STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0716

RPC Properties, Inc.,
Appellant,

vs.

STAT Dental d/b/a Emergency Dental Care USA,
Respondent.

Filed December 3, 2012
Affirmed
Connolly, Judge

Ramsey County District Court
File No. 62-CV-10-9374

Lawrence H. Crosby, Jay D. Olson, Crosby & Associates, St. Paul, Minnesota (for appellant)

Marnie Fearon, Felhaber, Larson, Fenlon & Vogt, Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Rodenberg, Judge; and Hooten, Judge.

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

CONNOLLY, Judge

In this lease dispute, appellant-landlord challenges the district court's ruling that respondent-tenant was not required to pay the cost of removing all improvements to the

property in order to return the premises to a leasable condition. Because the plain and unambiguous language of the lease requires respondent-tenant to remove only those improvements actually placed in the property by respondent-tenant, we affirm.

FACTS

In August 2006, respondent STAT Dental entered a three-year agreement with appellant RPC Properties Inc. to lease office space for a dental practice. The office space contained a number of improvements making the space functional as a dental office. These improvements dated from before the prior tenant, Dr. Deborah Fung, took possession of the space. Neither respondent nor Fung made any significant additions or alterations to the space during their leases.

As a condition of leasing the space, respondent asked to access the space prior to the October 1, 2006 lease-start date. Respondent reached an informal agreement with Fung for access to the space in exchange for an early relinquishment fee. Respondent also purchased some of Fung's furniture and equipment.

Article 21 of respondent's lease agreement contained the following language:

> On the last day of the term of this Lease . . . the Tenant shall remove the Tenant's goods and effects . . . and shall quit and deliver up the Leased Premises and all keys thereto . . . in as good order and condition as the same were in on the date Tenant took possession thereof . . . . All alterations, additions, improvements or changes by Landlord shall remain as Landlord's property and shall be surrendered with the Leased Premises as a part thereof, unless Landlord elects under the provisions of Article 22 to have Tenant remove the same. . . . Any property left in the Leased Premises after the expiration or termination of this Lease shall be deemed to have been abandoned and the property of the Landlord to dispose of as the Landlord deems expedient . . . .

Article 22 contained the following language:

> All installations, additions, hardware, non-trade fixtures and improvements, temporary or permanent, brought to the Premises by or for Tenant, in or upon the Premises, whether placed there by Tenant or Landlord, shall be Landlord's property and shall remain upon the Premises . . . . If prior to termination of this Lease or within ten (10) days thereafter Landlord so directs by notice, *Tenant shall promptly remove the installations, additions, hardware, non-trade fixtures and improvements placed in the Premises by Tenant* and designated in the notice, failing which Landlord may remove the same and Tenant shall pay the reasonable cost thereof.

(Emphasis added). Fung's lease contained identical provisions.

At the termination of its lease, respondent removed most of its equipment and furniture, but did not remove the improvements that were in the space at the time its lease commenced. Appellant notified respondent that the cost of removing the improvements plus one day of holdover rent was $5,252.55. After subtracting respondent's $1,857 security deposit, appellant demanded $3,395.55 and brought an action in conciliation court.

The conciliation court entered an order that appellant was entitled to $3,565.33 plus fees, less the amount of respondent's security deposit. Appellant filed an appeal in district court to recover the security deposit. Following a bench trial, the district court held that respondent was entitled to recover its security deposit, less $746.80 in miscellaneous, uncontested expenses. The court found that "[t]he restoration expenses requested by [appellant] relate to improvements or alterations that existed in and on the Leased Premises at the commencement of [respondent's] Lease Agreement and, therefore, were not placed in the Leased Premises by [respondent]." This appeal follows.

D E C I S I O N

"On appeal, a [district] court's findings of fact are given great deference, and shall not be set aside unless clearly erroneous." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). "However, we are not bound by and need not give deference to the district court's decision on a purely legal issue." *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002).

Contract interpretation is a question of law that this court reviews de novo, with the primary goal to "ascertain and enforce the intent of the parties." *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009). When the meaning of a clause is clear and unambiguous, a court should not "rewrite, modify, or limit its effect by a strained construction." *Id.* at 364-65.

