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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0774**

The Tap House Restaurant Group, LLC,
Appellant,

vs.

Cassidy Turley Commercial Real Estate Services, Inc.
d/b/a Cushman & Wakefield, et al.,
Respondents

**Filed December 11, 2017
Reversed and remanded
Worke, Judge**

Hennepin County District Court
File No. 27-CV-16-7177

John B. Orenstein, Harry N. Niska, Ross & Orenstein LLC, Minneapolis, Minnesota (for appellant)

Karla M. Vehrs, Kathryn E. Wendt, Lindquist & Vennum LLP, Minneapolis, Minnesota (for respondents)

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

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

WORKE, Judge

Appellant challenges the district court's award of summary judgment in favor of respondents in this lease-negotiation dispute, arguing that the district court erred by finding

no genuine issues of material fact and concluding that appellant's own actions were superseding causes of appellant's alleged damages. We agree, and reverse and remand.

FACTS

Appellant, The Tap House Restaurant Group, LLC (Tap House), enlisted the services of respondent Cassidy Turley Commercial Real Estate Services, Inc. and its employee, respondent Andrea Christenson, to help negotiate a property lease. Tap House also hired an independent attorney to assist in the negotiations.

Tap House, its attorney, and Christenson were all involved in lease negotiations with the property's landlord throughout the spring of 2013. These negotiations primarily occurred by email. At various points, Tap House and its attorney negotiated without Christenson present. At other times, all three participated in negotiations. In one exchange, only Tap House and Christenson attempted to negotiate a lower lease charge for heating, ventilation, and air conditioning (HVAC). In that exchange, Tap House expressed concern to Christenson with the amount of the HVAC charge. Hearing this concern, Christenson drafted a counteroffer and pitched it to the landlord's agent, who replied that the counteroffer was fair and the agent would work to get the offer approved. "[S]tay tuned," the agent's message concluded. Neither side followed up on this modification to the lease, nor was an agreement finalized to lower the HVAC charge.

In May 2013, Tap House and its attorney negotiated the final terms of the lease with the landlord. Christenson was largely absent from these negotiations. On May 21, Tap House signed the lease without reading it in its entirety, but the lease still contained the higher HVAC charge that Christenson tried to negotiate down.

Believing that the task of negotiating a lower HVAC charge fell to Christenson—which she allegedly neglected—Tap House filed suit against respondents. Tap House alleged claims against respondents for negligence, breach of fiduciary duty, and unjust enrichment. Respondents moved for summary judgment, which the district court granted, finding that no genuine issue of material fact existed and that Tap House’s own actions were superseding causes of its alleged damages. This appeal followed.

D E C I S I O N

Tap House argues that we should reverse and remand this case for two reasons. First, Tap House argues that the district court erred by finding no genuine issues of material fact on the question of whether it was Christenson’s obligation to negotiate and follow through on the HVAC charge. Second, Tap House argues that the district court erred by finding that Tap House’s retention of independent counsel and failure to read the final version of the lease before signing were superseding causes of Tap House’s alleged damages.

“We review a district court’s summary judgment decision de novo.” *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). In doing so, “we review whether there are any genuine issues of material fact and whether the district court erred in its application of the law.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002) (citations omitted). “We view the evidence in the light most favorable to the party against whom summary judgment was granted.” *Id.* at 76-77. No genuine issue for trial exists when “the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

The parties dispute whether Tap House delegated the task of negotiating a lower HVAC charge to Christenson and whether Christenson neglected that task. The district court found that Christenson was largely kept out of the negotiating process and “played a very minor role—primarily that of messenger” for Tap House and its attorney, and that Tap House’s “mere averments” contradicting respondents’ narrative did not create a genuine issue of material fact for summary judgment purposes.

We disagree. Viewing the evidence in the light most favorable to Tap House, while Christenson was not as immersed in the negotiating process as Tap House’s attorney, Christenson did attempt to negotiate a lower HVAC charge. After Christenson pitched the HVAC counteroffer, the landlord’s agent told her that he would “work to get this approved” and to “[s]tay tuned.” Christenson replied that she and Tap House would agree to the lower charge, but neither side apparently followed up. Tap House’s real estate expert offered an opinion that Christenson’s failure to take “reasonable steps” to follow up and confirm that her counteroffer was accepted “failed to adhere to the industry standard of care in representing a client in the negotiation of material lease terms.” We believe that reasonable minds could disagree as to whether Christenson shouldered and breached the duty of negotiating the lease’s HVAC charge. *See 328 Barry Ave., LLC v. Nolan Props. Grp., LLC*, 871 N.W.2d 745, 751 (Minn. 2015) (stating that summary judgment is not proper “when reasonable minds can draw different conclusions from the evidence presented.”).

Additionally, Tap House argues that the district court erred in concluding that hiring its own lawyer to negotiate the lease and failing to read the lease before signing constituted superseding causes of Tap House’s damages. A superseding cause of harm limits a

defendant's liability from potential negligence by breaking the causal chain set in motion by that negligence. *Lennon v. Pieper*, 411 N.W.2d 225, 228 (Minn. App. 1987). To be a superseding cause, the intervening cause must satisfy four elements:

1) its harmful effects must have occurred after the original negligence; 2) it must not have been brought about by the original negligence; 3) it must have actively worked to bring about a result which would not otherwise have followed from the original negligence; and 4) it must not have been reasonably foreseeable by the original wrongdoer.

Canada by Landy v. McCarthy, 567 N.W.2d 496, 507 (Minn. 1997). "Unless all four elements are satisfied, an intervening cause cannot be considered superseding." *Id.*

Here, there are unresolved fact issues concerning the first and fourth elements. As previously discussed, there is a genuine issue of material fact concerning Christenson's responsibility to negotiate the HVAC charge. If Christenson failed to do so, then this would be an ongoing failure throughout the lease negotiations. Therefore, any intervening actions by Tap House occurred contemporaneously with Christenson's original, ongoing negligence, not afterwards as required by the first factor.

Finally, turning to the last prong of the test, both sides presented competing expert opinions about whether Christenson shouldered the responsibility of negotiating the HVAC charge. In light of these differing opinions, the question of whether Christenson should have reasonably foreseen Tap House's intervening actions is a question best left in the hands of a jury. *See Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 629 (Minn. 2017) (stating that summary judgment must be denied when reasonable minds could disagree on the question of foreseeability). Since we conclude that the first and fourth

factors of the superseding cause test are not satisfied, there is no need to analyze the remaining factors.

Because there exists a genuine issue of material fact regarding Christenson's duty and possible breach of that duty to negotiate the HVAC charge, and because Tap House's hiring of an independent lawyer and its failure to read the lease before signing present factual disputes with respect to superseding cause, we reverse the district court's award of summary judgment and remand the case for further proceedings.

Reversed and remanded.