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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1660**

PET Enterprises and Motortech, Inc., et al.,
Respondents,

vs.

Ivo Fru Tabukum, et al.,
Appellants.

**Filed June 12, 2017
Affirmed
Halbrooks, Judge**

Ramsey County District Court
File No. 62-CV-13-6543

Timothy R. Maher, Joseph D. Kantor, Guzior Armbrecht Maher, Minneapolis, Minnesota
(for respondents)

Jeremy E. Warring, Kyle Moen, Seilerschindel, PLLC, Minneapolis, Minnesota (for
appellants)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Following a court trial, the district court determined that appellants Ivo Fru
Tabukum and I-T Auto Towing and Service were liable for civil theft, conversion, and

breach of a rental agreement. Tabukum challenges the district court's calculation of damages. We affirm.

FACTS

Both Tabukum and respondent Patrick Enow Takuanyi are natives of Cameroon. Takuanyi moved to the United States in the early 1990s after studying automotive engineering in Germany. He had an extensive collection of tools and equipment that he used in his business. Tabukum arrived in the 2000s; he learned the basics of automotive repair from Takuanyi.

In March 2013, Tabukum subleased commercial premises from respondent PET Enterprises and Motortech, Inc., a corporation owned by Takuanyi, for \$1,600 per month. The sublease stated two different terms with respect to the duration of the sublease: (1) a minimum of 36 months and (2) 24 months, beginning on March 6, 2013 and ending on March 5, 2015. Pursuant to the terms of the sublease, Tabukum was responsible for any damage to the shop, tools, and equipment. While Tabukum was permitted to use some of Takuanyi's larger tools and equipment, a separate agreement listed 18 items in the shop that Tabukum could not use or remove.

Based on multiple breaches of the terms of the sublease, including Tabukum's failure to pay rent, Takuanyi brought an eviction action against Tabukum, and the district court ordered Tabukum to vacate the premises on June 8, 2013. In the course of completing a walk-through of the premises, Takuanyi discovered that Tabukum had broken into his locked storage area and taken all of the tools that had been stored there. Other tools and equipment owned by Takuanyi were inoperable or damaged. Takuanyi sued Tabukum,

alleging conversion, civil liability for theft under Minn. Stat. § 604.14 (2016), breach of a noncompete agreement, and damages for breach of the lease and rental arrears.

Takuanyi entered the sublease agreement into evidence at trial to establish the terms of the sublease. He also entered into evidence receipts for many of the tools and equipment that were missing or damaged. Although the receipts totaled \$63,153.78, Takuanyi testified that he spent more than \$200,000 to acquire all of his tools and equipment. The district court found Tabukum liable for conversion, theft, and breach of the sublease. The district court awarded Takuanyi \$63,153.78 for conversion and theft of the tools and equipment and \$51,200 for Tabukum's breach of the sublease, which the district court determined to be 36 months in length. This appeal follows.

D E C I S I O N

Tabukum contends that the evidence does not support the district court's determination of damages. On appeal from a judgment when there has been no motion for a new trial, we review "whether the evidence sustains the findings of fact[,] and whether such findings sustain the conclusions of law." *Gruenhagen v. Larson*, 310 Minn. 454, 458, 246 N.W.2d 565, 569 (1976); see *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 309-10 (Minn. 2003).

"A person who steals personal property from another is civilly liable to the owner of the property for its value when stolen" Minn. Stat. § 604.14, subd. 1. "The measure of damages for conversion is the fair market value of the repossessed goods at the time of the conversion, plus interest from that date." *Bloomquist v. First Nat'l Bank of Elk River*, 378 N.W.2d 81, 86 (Minn. App. 1985), *review denied* (Minn. Jan. 31, 1986). Fair market

value is “[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm’s-length transaction.” *Black’s Law Dictionary* 1785 (10th ed. 2014). The plaintiff bears the burden of establishing the amount of damages. *Bonhiver v. Graff*, 311 Minn. 111, 132, 248 N.W.2d 291, 304 (1976). But a plaintiff cannot recover damages that are too speculative. *Whipple v. Indep. Sch. Dist. No. 621*, 424 N.W.2d 559, 565 (Minn. App. 1988).

Tabukum contends that the district court’s damages determination was speculative and that the evidence does not establish that the value of the items when taken was \$63,153.78. But Takuanyi presented receipts establishing that he paid \$63,153.78 for some of the tools and equipment that he purchased between three and seven years earlier. Takuanyi testified that he purchased some of the tools and equipment in used condition from pawn shops and thrift stores but stated that many of the items were in “like brand new condition” when they were stolen. Other witnesses, who were found to be credible by the district court, testified that Takuanyi had a “lifetime” of specialty tools that were stolen. We conclude that the evidence in the record supports the district court’s determination that Takuanyi’s tools and equipment had a fair market value of \$63,153.78 when they were stolen.

Tabukum also contends that the evidence does not support the district court’s determination of damages for breach of the sublease. On appeal, he bases this claim on the fact that the sublease references two different lengths—24 and 36 months. “[L]eases are contracts to which we apply general principles of contract construction.” *RAM Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1, 14 (Minn. 2012). A lease “is ambiguous if it is susceptible

to two or more reasonable interpretations.” *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). When construing ambiguous language, we “try to derive the parties’ real intentions.” *Metro. Airports Comm’n v. Noble*, 763 N.W.2d 639, 645 (Minn. 2009). To do this, we “examine any other admissible evidence shedding light on the expectations of the parties.” *RAM*, 820 N.W.2d at 15 (quotation omitted). When we review extrinsic evidence to determine the parties’ intent, construction “becomes a question of fact unless such evidence is conclusive.” *Donnay v. Boulware*, 275 Minn. 37, 44, 144 N.W.2d 711, 716 (1966). When we review an award of damages, we “must consider the evidence in the light most favorable to the verdict.” *Rayford v. Metro. Transit Comm’n*, 379 N.W.2d 161, 165 (Minn. App. 1985), *review denied* (Minn. Feb. 14, 1986). “The award should not be set aside unless it is manifestly and palpably contrary to the evidence.” *Id.* (quotation omitted).

The sublease stated, “A minimum of 36 months of occupancy is required,” and, “The lease begins on March 6th 2013 and continues for 24 month, [sic] ends on March 5th, 2015.” Significantly, the length of the sublease was not disputed at trial. The subject came up only once, in Tabukum’s direct testimony:

Q. So, how did the eviction happen? What happened there?

A. Well, the eviction, as I said, the two months that I pay my rent, and then he started all this—the landlord came to the shop and told me that he want to lease the building to somebody else, which I understand that I did this lease with Mr. Takuanyi, *which the lease is like 36 months*, but the owner want to kick me out of the building because Mr. Takuanyi collect the rent from me but he didn’t pay it to the owner.

(Emphasis added.) There is no other evidence in the record regarding this term of the sublease. We conclude that the evidence, when viewed in the light most favorable to the verdict, supports the district court's factual determination that the length of the sublease was 36 months. Therefore, the district court properly calculated the damages for Tabukum's failure to pay rent under the sublease.

Affirmed.