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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0092**

Penelope Isleman, et al.,
Appellants,

vs.

Public Storage,
Respondent.

**Filed November 23, 2020
Affirmed
Florey, Judge**

Anoka County District Court
File No. 02-CV-17-1095

Edward F. Rooney, Minneapolis, Minnesota (for appellants)

Jesse H. Kibort, Abraham S. Kaplan, Parker, Daniels, Kibort, LLC, Minneapolis,
Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Segal, Chief Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

This appeal arises from a lawsuit brought against respondent Public Storage for breach of contract, conversion, civil theft, consumer fraud, and violation of the Minnesota Liens on Personal Property in Self-Service Storage Act, Minn. Stat. §§ 514.970-.979 (2018), after the sale of appellants' stored property following delinquent rental payments.

Because the district court did not abuse its discretion in denying appellants leave to amend their complaint or motion to add a claim for punitive damages, and also did not err in granting respondent summary judgment on appellants' conversion and civil-theft claims, we affirm.

FACTS

Appellant Penelope Isleman rented a storage locker from respondent Public Storage beginning in January 2012 at respondent's Spring Lake Park self-storage facility. As part of the rental process, Penelope Isleman entered into a written Lease/Rental Agreement (the Agreement) with respondent and listed her current address on that document, which at the time was in Columbia Heights, Minnesota. Penelope Isleman maintains she never reviewed the terms of the Agreement because the storage facility employee encouraged her not to read it prior to signing.

The Agreement contained the following relevant provisions:

Paragraph 3(b) states:

Owner shall not be liable to Occupant or anyone else for the removal or sale of personal property which is owned by someone other than occupant, or upon which a prior lien has attached, unless Occupant had notified Owner that personal property in Occupant's space was not Occupant's personal property. Occupant agrees to notify Owner, in writing, of any personal property stored in Occupant's space which is not the sole personal property of Occupant and of the name of any person who has an interest in the personal property. Notice by Occupant to Owner shall not mean that Owner has agreed that Occupant may store property owned by anyone other than Occupant in the premises.

Paragraph 5 states:

Occupant shall store only personal property that belongs to Occupant. Because the value of the personal property may be difficult or impossible to ascertain, **Occupant agrees that under no circumstances will the total value of all personal property stored in the Premises, exceed or be deemed to exceed \$5,000. Occupant acknowledges and agrees that the Premises and the Property are not suitable for the storage of heirlooms or precious, invaluable or irreplaceable property such as, but not limited to, books, records, writings, contracts, documents, personalized or other DVDs or videos, works of art, objects for which no immediate resale market exists, objects which are claimed to have special or emotional value and records or receipts relating to the stored goods.**

Paragraph 13(a) states:

In the event Occupant shall change Occupant's physical address or email address, or alternate name and address as set forth on this Lease/Rental Agreement, Occupant shall give Owner written notice of such change signed by Occupant and specifying Occupant's current physical address or email address and alternate name, address and telephone number, within ten (10) days of the change; such notice to be mailed to owner by first class mail with proof of mailing. Changes of addresses or telephone numbers cannot be effected telephonically or through the listing of such information on return envelopes or checks.

Paragraph 16 states:

With the exception of posted rules and regulations as noted in paragraph 14, there are no representations, warranties, or agreements by or between the parties which are not fully set forth herein and no representative of Owner or Owner's Agents is authorized to make any representations, warranties, or agreements other than as expressly set forth herein and, further, with the exception of any subsequent notice from Owner to Occupant of adjustments as provided in paragraph 2 above, this Lease/Rental Agreement may only be amended in a writing signed by the parties.

In 2013, while continuing to rent the storage locker, Penelope Isleman moved to Grand Rapids. During this period, she placed into the storage unit some property belonging to her mother, appellant Margaret Isleman. According to Penelope Isleman, she stored her mother's belongings in the same unit she was already renting based on the recommendation of a local storage-facility employee.

On October 22, 2013, Penelope Isleman called the Spring Lake Park facility and asked that her mother (Margaret Isleman), "take over the unit." During this call, a local employee spoke to both appellants. Over the phone, the employee confirmed the monthly rate and payment deadlines for Penelope Isleman's unit with Margaret Isleman, who agreed that she would "take over the payments." According to Margaret Isleman, the employee told her she would "be treated exactly the same" as her daughter (Penelope Isleman). Margaret Isleman began making the monthly rental payments for Penelope Isleman's storage locker. Margaret Isleman never reviewed the Agreement or signed a new lease/rental agreement with respondent.

