STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1217

Abdul Tel,
Appellant,

vs.

Mowlid Mohamud Said,
Respondent.

Filed February 19, 2013
Affirmed
Cleary, Judge

Ramsey County District Court
File No. 62-HG-CV-12-1216

Diana Longrie, Maplewood, Minnesota (for appellant)

Timothy Kaine, Lockwood Law Office, Roseville, Minnesota (for respondent)

Considered and decided by Cleary, Presiding Judge; Ross, Judge; and Hooten, Judge.

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

CLEARY, Judge

Appellant challenges the district court's denial of his request that respondent be evicted from commercial property that appellant owns and respondent rented. Appellant argues that the district court misinterpreted the lease between the parties and clearly erred

by finding that respondent had properly exercised an option to renew the lease. We affirm.

FACTS

In April 2011, appellant Abdul Tel and respondent Mowlid Mohamud Said entered into a commercial lease agreement (the lease) whereby respondent agreed to rent from appellant commercial property located in St. Paul from May 1, 2011 to April 30, 2012. Respondent had the option to renew the lease for one five-year period. The lease states, "If [respondent] wishes to exercise the Renewal Option, [he] must provide notice to [appellant] of the exercising in writing no later than February 28, 2012." Another provision of the lease states, "Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows . . . ." The lease was drafted by appellant's attorney.

In May 2012, appellant filed a complaint to have respondent evicted from the commercial property, claiming that respondent had not exercised the option to renew the lease. Respondent filed an answer and counterclaim, maintaining that he had given appellant written notice prior to February 28, 2012, stating that he wanted to renew the lease and that he had been assured by appellant that the lease would be renewed.

An eviction hearing was held in housing court, during which appellant testified that respondent never gave him "anything" and he never received anything in the mail indicating that respondent wanted to renew the lease. Respondent testified that appellant's son would come to the commercial property every month on the first of the month to collect the rent check. Respondent further testified that, when appellant's son

came to collect the rent on February 1, 2012, respondent had his cousin write a letter expressing respondent's intent to renew the lease. Respondent testified that on April 1, 2012, he and appellant discussed when appellant would be giving respondent a new lease document. Respondent recorded this conversation with appellant, and the recording was played during the hearing.[1] Respondent's cousin testified that he wrote a note stating that respondent wanted to renew the lease and that respondent signed the note and gave it to appellant's son. The cousin could not recall the exact date that this occurred, but stated that it was on a morning that appellant's son came to collect the rent.

The housing court referee subsequently issued an order denying appellant's request that respondent be evicted from the commercial property. The referee stated that respondent's cousin's testimony was "credible and unrebutted" and that, "If [respondent] had not exercised his option to renew, [appellant] would not have indicated that he would send him a lease." The referee concluded that appellant had "failed to prove by a preponderance of the evidence that [respondent] failed to properly exercise his right to renew." A district court judge confirmed the referee's order, and this appeal follows.

[1] This recording was not admitted as an exhibit, and thus is not part of the record on appeal. *See* Minn. R. Civ. App. P. 110.01 ("The papers filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases."). The appellant has the burden to provide an adequate record on appeal. *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995). Thus, we must uphold the district court's findings regarding the recording.

D E C I S I O N

I. The district court did not err by determining that personal service of a notice of intent to renew the lease was sufficient under the terms of the lease.

Appellant challenges the district court's interpretation of the lease. "The construction and effect of a contract presents a question of law, unless an ambiguity exists." *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). When a contract is ambiguous, its construction is a question of fact. *Hickman v. Safeco Ins. Co. of Am.*, 695 N.W.2d 365, 369 (Minn. 2005). The determination of whether a contract is ambiguous is a question of law. *State by Humphrey v. Delano Cmty. Dev. Corp.*, 571 N.W.2d 233, 236 (Minn. 1997). Questions of law are subject to de novo review. *Boldt v. Roth*, 618 N.W.2d 393, 396 (Minn. 2000).

"A contract is ambiguous if its language is reasonably susceptible of more than one interpretation." *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). In this case, the disputed contract language is the provision of the lease that states, "Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows . . . ." Appellant argues that this language means that any notice required under the lease is *only* sufficiently given if sent by certified mail. Respondent maintains that, while certified mail is one way of giving sufficient notice, the lease does not state that certified mail is the only way, and that other methods such as personal service may also be sufficient.

"[L]anguage found in a contract is to be given its plain and ordinary meaning." *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 67 (Minn. 1979). "The cardinal purpose of construing a contract is to give effect to the intention of the parties as expressed in the language they used in drafting the whole contract." *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997). Where the intent of the parties is doubtful, the contract will be construed against the drafting party. *Turner*, 276 N.W.2d at 66.

Here, the lease states that notice "shall be deemed sufficiently given or served if sent by United States certified mail," but does not explicitly state that notice *must* be sent by certified mail or that notice shall *only* be deemed sufficiently given or served if sent by certified mail. Such limiting language could have been included in the lease if the parties had intended that certified mail be the only sufficient method of providing notice. We are supposed to give ordinary words in contracts their ordinary meaning. The word "sufficient" is inclusive, not exclusive. *See Black's Law Dictionary* 1571 (9th ed. 2009) (defining "sufficient" as "[a]dequate . . . for a given purpose," but not as mandatory). Given the lease language, the district court's interpretation that personal service was an acceptable method of giving notice is not error.

II. The district court did not clearly err by finding that respondent gave timely written notice that he was exercising the option to renew the lease.

Appellant challenges the district court's finding that respondent gave timely written notice that he was exercising the option to renew. Findings of fact should only be set aside if they are "clearly erroneous" in that "the reviewing court is left with the

definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted) (citing Minn. R. Civ. P. 52.01). On appeal, a district court's findings of fact are "given great deference" and should not be disturbed if there is reasonable evidence to support them. *Id.* "[D]ue regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. "The findings of a referee, to the extent adopted by the court, shall be considered as the findings of the court." *Id.*

Appellant argues that, even if respondent could personally deliver his notice of intent to renew the lease, the evidence does not support the finding that written notice was timely provided. Appellant contends that respondent's "testimony is clearly inconsistent with his claim of delivering written notice."

However, respondent testified as to the date that the notice was written by his cousin as follows:

> ATTORNEY: At the end of February, did [appellant's son] come in and collect the rent?
> RESPONDENT: Yes. At the end he came, he collected the check and he said – he doesn't know how to write, so my [cousin] over there wrote the letter.
> ATTORNEY: And that was like February 29?
> RESPONDENT: Around February 1st, February 1st.

Respondent also testified that appellant's son would always come to the commercial property on the first of the month to collect the rent check. Respondent's cousin testified that he could not recall the date that he had written the notice, but that it was on a day when appellant's son came to collect the rent check, and that, after the notice had been written, respondent signed it and gave it to appellant's son. Moreover, appellant later

told respondent that he would be sending respondent a new lease document. The district court's finding that respondent had properly exercised the option to renew the lease is reasonably supported by the record and is not clearly erroneous.

Affirmed.