STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1624

Chanhassen Lawn & Sport, Inc.,
Respondent,

vs.

Market Square Associates Limited Partnership,
Appellant.

Filed July 7, 2009
Reversed and remanded
Muehlberg, Judge[*]

Carver County District Court
File No. 10-CV-07-37

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Considered and decided by Schellhas, Presiding Judge; Larkin, Judge; and Muehlberg, 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

MUEHLBERG, Judge

A commercial landlord appeals from a district court's order requiring the landlord to give its tenant the opportunity to cure a default and to honor the buyout provisions contained in the parties' original lease agreement. The landlord, Market Square Associates Limited Partnership, contends that the district court erred by (1) denying Market Square's motion to terminate the lease because Market Square did not comply with the notice and opportunity to cure requirements found in the eviction statutes; and (2) concluding that the addendum to the lease agreement did not supersede the original buyout provision in the lease. Market Square also contends that the district court's erroneous conclusions on the substantive issues require a reversal of its attorney fee award. Because we conclude that the district court erred by applying the eviction statutes, we reverse the district court's denial of Market Square's motion to terminate the lease. And because Market Square complied with the unambiguous terms of the lease, we conclude that Market Square is allowed to terminate the lease according to its terms. We remand for the district court to apply the provisions of Article 24 of the lease and to reapportion its attorney fee award based on our resolution of the case.

FACTS

The facts of this case are undisputed. Chanhassen Lawn and Sport leased space in a shopping center owned by Market Square. The parties executed the original lease agreement in October 1991. The term of the lease is 32 years. The parties also executed several addenda to the lease agreement.

Two events precipitated the parties' present dispute. First, in June 2006, Market Square billed Chanhassen Lawn $15,224.97, for Chanhassen Lawn's proportionate share of the cost of resurfacing the shopping center's parking lot. Chanhassen Lawn refused to pay, arguing that the resurfacing of the parking lot was a capital improvement and not an operating expense. Second, in September 2006, Chanhassen Lawn sought to exercise its option pursuant to a buyout provision found in the original lease that required Market Square to purchase Chanhassen Lawn's leasehold interest. Market Square refused to do so, contending that the lease's buyout provision had been superseded by an addendum.

The parties' disagreements about the lease eventually led to litigation. Chanhassen Lawn sued Market Square, alleging that Market Square breached the lease by billing Chanhassen Lawn for the parking lot repairs and by refusing to honor the lease's original buyout provision. Chanhassen Lawn sought a declaratory judgment holding that it did not have to pay resurfacing costs and that Market Square had to honor the lease's original buyout provision. Market Square counterclaimed that Chanhassen Lawn had breached the lease by refusing to pay for the parking lot repairs and argued that Chanhassen Lawn was in default. Both parties moved for summary judgment.

On March 6, 2008, the district court granted summary judgment in favor of Market Square on its breach of contract claim. It ordered Chanhassen Lawn to pay Market Square $15,224.97, plus interest, costs, and reasonable attorney fees, concluding that the lease unambiguously requires Chanhassen Lawn to pay for the repair and replacement of parking surfaces. The district court also concluded that Chanhassen Lawn "is in default" for its failure to pay. Neither party appealed judgment on this issue.

Regarding the lease's buyout provisions, the district court concluded that Market Square "is obligated to comply with the terms of the buyout provisions as originally written in Article 50 and subsequently amended." The district court explained that the unambiguous language of the addendum to Article 50 clearly states that it only added a new paragraph and did not replace or delete the terms from the original provision. But the district court noted that "because [Chanhassen Lawn] is in default under the terms of the lease for failing to pay the parking lot resurfacing assessment, it is not entitled to exercise its option to require [Market Square's] purchase of its interest until such time as the default has been cured."

On March 12, 2006, armed with the district court's order holding that Chanhassen Lawn was in default under the lease, Market Square gave Chanhassen Lawn notice of its intent to terminate the lease pursuant to Article 24. Article 24, entitled "Default of Tenant," relates to Market Square's remedies in the event of Chanhassen Lawn's default. Article 24 provides:

> In the event Tenant shall . . . fail to pay rent . . . or . . . fail to keep or perform any of the other terms, conditions or covenants of the lease . . . then Landlord . . . shall have the right to either (a) terminate this Lease upon the expiration of five (5) days after written notice of such intent is given to tenant, in which event the Term hereof shall expire and terminate . . . or (b) re-enter the Premises, dispossess Tenant and/or other occupants of the Premises, remove all property from the Premises and store the same in a public warehouse.

Article 24 does not give Chanhassen Lawn a right to cure any default.

