STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0687

Northfield Telecommunications, Inc., d/b/a Advanced Wireless,
Appellant,

vs.

Maplewood Mall Associates, Ltd. Partnership,
Respondent.

Filed April 1, 2008
Affirmed in part, reversed in part, and remanded
Connolly, Judge

Ramsey County District Court
File No. CX 05-12675

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Considered and decided by Kalitowski, Presiding Judge; Connolly, Judge; and Poritsky, 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.

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

CONNOLLY, Judge

On appeal from summary judgment in a commercial landlord-tenant action, appellant-tenant challenges the district court's dismissal of its claims of breach of contract, breach of implied covenants of good faith and fair dealing, and fraud in the inducement. On the breach-of-contract claim, appellant argues that the lease was ambiguous concerning the number of rent reductions owed to appellant under the lease and any ambiguity in the lease should be construed against respondent-landlord, who drafted it. Because we agree that the district court properly dismissed the claims relating to fraud in the inducement and breach of implied covenants of good faith and fair dealing, we affirm. We also affirm the district court's grant of summary judgment on the eviction claim. However, because the district court failed to consider a letter sent by appellant to respondent under a provision of the lease that would have triggered a rent reduction, we reverse and remand for further proceedings on the breach-of-contract claim. We therefore affirm in part, reverse in part, and remand.

FACTS

On September 18, 1996 appellant Northfield Communications d/b/a Advanced Wireless (Advanced Wireless), entered into a seven-year, commercial lease with respondent Maplewood Mall Associates, Ltd. Partnership (Maplewood Mall) to lease retail space located at the shopping center. In 1998, Maplewood Mall was approached by Sam Goody, a music retailer, about expanding its leasehold at the shopping center. To facilitate this expansion, the Advanced Wireless store needed to be relocated within the

shopping center. Nothing in the existing lease required Advanced Wireless to relocate within the shopping center. Therefore, negotiations began on a new lease between Advanced Wireless and Maplewood Mall.

Advanced Wireless was primarily concerned with the possibility that other competitors that sold wireless phones and services might lease space in the shopping center and wanted to know if Maplewood Mall was currently in lease negotiations with such competitors or if it had plans to do so in the future. Advanced Wireless maintains that it was assured by Maplewood Mall that it was not negotiating with such competitors and had no plans to lease to competitors in the future. According to Advanced Wireless, Maplewood Mall agreed not to lease to any additional wireless competitors during the remainder of the lease, if Advanced Wireless would agree to relocate within the shopping center. Maplewood Mall disputes that point.

Because Advanced Wireless could not be forced to relocate under the terms of the existing lease, Advanced Wireless was ultimately paid $120,000 to move. To address the issue of competitors leasing space at the shopping center, a rent-reduction clause was negotiated between the parties. A new lease was executed on October 26, 1999, but only after considerable negotiation between the parties regarding the rent-reduction clause contained in Section 8.1. Relevant portions of Section 8.1 provided as follows:

> Subject only to the provision for a Competing Lease set forth below, Tenant expressly understands and acknowledges that its Permitted Use is *nonexclusive*, and that other tenants may sell items identical or similar to those sold by Tenant.

> Landlord agrees that so long as Tenant is not in default hereunder and is continuously operating its business from the Premises in accordance with the Permitted Use defined in Section 1.1(o) hereof, Landlord shall provide Tenant with the following relief from a portion of Minimum Annual Rent, as its sole and exclusive remedy, if Landlord shall lease (any such lease, a "Competing Lease") in-line store space in the enclosed mall portion of the Center after the date of this Lease, to another tenant or occupant (…) whose primary use therein is as a cellular or wireless retailer or re-seller ("Competing Tenant"). Competing Tenants shall specifically exclude any existing tenants or occupants currently open for business as of the date of this Lease in the Center's in-line stores or any Major Tenants, or any extension or renewal of any such lease or license. Competing Tenants shall include carts, kiosks, and other similar Common Area users whose primary use therein is as a cellular or wireless retailer or re-seller. *If (i) a Competing Tenant in an in-line store in the enclosed mall portion of the Center shall open for business under a Competing Lease, or if Landlord shall allow a Competing Tenant to operate a cart, kiosk or other similar Common Area use for a period of ten (10) consecutive months (…); and (ii) Tenant shall deliver to Landlord written notice ("Competition Notice") that Landlord has entered into a Competing Lease and that a Competing Tenant has opened for business at the Center; then starting from the date after Landlord receives a Competition Notice when the next monthly installment of Minimum Annual Rent is due and payable, Tenant shall pay Minimum Annual Rent in monthly installments reduced by twenty five percent (25%) ("Minimum Rent Abatement") for the remainder of the then current Lease Year and every Lease Year thereafter during the remainder of the Lease Term, unless and until the Competing Lease expires or otherwise terminates or the Competing Tenant no longer operates primarily as a retailer or re-seller of cellular or wireless services and products.*

