002 lease. And David Lansing also testified that this information was communicated to appellant on or about March 31, 2006.

The district court concluded that respondents "properly insure[d] the Property." As respondents note, appellant cancelled its additional insurance coverage, an act that was consistent with notice that respondents had sufficient coverage. Appellant failed to present evidence from any witness who had knowledge that the insurance policy was insufficient. We therefore conclude that the record supports the district court's determination that respondents had sufficient insurance coverage as required by the 2002 lease.

Affirmed.