On March 20, more than five days after Market Square's notice of intent to terminate the lease, Chanhassen Lawn attempted to cure its default by giving a check to

Market Square for $16,676.97. A letter accompanying the check explained that the check did not include Market Square's attorney fees because the district court had not yet determined whether the fees were reasonable. The letter also stated that "once the Court has established the amount of costs and reasonable attorneys' fees, Chanhassen [Lawn] is ready to comply with that order." Market Square rejected the check, and the parties returned to the district court.

According to the district court, Market Square "[sought] essentially another summary judgment order affirming that it is entitled to terminate the lease and trigger the equity payment provisions contained in Article 24C of the lease." Market Square also filed a motion for costs and attorney fees. Chanhassen Lawn argued that Market Square could not terminate the lease without giving Chanhassen Lawn reasonable notice and an opportunity to cure its default and sought "an order affirming that it is entitled to be bought out under Article 50 of the lease," and for its share of attorney fees for the buyout issue. On July 18, the district court issued an order providing that: (1) Market Square shall not terminate the lease without providing Chanhassen Lawn "an opportunity to cure pursuant to Minn. Stat. § 504B.291"; and (2) because Chanhassen Lawn prevailed on the issue of Market Square's "obligation to comply with the buyout provisions of Article 50 of the Lease" and Market Square prevailed on the parking lot resurfacing issue "each party is entitled to . . . attorneys' fees and costs related to their respective motions." After an *in camera* review of the parties' attorney fees, the district court issued its final order on August 7, 2008, requiring Market Square to pay $13,391 for Chanhassen Lawn's attorney fees and costs. This appeal follows.

D E C I S I O N

On review from summary judgment, this court determines whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Both parties concede that there are no genuine issues of material fact. When there are no genuine issues of material fact and the appeal turns on purely legal issues, this court's review is de novo. *Progressive Specialty Ins. Co. v. Widness ex. rel. Widness*, 635 N.W.2d 516, 518 (Minn. 2001).

I.

We first address Market Square's contention that the district court erred by preventing Market Square from terminating the lease. Market Square contends that the district court erred as a matter of law by applying Minn. Stat. § 504B.291 (2008) to this case. We agree.

Application of Minn. Stat. § 504B.291

Market Square argues that the district court erred by applying Minn. Stat. § 504B.291 because this is not an eviction action, but rather a civil suit to terminate a lease. Chanhassen Lawn counters that the protections from Minn. Stat. § 504B.291 are applicable here because Market Square's "attempt to terminate the Lease constitute[ed] a *de facto* eviction since it would, in effect, terminate [Chanhassen Lawn's] rights to occupy the premises." Chanhassen Lawn alternatively argues that "[e]ven if § 504B.291 does not technically apply, equitable principles do" and the district court should be

affirmed because it "exercised its discretion equitably in preventing forfeiture of [Chanhassen Lawn's] buy-out interest."

The district court concluded that Market Square could not terminate the lease because Market Square "failed to comply with the notice requirements of Minn. Stat. § 504B.291." The district court specifically applied what it identified as "additional protection for tenants" from Minn. Stat. § 504B.291 and concluded that:

> before cancelling the lease . . . [Market Square] must serve [Chanhassen Lawn] with written notice stating: (1) the lease will be canceled unless the amounts, agreements, and legal obligations in default are paid or performed within 30 days, or a longer specified period; and (2) if the amounts, agreements, and legal obligations are not paid or performed within that period, then the landlord may evict the tenant at the expiration of the period.

Market Square's notice of cancellation did not comply with Minn. Stat. § 504B.291 because it only gave Chanhassen Lawn five days' notice and no opportunity to cure. The district court therefore held that Market Square could not "terminate the lease and trigger the equity payment provisions contained in Article 24C." The district court provided that Chanhassen Lawn "must be given the statutorily required right to cure the default, and once cured . . . [Market Sqaure] must comply with the buyout provisions contained in Article 50 of the lease."

When a statute's terms are clear and unambiguous, courts should not engage in any further statutory construction and must apply the statute's plain meaning. *State by Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996). And because "the application of a statute to undisputed facts . . . is a legal conclusion," we review the district court's

application of the statute de novo. *Weston v. McWilliams & Assocs., Inc.*, 716 N.W.2d 634, 638 (Minn. 2006).