(Emphasis added.)

Section 24.7 of the lease deals with notice. It provides:

> All notices to be given hereunder by either party shall be written and sent by registered or certified mail, return

> receipt requested, postage pre-paid or by an express mail delivery service, addressed to the party intended to be notified at the address set forth in Article I. Either party may, at any time, or from time to time, notify the other in writing of a substitute address for that above set forth, and thereafter notices shall be directed to such substitute address. Notice given as aforesaid shall be sufficient service thereof and shall be deemed given as of the date received or the date on which delivery is first refused, as evidenced by the return receipt of the registered or certified mail or the express mail delivery receipt, as the case may be. A duplicate copy of all notices from Tenant shall be sent to any mortgagee as provided for in Section 19.2.

Advanced Wireless claims that the non-exclusive language was included in the first paragraph of Section 8.1 because, as of October 26, 1999, Maplewood Mall already had competitors in the shopping center. Section 24.3 of the lease contains a merger clause. It provides:

> There are no representations, covenants, warranties, promises, agreements, conditions, or undertakings, oral or written, between Landlord and Tenant other than herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless in writing and signed by them.

On August 22, 2000, Advanced Wireless sent a written "competition notice" to the Maplewood Mall pursuant to Section 8.1 of the lease in the form of a letter. The letter was not sent by registered or certified mail as required by Section 24.7. The letter stated:

> Under the provisions of the lease between Maplewood Mall Associates Limited Partnership and Northfield Telecommunications, Inc.[1] dated October 26, 1999, please receive this letter as a "**Competition Notice**" as defined in section 8.1 of the lease.

[1] Northfield Telecommunications, Inc. was doing business as Advanced Wireless.

> Maplewood Mall Associates Limited Partnership (Landlord) has entered into a "Competing Lease" and that a "Competing Tenant" (i.e. CCI Wireless) has opened for business at the Center.
>
> Under the provisions of 8.1 it is our intention to reduce the "Minimum Annual Rent" by twenty five percent (25%) beginning with the payment due September 1, 2000.

Maplewood Mall agreed that this competition notice triggered the rent-reduction clause contained in Section 8.1 and that the annual minimum rent was decreased by 25%. This reduction has remained in place since that date. Between 2000 and 2005, approximately 11 more competitors entered the shopping center. Advanced Wireless argues that it sent two additional competition notices in 2004 and 2005, but they were not acknowledged by Maplewood Mall as triggering any additional rent reductions.

On September 20, 2004, Advanced Wireless sent what it considered to be another competition notice pursuant to the lease. However, this notice did not resemble the one sent in 2000. It was not in letter form and was not sent by registered or certified mail. It merely consisted of "a fax sent to lease accounting including a cover sheet, what appears to be invoices from Simon Property Group,[2] a record of appellant's which lists invoices received, and a copy of Section 8.1 of the lease with the language '. . . (25%) for the remainder of the then current Lease Year and every Lease Year thereafter during the remainder of the lease term. . . .' underlined." Unlike the August 22, 2000 notice, it did not identify any competing tenants.

[2] Simon Property Group was the managing agent of the shopping center.

