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Court of Appeals of Minnesota.

Talon Bren Road, LLC, Respondent,
v.
Bren Road, LLC, defendant and third party plaintiff, Appellant,
v.
Talon OP, LP, third party defendant, Respondent.

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0278

Filed August 13, 2018

Affirmed

Hennepin County District Court

File No. 27-CV-16-8820

Attorneys and Law Firms

Ryan J. Hatton, The Coleman Law Firm, LLC, Minneapolis, Minnesota (for respondent)

Dennis B. Johnson, Gary K. Luloff, Chestnut Cambronne PA, Minneapolis, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Jesson, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

Jesson, Judge

***1 JESSON**, Judge

Appellant Talon Bren Road LLC paid $18,000,000 for a Minnetonka property that respondent Bren Road LLC promised would generate $1,560,000 in annual income. And if the property produced less income, Bren Road committed to pay the deficit. The property failed to generate the agreed annual income. Talon filed a complaint in Hennepin County district court, alleging multiple counts of breach of contract, chief among them was Talon's claim that Bren Road repeatedly failed to pay the deficit. After a bench trial, the district court determined that Bren Road owed Talon $594,177 in outstanding deficit payments. On appeal, Bren Road argues that the district court ignored evidence and mistakenly treated real-estate taxes as an operating expense. We affirm.

FACTS

Bren Road sold a Minnetonka property that houses permanent showrooms featuring home décor, accessories, and apparel merchandise to Talon for $18,000,000. The revenue generated by the property is primarily derived from individual showroom leases with members of the Upper Midwest Allied Gift Association, Inc. (UMAGA). All UMAGA leases are governed in part by the UMAGA Master Agreement.

The UMAGA Master Agreement requires the owner of the property to "lease all available showroom space in the Building to individual ... members of UMAGA." In exchange, UMAGA guaranteed that the property would "be the exclusive facility employed, used, or occupied by UMAGA for the markets or shows sponsored, promoted, or conducted or participated in by UMAGA in the metropolitan Twin Cities' area" and that it will "refrain from employing, using, or occupying any other facilities in the metropolitan Twin Cities' area" for those listed activities. As part of the transaction between Bren Road and Talon, Bren Road transferred its rights and obligations under the UMAGA Master Agreement to Talon.

In addition to the $18,000,000 purchase price and the transfer of ownership rights to the UMAGA Master Agreement, Bren Road and Talon agreed that the property must generate a minimum of $1,560,000 in annual net operating income. If the property failed to generate that amount, Bren Road agreed to pay the difference between the $1,560,000 target and the sum of the net operating income—calculated by subtracting "Operating Expenses" from the revenue generated by the property and assuming all rents under the UMAGA Agreement and showroom leases in place were paid in accordance with their terms. Under the contract, Talon would calculate the property's net operating income quarterly. If, in Talon's "reasonable discretion," it determines that there will be a deficit, it may send Bren Road a payment notice listing the amount of the deficit, the deficit quarter, and the deficit year. Upon receipt of such a notice, Bren Road is required to pay Talon within 30 days.

At the time of the sale, both parties were aware that the property could not generate $1,560,000 annually and that there would be deficits. And following the contractually outlined procedure, Talon sent Bren Road the first deficit-payment notice on September 11, 2014, which included a spreadsheet of its deficit calculation. In order to determine the deficit amount, Talon subtracts the property's income, less operating expenses, from the $1,560,000 target. All else being equal, the higher the operating expenses, the larger the deficit. Bren Road responded to Talon's first deficit-payment notice by letter on October 8, disputing some aspects of the calculation and requesting additional information regarding expenses that it perceived to be abnormally high. For example, it believed that some asphalt work that was done on the property should not have been listed as an expense, and it requested more information regarding the property's utility, cleaning, and administrative expenses. Notably, Bren Road did not dispute Talon's treatment of real-estate taxes as an operating expense. Talon responded to Bren Road's letter the following day, further explaining its calculation and providing the requested information. After Talon's reply, Bren Road never disputed any of the subsequent deficit-payment notices.

***2** Sometime in March 2015, UMAGA sponsored a market show at another facility in the metropolitan Twin Cities, contrary to the UMAGA Master Agreement. On November 17, 2015, Talon sent Bren Road a letter explaining that UMAGA had breached the Master Agreement and that, after negotiations, UMAGA agreed to lease any vacant showrooms in the building through November 30, 2016. Talon also wrote, "Inclusive of the additional revenue recognized for the vacant showrooms for purposes of calculating [net operating income] under the [agreement], the [deficit] payment due from Bren Road LLC for the Deficit Year [One] is $286,658 and the [deficit] payment due for the [first quarter of the second year] is $33,251." In every deficit-payment notice that followed this letter, however, Talon listed the deficit for year one at $322,134 and the deficit for the first quarter of the second year at $70,178.

After Bren Road repeatedly failed to make the deficit payments requested, Talon filed a breach-of-contract action in Hennepin County District Court. Following a bench trial, the district court issued an order finding that Bren Road owed Talon $594,177 in outstanding deficit payments, which included a finding that the November 2015 letter did not accurately list the amounts owed for the first deficit year or the first quarter of the second deficit year. Bren Road brought a motion for amended findings and conclusions of law, arguing to the district court that the November 17, 2015 letter was binding on Talon and that the district court miscalculated the total amount owed for the outstanding deficit payments by categorizing real-estate taxes as an operating expense. The district court rejected the arguments, and Bren Road appeals.

DECISION

Bren Road argues that the district court incorrectly calculated the total deficit outstanding by ignoring the November 2015 letter and by categorizing real-estate taxes as an operating expense. We review a district court's damages calculation for an abuse of discretion. *Holiday Recreational Indust., Inc. v. Manheim Servs. Corp.*, 599 N.W.2d 179, 183 (Minn. App. 1999). A district court abuses its discretion when it rests its holding on clearly erroneous facts or errors of law. *Hudson v. Trillium Staffing*, 896 N.W.2d 536, 540 (Minn. 2017).

