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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1374**

33 City Center Holding LLC,
Appellant,

vs.

Rosa Mexicano Minneapolis, LLC, et al.,
Respondents.

**Filed April 8, 2019
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CV-17-6930

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respondents)

Considered and decided by Bjorkman, Presiding Judge; Connolly, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the district court's grant of respondents' motion for judgment on the pleadings, arguing that it pleaded legally sufficient facts to support its claims for anticipatory breach of lease and unjust enrichment. Because we conclude that appellant failed to allege an unequivocal repudiation of the lease, and because an unjust enrichment claim cannot be maintained when the rights of the parties are governed by a valid contract, we affirm.

FACTS

Respondent Rosa Mexicano Minneapolis, LLC (Tenant) signed a 15-year lease (Lease) for commercial space in 33 City Center (Premises) with 33 South 6th Street LLC (Landlord) on December 15, 2010. Respondent Rosa Mexicano Group Holdings, LLC (Guarantor) provided a 60-month guarantee. While the Lease was still in effect but after the expiration of the guarantee, Tenant closed its operations, moved out of the Premises, and stopped paying rent. Appellant assignee 33 City Center Holding, LLC filed suit against both Tenant and Guarantor alleging that both were liable for the unpaid rent because Tenant had anticipatorily breached the lease while the guarantee was still in effect. Appellant also alleged, among other claims, unjust enrichment.

To support its claim for anticipatory breach, appellant's allegations focused on its communications with Tenant's agent, Larry Summerton. Specifically, appellant alleged that on April 21, 2015, Mr. Summerton contacted appellant on behalf of Tenant and indicated that Tenant intended to vacate the premises. Further, on April 28,

Mr. Summerton sent an email to the building general manager reiterating that “as noted, [tenant] plan[s] on vacating at the expiration of the corporate guarantee but would like to work towards a replacement tenant and coordinate with the landlord.” Following the email, Mr. Summerton had additional verbal communications with Landlord and his agents indicating the Tenant intended to vacate the premises.

Appellant also alleged that in July 2015, a notice of default was sent to both Tenant and Guarantor, which notified the parties that Tenant’s intent to vacate the premises would constitute a violation of the covenant of continued occupancy. The notice of default requested a “written rescission of [Tenant’s] repudiation of the Lease.” Respondents subsequently failed to respond to the default notice; however, Tenant continued to occupy the premises and pay rent for over a year.

Tenant left the premises in October 2016—nine months past the 60-month guarantee term. In May 2017, appellant filed its complaint alleging the anticipatory breach and unjust enrichment claims. Respondents filed a motion for judgment on the pleadings, requesting dismissal of both claims. The district court granted the motion and dismissed the claims after holding hearings. This appeal follows.

D E C I S I O N

Appellant argues that the district court prematurely dismissed its anticipatory breach and unjust enrichment claims when it granted respondents’ motion for judgment on the pleadings. After pleadings are closed but before trial, a party may move for judgment on the pleadings if a complaint fails to set forth a legally sufficient claim for relief. Minn. R. Civ. P. 12.03. In determining whether the district court properly granted judgment on the

pleadings, this court “consider[s] only the facts alleged in the complaint, accepting those facts as true and drawing all reasonable inferences in favor of the nonmoving party.” *Burt v. Rackner, Inc.*, 902 N.W.2d 448, 451 (Minn. 2017); Minn. R. Civ. P. 10.03 (“A copy of any written instrument which is an exhibit to a pleading is a part of the statement of claim or defense set forth in the pleading.”). Whether a complaint sets forth a legally sufficient claim for relief is reviewed by this court de novo. *Frederick v. Wallerich*, 907 N.W.2d 167, 172 (Minn. 2018). Judgment on the pleadings is particularly appropriate in disputes concerning the legal effect of documents. See *McReavy v. Zeimes*, 9 N.W.2d 924, 927 (Minn. 1943) (concluding that judgment on the pleadings is proper when the dispute centers on the meaning of a contract and the contract language unambiguously entitles the moving party to judgment).