On February 22, 2005, Advanced Wireless through its attorneys sent a third competition notice in the form of a letter. The letter was also not sent by registered or certified mail as required by the lease. That letter stated: "[t]he purpose of this letter then, is to provide another 'Competition Notice' as defined in Section 8.1 of the Lease." The letter stated that 11 "Competing Tenants" had been permitted to enter leases at the shopping center and then listed each one. It further stated that Advanced Wireless would therefore be entitled to a "25% rent reduction for each new violation of the 'competing tenant' clause." This letter specifically identified the 11 competing tenants.

As of February 2005, Advanced Wireless stopped paying its annual minimum rent obligations, as well as its additional rent obligations for property taxes and other similar charges that were due under the lease. Advanced Wireless claims that it was told "that the Mall would determine the number of competing tenants in violation of the lease and the dates of their tenancy, and would provide an accurate accounting of Advanced Wireless' rent overpayment." Advanced Wireless further contends that it was authorized to "suspend lease payments until the Mall could provide this accurate accounting".

On November 23, 2005, Advanced Wireless was served with a notice of default for nonpayment of rent. An eviction proceeding was initiated by Maplewood Mall on December 19, 2005. On December 29, 2005, Advanced Wireless, in turn, sued Maplewood Mall. That complaint included claims of fraud in the inducement, breach of contract and breach of the implied covenants of good faith and fair dealing. Advanced Wireless also sought declaratory judgment regarding the rent-reduction clause in Section 8.1 of the lease. These cases were later consolidated.

On April 7, 2006, the district court issued an order finding Advanced Wireless in breach of the lease for nonpayment of rent. On February 28, 2007, the district court granted summary judgment in favor of Maplewood Mall on the fraud-in-the-inducement, breach-of-contract and breach-of-implied-covenants-of-good-faith-and-fair-dealing claims, ordering Advanced Wireless to immediately vacate the premises.[3] The district court also granted Maplewood Mall's motion for summary judgment with regard to that part of the complaint that requested declaratory relief by allowing only one rent reduction. On March 26, 2007, the district court issued an order granting a monetary judgment against Advanced Wireless in the amount of $162,632.59, representing past due rental payments, interest, attorney fees and costs. This appeal follows.

D E C I S I O N

On appeal from summary judgment, this court asks (1) whether there are any genuine issues of material fact; and (2) whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citation omitted). This court views the evidence in the light most favorable to the party against whom judgment was granted. *Id.* No genuine issue of material fact exists when "the nonmoving party presents evidence

[3] The April 7, 2006 order was not separately appealed, but, the February 28, 2007 order of the district court further discussed the eviction claim and appellant raises eviction-related issues in this appeal.

which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997); *see also Schroeder v. St. Louis County*, 708 N.W.2d 497, 507 (Minn. 2006) (stating that "[a] party need not show *substantial evidence* to withstand summary judgment. Instead, summary judgment is inappropriate if the nonmoving party has the burden of proof on an issue and presents *sufficient evidence* to permit reasonable persons to draw different conclusions.").

I. Ambiguity in the Lease

Advanced Wireless contends that (1) Section 8.1 of the lease unambiguously provides for a 25% reduction in rent each time Maplewood Mall leased to a wireless competitor; (2) if additional "competition notices" were required, Advanced Wireless provided them; and (3) if Section 8.1 is ambiguous, that ambiguity must be construed against Maplewood Mall. Maplewood Mall disagrees, and argues that only one 25% rent reduction is proper, any additional competition notices after the August 22, 2000 letter were invalid, and any ambiguity should not be construed against it.

The district court, in discussing Section 8.1, concluded that "this provision of the Lease is somewhat ambiguous as to the issue of multiple Competing Tenants." The district court went further, however, and stated that,

> while this provision may be ambiguous as applied to a scenario with multiple Competing Tenants, it is wholly unambiguous as to the requirement that notice be properly given to the Defendant when Plaintiff believes another tenant qualifies as a Competing Tenant under Section 8.1, triggering

> the rent reduction. Plaintiff failed to bring proper notice at anytime apart from its initial notice of a Competing Tenant provided on August 22, 2000.

