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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1865**

Darlson Manno Limited Partnership,
Appellant,

vs.

Diversified Capital Mortgage, LLC, et al.,
Respondents.

**Filed July 21, 2009
Affirmed
Stoneburner, Judge**

Hennepin County District Court
File No. 27CV077012

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Considered and decided by Stoneburner, Presiding Judge; Stauber, Judge; and Willis, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant landlord challenges the district court's decision that a hold-over provision in an expired lease was not retroactive to the date of expiration of the lease. Because the lease lacks any reference to retroactive application of the hold-over provision and the language and punctuation of the lease demonstrate that notice must precede the application of the provision for increased rent, we affirm.

FACTS

In June 2003, the predecessor-in-interest of appellant Darlson Manno Limited Partnership (landlord) entered into a written lease with respondents Diversified Capital Mortgage, LLC; Cheryl Seburg; and Michael Jolkowski (tenants), for the 39-month rental of a single suite in a building. The lease contained the following hold-over provision:

Holding Over. The Lease shall terminate and shall become null and void without further notice upon the expiration of the term herein specified, and any holding over by Tenant after such expiration shall not constitute a renewal hereof or give Tenant any rights under the Lease. If Tenant shall hold over for any period after the expiration of said term, Landlord may, at its option, exercised by written notice to Tenant, treat Tenant as a Tenant from month to month commencing on the first day following the expiration of the Lease except that the Base Rent and Operating Expenses, which shall be payable in advance monthly, shall be 200% of said Base Rent and Operating Expenses applicable at the date of expiration. . . .

In February 2004, the lease was amended to include the rental of an additional suite.

Landlord notified tenants in July 2004 that it had purchased the building and accepted all the terms and conditions of the lease. Before the lease expired, landlord and

tenants had some discussions about extending the lease: they dispute the content of these discussions, and no written extension or modification of the lease resulted. When the lease expired, tenants remained in the building, occupying only one suite, and by oral agreement, landlord continued to bill them for rent at the lease rate for one suite while they discussed lease renewal. From November 2006 through February 2007, tenants paid the invoiced amounts, which were accepted by landlord.

On March 15, 2007, tenants gave notice of their intent to vacate the suite by April 30, 2007. On or about March 20, 2007, landlord gave tenants written notice that it was invoking the hold-over provision in the lease retroactive to the date the lease expired, and would treat tenants as month-to-month tenants and charge the double-the-base rent and operating expenses provided for in the hold-over agreement. Tenants refused to pay the increased amounts demanded and vacated the property before April 30, 2007. Landlord then sued tenants for breach-of-contract, seeking damages under the hold-over provision retroactive to the date that the lease expired.

The district court granted summary judgment, concluding that landlord's invocation of the hold-over provision in the lease only became effective in the month after landlord gave notice of its intent to invoke the provision. The district court granted landlord judgment for \$3,543.92, representing 200% of the base rent and operating expenses for April 2007 less the amount that tenants had already paid for that month, and

\$4,000 in attorney fees. This appeal followed, challenging the district court's failure to apply the hold-over provision retroactive to the date that the lease expired.¹

DECISION

Standard of Review

On appeal from summary judgment, we ask only whether there are any genuine issues of material fact and whether the district court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). When there are no genuine issues of material fact and the appeal turns on purely legal issues, review is de novo. *Progressive Specialty Ins. Co. v. Widness ex rel. Widness*, 635 N.W.2d 516, 518 (Minn. 2001); *see also Dorsey & Whitney LLP v. Grossman*, 749 N.W.2d 409, 417–19 (Minn. App. 2008) (holding that both determination of contract ambiguity and interpretation of unambiguous contract are questions of law, subject to de novo review).