Section 504B.291, subdivisions 1 and 2 provide, in relevant parts:

> **504B.291 EVICTION ACTION FOR NONPAYMENT; REDEMPTION; OTHER RIGHTS.**
>
> Subdivision 1. **Action to recover.** (a) A landlord may bring an eviction action for nonpayment of rent irrespective of whether the lease contains a right of reentry clause. Such an eviction action is equivalent to a demand for the rent. In such an action, unless the landlord has also sought to evict the tenant by alleging a material violation of the lease under section 504B.285, subdivision 5, the tenant may, at any time before possession has been delivered, redeem the tenancy and be restored to possession by paying to the landlord or bringing to court the amount of the rent that is in arrears, with interest, costs of the action, and an attorney's fee not to exceed $5, and by performing any other covenants of the lease.
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> Subd. 2. **Lease greater than 20 years.** (a) *If the lease under which an action is brought under subdivision 1* is for a term of more than 20 years, the action may not begin until the landlord serves a written notice on the tenant and on all creditors with legal or equitable recorded liens on the property. The notice must state: (1) the lease will be canceled unless the amounts, agreements, and legal obligations in default are paid or performed within 30 days, or a longer specified period; and (2) if the amounts, agreements, and legal obligations are not paid or performed within that period, then the landlord may evict the tenant at the expiration of the period.
>
> (b) If the lease provides that the landlord must give more than the 30 days' notice provided in paragraph (a), then notice must be the same as that provided in the lease.

(Emphasis added.) The terms of section 504B.291 indicate that the statute governs eviction actions for nonpayment of rent. And subdivision 2(a), which gives additional

protections for tenants in leases greater than 20 years, clearly and unambiguously states that it applies only when an eviction action for nonpayment of rent is brought under subdivision 1.

Here, Market Square did not bring an eviction action for nonpayment of rent. Rather, it sought a declaratory judgment and summary judgment "affirming that it is entitled to terminate the lease and trigger the equity payment provisions contained in Article 24C of the lease." Nevertheless, the district court applied the notice and opportunity to cure protections from section 504B.291 and held that Chanhassen Lawn "must be given the statutorily required right to cure the default." But this court has declined to apply the statutory predecessor of Minn. Stat. § 504B.291 to unlawful detainer cases that are not brought for nonpayment of rent. *See, e.g., Priordale Mall Invs. v. Farrington*, 411 N.W.2d 582, 584 n.1 (Minn. App. 1987) ("We note that this is not an action for nonpayment of rent and that Minn. Stat. § 504.02 (1984) (tenant's right of redemption) does not apply."). Because the terms of the statute indicate that it only applies when an eviction action is brought for nonpayment of rent, the district court erred by applying it to this case.

Chanhassen Lawn argues that section 504B.291's protections should apply because "[Market Square's] attempt to terminate the Lease constitutes a *de facto* eviction, since it would, in effect, terminate [Chanhassen Lawn's] rights to occupy the premises." Though this argument has some intuitive appeal, it does not carry the day. Again, the clear terms of section 504B.291, subdivision 2, state that the protections of 30 days' notice and an opportunity to cure apply only if an eviction action is bought under section

504B.291, subdivision 1. Here, because Market Square did not bring an action under section 504B.291 for nonpayment of rent, the statute simply does not apply.

Chanhassen Lawn finally argues that "[e]ven if § 504B.291 does not technically apply, equitable principles do" and the district court "did not abuse its discretion in holding, as a matter of equity, that [Chanhassen Lawn] should be entitled to exercise its buyout option" and by preventing Market Square from terminating the lease. Chanhassen Lawn spends many pages of its brief detailing how the district court's decision was based on equity and how equity supports Chanhassen Lawn's position. But reviewing the specifics of the district court's reasoning shows that the district court did not "exercise its equitable discretion" in disallowing Market Square's termination of the lease; rather, it held that Minn. Stat. § 504B.291 applied to this case. As explained above, the district court erred by applying the statute to this case because this was not an "eviction action for nonpayment of rent."

Termination of the Lease under Article 24

Because we conclude that the district court erred by applying section 504B.291, we continue to Market Square's argument regarding its right to terminate under Article 24 of the lease. Market Square correctly notes that the district court found that Chanhassen Lawn was in default under the lease because it failed to pay the parking lot resurfacing costs. Chanhassen Lawn did not appeal that finding and concedes that it was in default. Market Square argues that in the event of tenant's default, "Article 24 and only Article 24 controls." We agree.