Throughout 2013 and 2014, Penelope Isleman made several in-person attempts at the Spring Lake Park facility to change the old address that was on file to her new address. During her final in-person visit to the facility in October 2014, Penelope Isleman also attempted to provide Margaret Isleman's current address as an "alternate contact." No formal written notice of an address change as specified in the Agreement was sent to respondent. During the period that she made payments, Margaret Isleman never received any mail from respondent, including notices of rent increases on the storage unit.

Throughout 2014, respondent continued to send notices to Penelope Isleman at the old address, and these notices were repeatedly returned as undeliverable. Many of these returned notices included the forwarding address with Penelope Isleman's current address. Respondent did not update the address it had on file based on the returned mail, consistent with its company policy at the time. Rental payments on the unit became delinquent, and a public auction was initially scheduled for March 2015. This sale was postponed after respondent received a \$160.00 check covering a portion of the unpaid rent that was due; the auction was eventually cancelled when the rental balance was made current at the end of the month. Rental payments on the unit became delinquent again in April and a public auction was scheduled for the end of May. Respondent sent Penelope Isleman a Notice of Enforcement of Owner's Lien-Notice of Sale at the old address, which was again returned, and later a Balance Due Letter at the same undeliverable address. The contents of the storage unit were sold at auction on May 27, 2015.

Appellants filed suit against respondent, alleging (1) breach of contract; (2) conversion; (3) civil theft; (4) violation of the Minnesota Liens on Personal Property in Self-Service Storage Act (Liens Storage Act); and (5) violation of the Minnesota Uniform Deceptive Trade Practices Act. In September 2017, following respondent's rule 12 motion, the district court dismissed appellants' consumer-fraud claim for violation of the Deceptive Trade Practice Act (consumer-fraud claim). In May 2018, the court denied appellants' subsequent motion to replead their consumer-fraud claim with particularity, concluding that the prior dismissal had been with prejudice pursuant to Minn. R. Civ. Pro. 42.02(c).

Following discovery, respondent moved for summary judgment on all claims brought by Margaret Isleman and on Penelope Isleman's conversion and civil-theft claims. Appellants moved for partial summary judgment on the issue of liability on their claims for conversion, civil theft, and violation of the Liens Storage Act. Appellants also moved for leave to amend their complaint to seek punitive damages. The district court denied appellants' motion to amend their complaint to add a claim for punitive damages and granted respondent's motion for summary judgment on all claims filed by Margaret Isleman and on Penelope Isleman's claims for conversion and civil theft. The district court also granted Penelope Isleman summary judgment on the issue of liability on her claim that respondent violated the Liens Storage Act. Finally, the court determined that, under the Agreement, Penelope Isleman had agreed that she would not keep personal property in the storage unit that had a value exceeding \$5,000.00; accordingly, damages on her remaining claims for breach of contract and violation of the Liens Storage Act would be limited to \$5,000.¹ This appeal follows.

D E C I S I O N

I. Denial of motion to replead consumer-fraud claim

Appellants argue that the district court erred by denying their motion to amend their complaint to replead their consumer-fraud claim with the requisite particularity. "Under Minn. R. Civ. P. 15.01, the decision by a trial court to deny a motion to amend a pleading may be reversed only if the trial court abused its discretion." *Copeland v. Hubbard Broad.*,

¹ Prior to briefing submissions for this appeal, appellants voluntarily dismissed the remaining breach-of-contract and lien-foreclosure claims.

Inc., 526 N.W.2d 402, 405 (Minn. App. 1995). A party can “amend a pleading once as a matter of course at any time before a responsive pleading is served.” Minn. R. Civ. P. 15.01. Rule 15.01 also provides that “[o]therwise a party may amend a pleading only by leave of the court or by written consent of the adverse party; and leave shall be freely given when justice so requires.”

In its order dated September 21, 2017, the district court dismissed appellants’ consumer-fraud claim for failure to meet the particularity requirements of Minn. R. Civ. P. 9(b). The court’s order did not state whether the dismissal was with or without prejudice. In December, appellants moved to amend their complaint to replead the consumer-fraud claim along with the submission of a proposed second amended complaint. In May 2018, the district court denied appellants’ motion to amend, stating that the previous dismissal of their claim had been “with prejudice.” In denying appellants’ motion, the court noted that under Minn. R. Civ. P. 41.02(c), a dismissal is with prejudice and on the merits unless otherwise specified, and in its prior order, the court “did not give [appellants] leave to attempt to cure the deficiencies in [the consumer-fraud claim] to avoid dismissal of the claim.” Accordingly, the court concluded that appellants’ claim had been dismissed with prejudice in the prior order and could not be revived in a second amended complaint.