The November 2015 letter

Bren Road first argues that the district court incorrectly calculated the outstanding deficit payments by ignoring the November 2015 letter. We disagree. We will not reverse a district court's damages calculation if it "fall[s] within the mathematical limits established by the evidence and the evidence otherwise supports the determination." *Neilan v. Braun*, 354 N.W.2d 856, 859 (Minn. App. 1984). And here, contrary to Bren Road's argument, the district court did not ignore the November 2015 letter but found "that the figures in the ... letter were either incorrect or part of a negotiation for an immediate payment." While there is little evidence in the record indicating that the letter was intended to be part of a negotiation or offer, there is an abundance of evidence that suggests, as the district court found, that the letter's figures were simply incorrect. Bren Road reads the letter to state that it owed $286,658 for the first deficit year and $55,709 for the first quarter of the second year. But the district court's calculations—$322,134 for year one and $70,178 for quarter one of year two—are supported by every deficit-payment notice that followed the November 2015 letter and the testimony of Talon's CFO and its senior accountant, both of whom stated that the letter's figures were inaccurate. The district court's finding harmonizes with the record evidence and is not erroneous.

We are not convinced otherwise by Bren Road's argument that the November 2015 letter was simply an extension of the parties' contract and therefore binding. According to Bren Road, each deficit-payment notice was essentially a modification of the existing contract. Although we are doubtful as to whether the November 2015 letter or any of the deficit-payment notices meet the requirements for modifying a contract, see *Olson v. Penkert*, 252 Minn. 344, 347–48, 90 N.W.2d 193, 203 (1958), we need not reach a definitive holding on the question because Bren Road's argument collapses on its own logic. If, as Bren Road argues, the November 2015 letter was a deficit-payment notice that modified the previous payment notice and therefore bound the parties, then the payment notices that followed that letter—all of which used the figures ultimately adopted as fact by the district court—would have done the same. In other words, Bren Road's modification argument would only succeed if the November 2015 letter was the last payment notice sent by Talon. It was not.

Real-estate taxes

***3** Bren Road next argues that the district court improperly included real-estate taxes as an operating expense in its calculation of the total outstanding deficit. We review the interpretation of contracts de novo. *Stiglich Constr., Inc. v. Larson*, 621 N.W.2d 801, 802 (Minn. App. 2001), *review denied* (Minn. Mar. 27, 2001). The parties' contract states that " 'Operating Expenses' shall have the meaning defined in the UMAGA [Master] Agreement," and the UMAGA Master Agreement refers to "the Showroom Lease Agreement" for the definitions of "words or phrases used [t]herein." Bren Road argues that, because the Showroom Lease Agreement provides separate definitions for both operating expenses and real-estate taxes, one cannot be understood to encompass the other without rendering one of the phrases superfluous. But the parties' contract said nothing about adopting the Showroom Lease Agreement's definition of real-estate taxes. Instead, it adopted *only* the definition of operating expenses. And that definition states that operating expenses include "all expenses incurred with respect to the maintenance and operation of the Property or Building as determined by [Talon's] accountant" and "any other expense imposed on [Talon] ... pursuant to Law." This language plainly encompasses legally imposed real-estate taxes. *See* Minn. Stat. § 272.01, subd. 1 ("All real ... property in this state is taxable ...".). Real-estate taxes are an operating expense.

We would reach the same result even if we considered the Showroom Lease Agreement's separate definition of real-estate taxes. Whether a contract is ambiguous is a question of law, but the interpretation of an ambiguous contract is a question of fact reviewed for clear error. *See Trondson v. Janikula*, 458 N.W.2d 679, 682 (Minn. 1990). According to Bren Road, that the Showroom Lease Agreement defines and uses the phrases "operating expenses" and "real-estate taxes" separately demonstrates that the two phrases are mutually exclusive of each other. For example, the agreement requires the lessee to pay

certain "additional rent," which is composed of "Lessee's Pro Rata Share of Real Estate Taxes" and "Lessee's Pro Rata Share of Operating Expenses."

We agree that the separate definitions and uses of the two phrases support Bren Road's argument that operating expenses do not include real-estate taxes. But our interpretation of a contract does not depend 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. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997). And language in both the parties' agreement and the UMAGA Master Agreement—from which the parties' contract adopts the definition of operating expenses—suggests that operating expenses do include real-estate taxes. For example, the parties' contract states, "To the extent any operating expenses of the Project (including *real estate taxes* and special assessments) are reimbursable by Tenants under the Leases ... ," and the UMAGA Master Agreement—from which the parties' contract adopts the definition of Operating Expense—states, "The only Operating Expenses that Owner pays directly are the Real Estate Taxes ...."

Accordingly, even if we consider the Showroom Lease Agreement's separate definition and use of the phrase "Real Estate Taxes," the most that can be said is that the parties' contract is ambiguous on the question of whether operating expenses include real-estate taxes. In concluding that operating expenses included real-estate taxes, the district court noted that, prior to the property's sale, Bren Road provided Talon with months of financial reports that listed real-estate taxes as an operating expense. It also highlighted the fact that Bren Road never disputed Talon's treatment of real-estate taxes as an operating expense in the numerous deficit-payment notices Talon sent to Bren Road. Therefore, even if we consider the Showroom Lease Agreement's separate definition of real-estate taxes, we cannot conclude that the district court clearly erred when it interpreted the ambiguously defined operating expenses to include real-estate taxes.

Affirmed.

All Citations

Not Reported in N.W. Rptr., 2018 WL 3826277