Article 24 of the lease is entitled, "Default of Tenant," and it gives Market Square two options in the event of Chanhassen Lawn's default. Market Square can either: "(a) terminate this Lease upon the expiration of five (5) days after written notice . . . or (b) re-enter the Premises [and] dispossess [the] Tenant." Based on the undisputed facts, Market Square chose the first option under Article 24 and gave Chanhassen Lawn written notice of its intent to terminate on March 12, 2008. According to the provisions of Article 24, Market Square would be allowed to terminate the lease as soon as March 18, 2008. Indeed, the district court noted that "[c]onsidering only the provisions of Article 24 of the lease . . . [Market Square] was entitled to terminate the lease upon the expiration of five days after written notice of such intent was given to [Chanhassen Lawn]." Because the terms of the lease give the landlord specific remedies in the case of tenant's default, because Market Square exercised its remedy, and because the lease does not provide Chanhassen Lawn the opportunity to cure its default, we conclude that Market Square's motion to terminate the lease should have been granted.

Chanhassen Lawn argues that the district court's refusal to apply Article 24 was reasonable because it would have resulted in a forfeiture of Chanhassen Lawn's "equity" in the property, including its initial $200,000 investment. But the terms of the lease show that Chanhassen Lawn's "equity" would not have been forfeited. Chanhassen Lawn's "initial equity payment" is protected by Article 24C of the lease which provides: "In the event that Landlord elects to terminate this Lease pursuant to the terms hereof due to Tenant default . . . Tenant shall convey by quit claim deed or other appropriate document all of its rights . . . [and] Landlord shall pay to Tenant pursuant to the terms set forth in

this section an amount equal to the sum of the Initial Payment plus that portion of the Cost of Construction paid to Landlord as rent as of the date of termination less the sum of any overdue and unpaid Rent . . . ." The lease notes that the "Initial Payment" was $100,000. The portion of the costs of construction is less clear from the record, but Chanhassen Lawn suggests that it is at least another $100,000. This provision protects Chanhassen Lawn in the event of its own default because it prevents a "forfeiture" of its investment in the shopping center. Contrary to Chanhassen Lawn's assertion, a forfeiture will not result from allowing Market Square to apply Article 24's terms and exercise its right to terminate the lease.

We reverse the district court's decision to apply section 504B.291 to prevent Market Square from terminating the lease. By applying section 504B.291, the district court essentially amended the terms of the lease by providing Chanhassen Lawn with 30 days' notice and an opportunity to cure its default rather than applying the five-day notice and no opportunity to cure provision found in Article 24 of the lease. Because of Chanhassen Lawn's default, Market Square is entitled to terminate the lease under Article 24. Because Market Square's motion to terminate the lease should have been granted, the issue of whether the original buyout provision in Article 50 was superseded becomes irrelevant and we therefore decline to reach it.

II.

The district court awarded attorney fees to both parties and apportioned the fees based on which party prevailed on each issue. The district court found that (1) Chanhassen Lawn was the prevailing party on "the issue of requiring [Market

Square's] compliance with Article 50 of the lease"; and (2) Market Square was the prevailing party on "the issue of [Chanhassen Lawn's] requirement to pay the parking lot resurfacing costs." The district court accepted Chanhassen Lawn's attorney's affidavit which "estimat[ed] that approximately 25% of the fees and costs were attributed to the parking lot resurfacing issue and 75% were attributed to the buyout issue." It therefore awarded Chanhassen Lawn "three-fourths of their attorney's fees and costs, or $35,699" and awarded Market Square "one-quarter of its attorney's fees and costs, or $22,308." After offsetting these amounts, the district court ordered Market Square to pay Chanhassen Lawn $13,391. This court reviews the award or denial of attorney fees for an abuse of discretion. *WDSI, Inc. v. County of Steele*, 672 N.W.2d 617, 622 (Minn. App. 2003).

Generally, a party may not recover attorney fees unless provided by statute or contract. *Fownes v. Hubbard Broadcasting, Inc.*, 310 Minn. 540, 544, 246 N.W.2d 700, 702 (Minn. 1976). Here, both parties acknowledge that a lease provision allows the "prevailing party" to recover attorney fees.

"In determining who qualifies as the prevailing party in an action, the general result should be considered, and inquiry made as to who has, in the view of the law, succeeded in the action." *Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn. 1998) (quotation omitted). The *Borchert* court explained that "[t]he prevailing party in any action is one in whose favor the decision or verdict is rendered and judgment entered." *Id*. Because we conclude that Market Square should have been allowed to terminate the lease according to the provisions in Article 24, Market Square is the "prevailing party" in

the litigation because Market Square is the party "in whose favor the decision or verdict is rendered and judgment entered." Chanhassen Lawn obviously cannot exercise the buyout provision under Article 50 when the lease has been properly terminated.

Because Market Square prevails on the termination issue, Chanhassen Lawn's "victory" on the Article 50 issue does not make it the "prevailing party," and the district court's apportionment of attorney fees was therefore erroneous. We remand to the district court to reapportion the attorney fees consistent with this court's decision.

Reversed and remanded.