A clause is ambiguous only when it is "susceptible to more than one reasonable construction." *Fena v. Wickstrom*, 348 N.W.2d 389, 390 (Minn. App. 1984). A contract is not ambiguous simply because the parties do not agree on the proper interpretation of its terms. *Knudsen v. Transp. Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (Minn. App. 2003), *review denied* (Minn. Feb. 25, 2004). A reviewing court "must fastidiously guard against the invitation to create ambiguities where none exist." *Columbia Heights Motors, Inc. v. Allstate Ins. Co.*, 275 N.W.2d 32, 36 (Minn. 1979) (quotation omitted).

The plain language of Article 22 allows the landlord to require a tenant to remove "the installations, additions, hardware, non-trade fixtures and improvements placed in the Premises *by Tenant*." (Emphasis added). The district court held, and the parties do not

dispute, that respondent did not install the improvements at issue. The parties likewise do not dispute that neither appellant nor a third party installed the improvements at the request of respondent.

Appellant argues that the district court read the provision "too closely" and insists that respondent "took the premises and its improvements with the full knowledge that its lease . . . required [respondent] to demo out the space." Respondent disputes this argument. Appellant also contends that, because respondent benefited from the presence of the improvements, respondent was bound to remove those improvements at the end of its lease.

Appellant offers a strained construction of "placed in the Premises by Tenant." As required by Article 21, respondents surrendered the premises in the condition it was in "on the date Tenant took possession." Respondent has removed, or will pay to remove, any property that it "placed in the Premises." The plain language of the lease agreement does not require anything more of respondent.

Alternatively, appellant argues that respondent assumed the remainder of Fung's lease, therefore assuming the duty to restore the leased property. "The law in Minnesota, as in most jurisdictions, holds that the assignment of a contract does not impose upon the assignee the duties or liabilities imposed by the contract on the assignor in the absence of the assignee's specific assumption of such liabilities." *Meyers v. Postal Fin. Co.*, 287 N.W.2d 614, 617 (Minn. 1979).

The parties disagree as to the legal nature of the agreement between respondent and Fung, but agree that whatever agreement existed was informal. And even if

respondent did assume the remainder of Fung's lease, along with Fung's obligations under Articles 21 and 22, her lease contained the same language as respondent's and only required the removal of improvements placed "by [the] tenant." The undisputed evidence shows that Fung did not install the improvements or specifically assume the duty to remove any improvements placed by a prior tenant.

Finally, appellant argues that an unpublished case from this court provides guidance.[1] Appellant litigated the issue of whether a tenant could be held liable for the cost of removing improvements placed by a prior tenant in *RPC Props., Inc. v. Olson*, No. A04-2034, 2005 WL 1804474 (Minn. App. Aug. 2, 2005). The lease in *Olson* contained substantially identical language to the lease in the present case. *Id.* at *1. In that case, we reversed the decision of the district court and held that the tenant/respondent was responsible for the cost of removing improvements that had been installed by the previous tenant. *Id.* at *1-2. That decision rested on two grounds that distinguish it from the current case.

First, we held that the district court erred in finding that the landlord, rather than the prior tenant, had installed the improvements at issue. *Id.* at *3-4. In the instant case, the parties agree that neither the current nor the prior tenant installed the improvements.

Second, in *Olson* the respondent-tenant signed an agreement with the prior tenant expressly agreeing to assume "all the terms, conditions, covenants, and agreements of [assignor's] lease." *Id.* at *5. We applied the rule from *Meyers* that assignment of a

[1] We note that unpublished cases are not binding authority, but may be persuasive. *City of St. Paul v. Eldredge*, 788 N.W.2d 522, 526-27 (Minn. App. 2010), *aff'd*, 800 N.W.2d 643 (Minn. 2011).

contract only imposes the duties and obligations of the assignor's contract on the assignee where there is a specific assumption of those liabilities. *Id.* (citing *Meyers*, 287 N.W.2d at 617). Neither respondent nor the prior tenant in this case specifically assumed the duties and obligations of a prior lease. Therefore, under both *Meyers* and *Olson*, respondent is only responsible for removing improvements placed by respondent, and restoring the property to the state it was in at the time that respondent's lease began.

Affirmed.