Appellants contend that the district court erroneously relied on Minn. R. Civ. P. 41.02(c) to rule that the earlier dismissal of their claim had been “a dismissal with prejudice.” Appellants argue that the district court improperly invoked Rule 41.02 at the “outset of a lawsuit” as the basis for holding that the prior dismissal had been with prejudice because Rule 41 is intended, when viewed in chronological order of the Rules of Civil

Procedure as a whole and read in the context of the preceding subsections, to be used only later in litigation, after a case has reached the trial stage. Appellants also emphasize that their claim's dismissal was "due to a pleading deficiency only" rather than based on a failure to prosecute, and therefore was incongruent with the primary purpose of a Rule 41 dismissal.

A dismissal under Rule 41.02 is discretionary. *Scherer v. Hanson*, 270 N.W.2d 23, 24 (Minn. 1978) (per curiam). Accordingly, we will reverse such a dismissal "only when the [district] court abused its discretion." *Bonhiver v. Fugelso, Porter, Simich & Whiteman, Inc.*, 355 N.W.2d 138, 144 (Minn. 1984). In addressing the effect of involuntary dismissals, Minnesota Rule of Civil Procedure 41.02(c) states:

Unless the court specifies otherwise in its order, a dismissal pursuant to this rule and any dismissal not provided for in this rule or in Rule 41.01, other than a dismissal for lack of jurisdiction, for forum non conveniens, or for failure to join a party indispensable pursuant to Rule 19, operates as an adjudication upon the merits.

Here, the district court dismissed appellants' consumer-fraud claim for failure to meet the heightened particularity requirements of Rule 9. This reason for dismissal is not one of the listed exceptions in Rule 41.02(c); accordingly, because the court did not otherwise specify that it was dismissing appellants' claim *without* prejudice, under the plain language of Rule 41.02(c), the prior dismissal operated as "an adjudication on the merits." Appellants' argument urging this court to limit the application of Rule 41.02(c) to dismissals only at the trial stage of litigation is not founded in the plain language of the rule. Because there had been a prior adjudication on the merits of this claim, the district

court did not abuse its discretion in denying appellants' leave to amend their complaint to replead it.

While this prior adjudication and subsequent dismissal based on the plain language of Rule 41 is sufficient to uphold the district court's decision, we also observe that an amendment would have been futile since appellants, as private plaintiffs, failed to plead the public-benefit requirement necessary under Minn. Stat. § 8.31 to sue for violations of the Consumer Fraud Act. Appellants alleged only a one-on-one transaction and failed to plead a cause of action that falls within the scope of the private attorney general statute. *See Engstrom v. Whitebirch, Inc.*, 931 N.W.2d 786, 790 n.5 (Minn. 2019) ("In addition to proving injury from the violations, plaintiffs who bring claims under the private attorney general statute must also "demonstrate that their cause of action benefits the public.") Thus, the futility of appellant's proposed claim also warrants the district court's denial of their motion to amend. *See Doe 76C v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012) (stating that an appellate court need not adopt a district court's reasoning and may enter judgment on any appropriate legal grounds).

Finally, while appellants contend that they moved to replead the consumer-fraud claim "early on in the case, and well within the existing discovery period," as the district court observed, their motion to amend was not promptly brought. Appellants could have moved to amend their complaint at the same time respondent brought its rule 12 motion challenging the consumer-fraud claim for failure to meet the particularity requirements of rule 9. Instead, appellants waited until after the district court had fully considered this issue and ruled to dismiss their claim; only then electing to file another motion seeking to replead

their dismissed claim with a proposed newly amended complaint. This delay in appellants' motion serves as yet another basis to support the district court's decision.

II. Summary judgment on conversion and civil-theft claims

Summary judgment is appropriate if the moving party shows there is no genuine issue of material fact and is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01. This court reviews a district court's summary-judgment decision *de novo*, assessing whether any genuine issues of material fact exist and whether the district court misapplied the law. *Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 819 (Minn. 2016). The reviewing court views the evidence in the light most favorable to the nonmoving party and resolves doubts regarding the existence of material facts in that party's favor. *Senogles v. Carlson*, 902 N.W.2d 38, 42 (Minn. 2017).