Therefore, the district court concluded that because proper notice had not been given since 2000, only one rent reduction was appropriate.

The purpose of contract interpretation is to ascertain and enforce the intent of the parties. *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). "Where there is a written instrument, the intent of the parties is determined from the plain language of the instrument itself." *Id.* "A contract is ambiguous if its language is reasonably susceptible to more than one interpretation." *Brookfield Trade Center, Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998) (citing *Current Tech. Concepts, Inc. v. Irie Enterprises, Inc.*, 530 N.W.2d 539, 543 (Minn. 1995)).

As the district court noted, the language in Section 8.1 of the lease is ambiguous. It simply does not specify if the rent reduction should be granted one time or numerous times, and it is susceptible to more than one interpretation. However, if Advanced Wireless is entitled to a separate rent reduction each time a competing tenant enters the shopping center, such reduction is contingent upon Advanced Wireless providing proper notice to Maplewood Mall each time a competing tenant rents space. There is simply no evidence supporting Advanced Wireless's argument that these rent reductions should be granted even without notice.

Advanced Wireless contends that it gave Maplewood Mall at least three proper competition notices. Unfortunately, Section 8.1 provides little insight into the proper form of the required notices. It merely says, "[t]enant shall deliver to Landlord written

notice ("Competition Notice") that Landlord has entered into a Competing Lease and that a Competing Tenant has opened for business at the Center." There are no further form requirements. As all parties agree that the August 22, 2000 notice was proper, this is the best example of what type of notice Advanced Wireless needed to provide to Maplewood Mall to claim a rent reduction. This notice was a letter stating, "[u]nder the provisions of the lease between Maplewood Mall Associates Limited Partnership and Northfield Telecommunications, Inc. dated October 26, 1999, please receive this letter as **'Competition Notice'** as defined in section 8.1 of the lease." That letter specifically identified CCI Wireless as the competing tenant. Annual minimum rent was reduced by 25% after receipt of this letter.

Advanced Wireless claims that a second proper competition notice was faxed to Maplewood Mall on September 23, 2004.[4] The district court rejected that argument. It stated: "[p]laintiff's suggestion that the packet of random materials sent by fax to Lease Accounting by Plaintiff on September 20, 2004 constitutes an additional Competition Notice is unconvincing." We agree. This notice was merely a fax cover sheet stating that it was a rent-competition notice. Although Section 8.1 was highlighted, there was no further information to alert Maplewood Mall that Advanced Wireless was utilizing the rent-reduction clause unlike the August 22, 2000 letter. Also, it did not indicate which

[4] This notice was not sent in compliance with section 24.7 of the lease, which requires notices to be sent via certified or registered mail. The first notice was sent by regular mail. Nonetheless, notice in this manner was deemed sufficient by both parties. This second notice was sent via fax.

competitor had entered the shopping center or when the reduction would take effect. This was not sufficient notice to trigger the rent-reduction clause.

However, there was a third competition notice sent by Advanced Wireless by regular mail on February 22, 2005. The language in this competition notice closely tracks that of the August 22, 2000 competition notice. It states, "[t]he purpose of this letter, then, is to provide another 'Competition Notice' as defined in Section 8.1 of the Lease." This notice also lists the names of 11 identified competitors leasing property in the shopping center. The district court did not address this notice in its opinion. We are unable to conclude why this letter would not constitute a proper rent-reduction notice under the lease, given the district court's finding that the August 22, 2000 letter constituted a valid competition notice.