Landlord does not disagree with the district court's conclusion that the hold-over provision in the 2003 lease became effective on April 1, 2007. But landlord argues that the district court erred by concluding that the provision could only be enforced prospectively. Landlord asserts that the hold-over provision clearly and unambiguously requires that tenants pay 200% of base rent and operating expenses beginning on the first

¹ Tenants' brief asserts that the district court erred by applying the hold-over provision for the month of April 2007, but tenants did not file a notice of review, so this issue is not properly before us in this appeal. *See City of Ramsey v. Holmberg*, 548 N.W.2d 302, 305 (Minn. App. 1996) (holding that an issue decided adversely to a party is not properly before this court if no notice of review is filed pursuant to Minn. R. Civ. App. P. 106), *review denied* (Minn. Aug. 6, 1996).

day following the expiration of the lease. Tenants contend that the hold-over provision does not allow for application before notice.

The primary purpose of interpreting a lease, as with other contracts, is to determine and enforce the intent of the parties at the time they entered into the contract. *See Karim v. Werner*, 333 N.W.2d 877, 879 (Minn. 1983) (describing the role of the court as ascertaining and giving effect to the parties' intentions in drafting a contract). "[W]hen a contract is unambiguous, a court gives effect to the parties' intentions as expressed in the four corners of the instrument, and clear, plain, and unambiguous terms are conclusive of that intent." *Knudsen v. Transp. Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (Minn. App. 2003), *review denied* (Minn. Feb. 25, 2004). The determination of whether a contract is ambiguous depends, "not upon words or phrases read in isolation, but rather upon the meaning assigned to the words or phrases in accordance with the apparent purpose of the contract as a whole." *Art Goebel, Inc. v. North Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997). "A contract is ambiguous if its language is reasonably susceptible to more than one interpretation." *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). "So far as reasonably possible[,] a construction is to be avoided which would lead to absurd or unjust results. A contract is to receive a reasonable construction." *Mead v. Seaboard Sur. Co.*, 198 Minn. 476, 478, 270 N.W. 563, 565 (1936) (quotation omitted).

Landlord first asserts that the provision for "200% of said Base Rent and Operating Expenses *applicable at the date of expiration*" (emphasis added) means that landlord could treat tenants as month-to-month tenants "by providing written notice to the

tenant at any time and it would become retroactive to the date of expiration.” But the comma preceding the quoted phrase means that the words “applicable at the date of expiration” only functions to modify “Base Rent and Operating Expenses” and does not relate to the effective date of landlord’s election to treat tenants as month-to-month tenants under the provision. And landlord admits that the provision could not apply until at least the day after expiration of the lease because tenants would not be “holding over” on the expiration date of the lease.

Landlord next argues that the hold-over provision can be applied retroactively because the provision that “Landlord may, at its option, exercised by written notice to Tenant, treat Tenant as a Tenant from month to month *commencing on the first day following the expiration of the Lease*” (emphasis added) makes written notice at any time after the expiration of the term “necessarily” retroactive. We disagree because use of the past tense “exercised” plainly requires that the written notice must precede landlord’s invocation of the provision. Notice could have been given before or on the lease’s expiration date that the provision would begin to apply on the first day following the expiration of the lease.

Finally, appellant argues that this case is similar to *San Francisco Real Estate Investors v. Am. Nat’l Bank & Trust Co. of St. Paul*, in which a notice of a retroactive rent adjustment was upheld. 359 N.W.2d 658, 663 (Minn. App. 1984), *review dismissed* (Minn. Aug. 12, 1985). We disagree. In *San Francisco Real Estate Investors*, the lease stated, “[d]uring each lease year commencing with the second lease year, rent for the immediately preceding lease year *shall be retroactively adjusted* to reflect actual Taxes

paid for that year” *Id.* at 660 (emphasis added). By contrast, the lease involved in this action is devoid of any reference to retroactive application of the increased-rent provision and the language and punctuation of the lease demonstrate that notice must precede the application of the provision for increased rent. The district court did not err when it did not apply the hold-over provision retroactively.

Affirmed.