Anticipatory Breach

Under Minnesota law, an anticipatory breach occurs when a party to an executory contract expressly renounces the same, giving notice that he will not perform the contract before performance is due. *Space Ctr., Inc. v. 451 Corp.*, 298 N.W.2d 443, 450 (Minn. 1980). “The refusal to perform must in effect be an unqualified renunciation or repudiation of the contract.” *Id.*; accord *Bell v. Olson*, 424 N.W.2d 829, 832 (Minn. App. 1988) (“Anticipatory breach may be found only upon a definite and unequivocal manifestation of intention on the part of the repudiator that he will not render the promised performance when the time fixed for it in the contract arrives.” (quotation omitted)). Anticipatory breach may be shown in the absence of an express unqualified repudiation if the record demonstrates an inability to perform. *Space Ctr., Inc.*, 298 N.W.2d at 450.

To support its claim for anticipatory breach, appellant relies on the statements from Tenant’s agent, Mr. Summerton. But Mr. Summerton’s notification to Landlord that Tenant planned on vacating in the future did not amount to an unqualified renunciation or repudiation of the contract. It did not amount to an unqualified renunciation because the lease provided multiple ways for Tenant to vacate the premises and still fulfill its obligations under the lease. For example, the lease permitted Tenant to assign or sublet the entire premises with Landlord’s consent, provided that Landlord’s consent not be unreasonably withheld or delayed. The complaint acknowledges that Tenant was indeed considering these very options.

Because the lease provided options for Tenant to vacate the premises without breaching, the mere statements that Tenant was planning on vacating in the future, coupled with its statement that it would like to work toward finding a suitable replacement tenant, do not amount to an unqualified renunciation or repudiation of the contract. Consequently, taking the facts alleged in the complaint as true, respondents are entitled to dismissal of the anticipatory breach claim as a matter of law.

While we conclude that the district court did not err when it dismissed appellant’s anticipatory breach claim, we also note that appellant’s attempt to plead around the limited contractual guarantee is unconvincing. Under the guarantee, Guarantor agreed only to “make [any payment] or perform . . . each covenant” during the period between “the execution of the Lease and the last day of the Guarantee Term.” The guarantee term covered the first full 60 months after the rent commencement date. However, appellant

did not plead that Tenant failed to perform any covenant during the guarantee term. Appellant pleaded only that Tenant was planning on breaching after the guarantee term.

Moreover, the limited guarantee provided that if Tenant committed “a material default under the lease” that “Landlord [had] the right to demand from Guarantor the Guarantee Amount.” The “Guarantee Amount” was “an amount equal to Rent during the Guarantee Term and the total unamortized Allowance and the unamortized Storefront Allowance (as described in the Lease).” Here, again, appellant did not plead that Tenant failed to pay rent during the guarantee term, such that part of the guarantee amount was still owed. On the contrary, appellant pleaded that Tenant remained in possession of the premises and continued to pay rent for around nine months after the expiration of the guarantee term. Consequently, even if appellant had alleged an unqualified renunciation of the contract, the doctrine of anticipatory breach would not allow appellant to extend the limited contractual guarantee, by increasing the length of the guarantee term, thereby increasing the guarantee amount.

Unjust Enrichment

Appellant argues that the district court erred in dismissing its claim for unjust enrichment. The district court found that a claim for unjust enrichment cannot be made because the rights of the parties are governed by a valid contract. *See Midwest Sports Mktg., Inc. v. Hillerich & Bradsby of Canada, Ltd.*, 552 N.W.2d 254, 268 (Minn. App. 1996) (holding that when the parties’ rights are governed by a valid contract, a claim for unjust enrichment fails as a matter of law). Appellant concedes that “if the Lease and Guaranty fully govern the parties’ rights that unjust enrichment is unavailable.” However,

appellant argues that litigants are permitted to plead alternative theories of relief and, therefore, it was improper to dismiss the unjust enrichment claim before discovery.

Appellant relies on *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. App. 2001) for the proposition that it is improper to dismiss an unjust enrichment claim on a motion for judgment on the pleadings. In *Schumacher*, this court overturned the district court's finding that the plaintiff did not plead unjust enrichment with enough specificity. 627 N.W.2d at 729; *see* Minn. R. Civ. P. 8.05 ("Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required."). But *Schumacher* is distinguishable from the case at hand. In this case, the district court did not dismiss appellant's claim for unjust enrichment because appellant failed to plead the claim with enough specificity. The district court dismissed appellant's claim because it rightfully concluded that a claim for unjust enrichment cannot be maintained when the rights of the parties are governed by a valid contract. *See Midwest Sports Mktg.*, 552 N.W.2d at 268. The district court did not err in dismissing the claim for unjust enrichment.

Affirmed.