Maplewood Mall argues that this February 22, 2005 notice was invalid because "it did not follow the directives of Section 24.7 of the lease which addresses where such notices are to be sent." Section 24.7 provides: "[a]ll notices to be given hereunder shall be…sent by registered or certified mail….addressed to the party intended to be notified at the address set forth in Article I." Maplewood Mall's address for notices is set out in Article 1, Section 1.1 and is 3001 White Bear Avenue, Suite 1072, St. Paul, Minnesota 55109. This is where the acknowledged notice from August 22, 2000 was sent. The February 22, 2005 notice, however, was sent to 115 West Washington Street, Indianapolis, IN 46204. But Advanced Wireless points out in an affidavit that it received a May 3, 2002 letter from Maplewood Mall that attached another notice dated May 6, 2002 from Maplewood Mall that designates Simon Property Group, L.P. as the managing

agent for the shopping center and changes the notice designation for all correspondence and payment. The May 6, 2002 letter states: "Effective May 2, 2002, all other correspondence and notices should be directed to the following address: Maplewood Mall Associates, L.P., c/o Simon Property Group, L.P., National City Center, 115 West Washington Street, Indianapolis, IN 46204." Therefore, the February 22, 2005 competition notice was sent to the proper address as required by the lease.[5] This point is crucial because the district court, on the grounds that Advanced Wireless failed to satisfy the lease's notice provisions, decided that it was unnecessary to interpret the "somewhat ambiguous" rent-reduction provision of the lease to determine if any future rent reductions were owing to Advanced Wireless. Because the district court did not address why the February 22, 2005 competition notice was insufficient, we remand this issue to the district court for additional findings on this subject. Furthermore, if the third competition notice is sufficient, then the district court must determine whether future rent reductions are warranted under the lease.

Normally, "[t]he construction and effect of a contract are questions of law for the court, but where there is ambiguity and construction depends upon extrinsic evidence and a writing, there is a question of fact for the jury." *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn. 1979). In this case, the record does not include any extrinsic

[5] On appeal, neither party addresses the fact that this third notice was not sent by registered or certified mail as required by the lease. However, since the first letter also did not comply with this provision of the lease but was viewed as a valid competition notice by both parties and the district court, we cannot, on this record, reject the third notice on this basis. We also note that neither party addresses the requirement on section 24.7 that a duplicate copy of all notices must be sent to any mortgagee under section 19.2.

evidence concerning the rent-reduction clause in Section 8.1. While the district court may be able to decide this issue on the existing record, if it decides that additional evidence is necessary it may reopen the record. If it rules that more than one rent reduction was permitted, the district court must then recalculate the amount of the $162,632.59 judgment to account for these reductions.

In its brief, Maplewood Mall argues that to permit multiple rent reductions under the lease would be "patently absurd" and that "nothing in the lease suggests that the 25% reduction applies in a cumulative manner in the presence of multiple competing tenants." We disagree. It is possible that the quid pro quo contemplated when the parties renegotiated the lease was that, in exchange for Advanced Wireless acknowledging it did not have exclusivity on selling wireless phones in the shopping center, it would receive a rent reduction if competitors entered the shopping center.

Lastly, the argument that Section 8.1 should be construed against Maplewood Mall as a matter of law is without merit. Both parties were represented by competent counsel at the time the lease was drafted. There were substantial negotiations between the parties, as evidenced by the red-lined version of the lease. Furthermore, Advanced Wireless held the superior bargaining position because it was not required to move from its first leasehold. Based on these facts, Maplewood Mall should only be considered the drafter because it created the physical document. That fact alone is not sufficient reason to resolve the ambiguity against Maplewood Mall.

II. Eviction

Advanced Wireless next argues that the district court erred by granting summary judgment in favor of Maplewood Mall on the eviction claim. Specifically, Advanced Wireless believes that the following material facts were in dispute: (1) whether it had overpaid rent; (2) whether any underpayment was authorized by Maplewood Mall; and (3) whether Maplewood Mall's actions were retaliatory for the its conduct in asserting its contractual rights. Therefore, according to Advanced Wireless, this issue should be remanded for determination at trial.

Under the eviction statute, "[a] person may be evicted if the person has unlawfully or forcibly occupied or taken possession of real property or unlawfully detains or retains possession of real property." Minn. Stat. § 504B.301 (2006). The lease in this case clearly states that payment of rent is a prerequisite to retaining possession of the leasehold. Therefore, nonpayment of rent, unless excused, would lead to a proper eviction action. Under the lease, Advanced Wireless was obligated to pay minimum annual rent and additional rent. Minimum rent is defined as

> a Minimum Annual Rent of Twenty-One Thousand Four Hundred Sixty and no/100 ($21,460.00) per annum, payable in equal monthly installments, in advance upon the first day of each and every month commencing upon the Commencement Date and continuing thereafter through and including the last day of the fifth (5^{th}) Lease Year, and
>
> a Minimum Annual Rent of Twenty-Five Thousand and no/100 dollars ($25,000.00) per annum, payable in equal monthly installments, in advance upon the first day of each and every month commencing upon the sixth (6th) Lease Year of the Lease Term and continuing thereafter through and including the last month of the Lease Term.

Additional rent is defined under Section 4.6 as "all amounts required to or provided to be paid by Tenant under this Lease other than Minimum Annual Rent and Percentage Rent shall be deemed Additional Rent." Additional rent included items such as real estate taxes and common-area maintenance payments.

First, Advanced Wireless alleges that it overpaid rent. If true, this would be a valid defense to an eviction action. Minn. Stat. § 504B.285, subd. 5 (2006). This defense would only be possible if further rent reductions should have been allowed under the lease resulting in Advanced Wireless's overpayment of rent. This is highly unlikely because any rent reductions would have only been effective, if at all, from the date of the third notice, February 22, 2005. In February 2005, however, Advanced Wireless reduced the amount it paid for annual minimum rent, as well as additional rent, based on its own calculations under the rent-reduction clause. And because the reduction clause *only* provided for minimum-annual-rent reductions, it was not permissible to reduce the additional rent by any amount. Therefore, by improperly reducing both rents unilaterally, Advanced Wireless was underpaying at least the additional rent and, absent a set-off argument not made to this court, Advanced Wireless's overpayment defense fails, and the district court did not err when it concluded that Advanced Wireless was required to vacate the premises.

The other arguments advanced by appellant on this subject are without merit. First, Advanced Wireless argues that it was authorized by Maplewood Mall to withhold rent until an accounting could be done. We disagree. Section 18.3 of the Lease expressly

prohibits such action. This provision states that "[t]he covenants to pay rent and other amounts hereunder are independent covenants and Tenant shall have no right to hold back, offset or fail to pay any such amounts for default by Landlord or any other reason whatsoever." Advanced Wireless was unauthorized, by contract, to withhold rent because of a dispute with Maplewood Mall. Such withholding amounted to a breach of the lease and was just cause for the eviction action to be brought by Maplewood Mall. Even assuming that this authorization was given orally, it was not proper for Advanced Wireless to rely on it. Section 24.3 of the lease provides in relevant part: "[e]xcept as herein otherwise provided, no subsequent alteration, amendment, change, or addition to this Lease shall be binding upon Landlord or Tenant unless in writing and signed by them." Therefore, such an authorization cannot be a defense to the underpayment of rent.

Lastly, Advanced Wireless alleges that this eviction action was brought in retaliation for its attempts to enforce the lease provision, namely that multiple rent reductions were proper. While this could potentially be a defense to an eviction action, there is simply no evidence in the record that Maplewood Mall was acting in a retaliatory manner. Advanced Wireless unilaterally reduced the amount of rent due by its own calculations. Maplewood Mall disagreed with this amount, advised Advanced Wireless that it was in default and subsequently brought an eviction action.

III. Fraud in the Inducement

Advanced Wireless next argues that it was fraudulently induced into signing the lease. It contends that it was lied to by Maplewood Mall regarding whether it was currently negotiating with wireless competitors, and whether Maplewood Mall had any

intention of negotiating with them in the future. Advanced Wireless alleges that Maplewood Mall was in fact negotiating with competitors, and inserted the rent reduction clause in anticipation of bringing competitors into the shopping center.

The parol evidence rule "prohibits the admission of extrinsic evidence of prior or contemporaneous oral agreements, or prior written agreements, to explain the meaning of a contract when the parties have reduced their agreement to an unambiguous integrated writing." *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 312 (Minn. 2003) (citing Richard A. Lord, Williston on Contracts § 33:1 (4th ed. 1999)). An exception to this general rule, however, is when the written agreement is challenged due to fraud. *Johnson Bldg. Co. v. River Bluff Dev. Co.*, 374 N.W.2d 187, 193 (Minn. App. 1985) *review denied* (Minn. Nov. 18, 1985). That case goes so far as to say, "[t]he parol evidence rule is inapplicable to exclude evidence of fraudulent oral representations by one party which induce another to enter into a written contract." *Id.* However, fraud is ineffective as a defense to enforcement of a contract term when the contract provision "explicitly states a fact completely antithetical to the claimed misrepresentations." *Commercial Prop. Invs., Inc. v. Quality Inns Int'l, Inc.*, 938 F.2d 870, 875 (8th Cir. 1991); *see also River Bluff*, 374 N.W.2d at 193 (stating that you cannot rely on a promise that is completely contradictory to what is in the contract).

Section 8.1 of the lease reads in part: "[t]enant expressly understands and acknowledges that its Permitted Use is nonexclusive, and that other tenants may sell items identical or similar to those sold by Tenant." The district court found that this term was "wholly unambiguous" and we agree. The district court went on to state that

Advanced Wireless was represented at the time the agreement was negotiated and executed, and had notice of this non-exclusivity provision.

Also, the lease contained a merger clause which states that "[t]here are no representations, covenants, warranties, promises, agreements, conditions, or undertakings, oral or written, between Landlord and Tenant other than herein set forth." Once a contract is considered integrated, parol evidence cannot be used to counter the terms of the contract. *Apple Valley Red-E-Mix, Inc. v. Mills-Winfield Eng'g Sales, Inc.* 436 N.W.2d 121, 123 (Minn. App. 1989), *review denied* (Minn. Apr. 26, 1989). Based on this provision, the parties intended that the lease was the complete agreement between them, and the district court so concluded.

The district court did not err it is application of the law to the undisputed material facts in granting summary judgment on this claim.

IV. Breach of Implied Covenants of Good Faith and Fair Dealing

Finally, Advanced Wireless argues that Maplewood Mall breached its implied covenants of good faith and fair dealing in two ways. First, Advanced Wireless contends that Maplewood Mall deliberately lied about its negotiations with competitors and its future plans to do so. Second, Advanced Wireless claims that Maplewood Mall admitted breaching the lease because Advanced Wireless had been given an exclusive lease and yet still allowed competitors into the shopping center.

In Minnesota, "every contract includes an implied covenant of good faith and fair dealing requiring that one party not 'unjustifiably hinder' the other party's performance of the contract." *In re Hennepin County 1986 Recycling Bond Litig.*, 540 N.W.2d 494,

502 (Minn. 1995). "Bad faith is defined as a party's refusal to fulfill some duty or contractual obligation based on an ulterior motive, not an honest mistake regarding one's rights or duties." *Sterling Capital Advisors, Inc. v. Herzog*, 575 N.W.2d 121, 125 (Minn. App. 1998) (citing *Lassen v. First Bank Eden Prairie*, 514 N.W.2d 831, 837 (Minn. App. 1994)), *review denied* (Minn. June 29, 1994)).

This argument fails for the same reasons that the fraudulent-inducement claim fails. The lease itself is controlling and the lease specifically provided that it was non-exclusive.

V. Conclusion

In sum, we affirm the district court's granting of summary judgment on the claims relating to fraudulent inducement and breach of the implied covenant of good faith and fair dealing. We also affirm the district court's granting of summary judgment on the eviction claim. However, because the district court did not discuss the third competition notice, we reverse its decision to grant summary judgment on the breach-of-contract claim, and we remand to the district court so that it may interpret the lease provision governing future rent reductions. Because the district court has already determined that the rent-reduction clause is ambiguous, it must now interpret the lease to determine if Advanced Wireless is entitled to multiple rent reductions. If it determines that appellant is entitled to such reductions, then the judgment of $162,632.59 must be reduced to reflect a credit from February 22, 2005, the date of the notice, to December 19, 2005, the date of the eviction action.

Affirmed in part, reversed in part, and remanded.