A. Penelope Isleman's claims

The district court determined that Penelope Isleman could not bring contract and tort claims arising from the same incident, as double recovery is generally not permitted and the "independent duty" exception was inapplicable based on the nature of the conversion and civil-theft claims. The court determined that no independent duty was owed to Penelope Isleman and that the only duty respondent owed her arose from the parties' contractual relationship. Since this contractual claim was the "gravamen of the complaint," the court concluded that Penelope Isleman could not recover under her conversion and civil-theft claims and was limited to possible recovery on her breach-of-contract claim.

In general, a plaintiff may pursue “two legal remedies for the same wrongful conduct,” but there can be no double recovery. *Wirig v. Kinney Shoe Corp.*, 461 N.W.2d 374, 379 (Minn. 1990). However, under the independent-duty rule, “when a plaintiff seeks to recover damages for an alleged breach of contract [s]he is limited to damages flowing only from such breach except in exceptional cases where the defendant’s breach of contract constitutes or is accompanied by an independent tort.” *Wild v. Rarig*, 234 N.W.2d 775, 789 (Minn. 1975). “An independent tort may accompany a breach of contract when the defendant has a legal duty to the plaintiff arising separately from any duty imposed in the contract.” *Toyota-Lift of Minnesota, Inc. v. Am. Warehouse Sys., LLC*, 868 N.W.2d 689, 696 (Minn. App. 2015), *aff’d*, (886 N.W.2d 208 (Minn. 2016)).

Appellants argue that the district court erred in its application of the independent duty rule because “the gravamen” of their complaint was a tort—rather than a breach-of-contract claim—since “Penelope Isleman lost her property because Public Storage violated duties imposed by law [i.e. notice requirements imposed by the Liens Storage Act], not duties imposed by the Lease.” Citing *Francis v. W. Union Tel. Co.*, 59 N.W. 1078, 1080 (Minn. 1895), respondent argues that “the foundation” of Penelope Isleman’s civil-theft and conversion claims arise from the lease agreement she entered into with Public Storage, and thus the limits regarding damages for a breach-of-contract claim were properly applied by the district court. Respondent emphasizes that the related statutory provisions in the Liens Storage Act still stem from the parties’ contractual relationship and thus do not create an independent duty upon which a separate tort claim can be based.

In *Francis*, the supreme court evaluated the nature of an action—whether it was founded in tort or contract law—involving an undelivered telegraph message and allegations that this failed transmission by the telegraph company caused plaintiff mental anguish. *Id.* In concluding the action was founded in contract law, the court observed:

This action is not one of tort, but on contract; its gist and gravamen being the breach of the contract, the duties and obligations growing out of which are regulated by the statute, which itself becomes a part of it. The best test of this is the fact that such an action could not be maintained without pleading and proving the contract.

Francis, 59 N.W. at 1080. In line with this guidance, the “gist and gravamen” of Penelope Isleman’s tort claims arise from the lease agreement and the alleged violation of that contract by respondent. *Id.*; see also *Swanson v. First Nat. Bank of Barnum*, 239 N.W. 900, 901 (Minn. 1931) (citing *Francis* decision with approval and stating that “the action is one for breach of contract [because] . . . [w]ithout alleging and proving the agreement . . . no recovery could be had”). The legal duty respondent owed to appellant, which formed the basis of her conversion and civil-theft claims, did not arise separately from the Agreement. Thus, the district court did not err as a matter of law in dismissing Penelope Isleman’s conversion and civil-theft claims.

Appellants also take issue with certain factual determinations made by the district court in its summary-judgment order—namely that (1) Penelope Isleman agreed that she would not keep property in the storage unit exceeding \$5,000 and (2) Penelope and Margaret Isleman both acknowledged that they “never sent a written notice to [Public Storage] containing [Margaret Isleman’s] address.”

Appellants do not explain how either of these facts, if reasonably in dispute, would be material to the district court's summary-judgment dismissal of Penelope Isleman's conversation or civil-theft claims. Moreover, the Agreement explicitly states that the property kept in the rental unit cannot exceed \$5,000. There is no genuine issue of material fact that the agreed-upon limit of any damages claim was \$5,000 and that the agreement could not be varied by a telephone conversation with a local employee.

As to the district court's determination that appellants acknowledged that they never "sent a written notice" of Margaret Isleman's address to respondent, appellants point to their testimony that they provided an employee with "a writing" that contained updated contact information during an in-person visit to the Spring Lake Park facility in October 2014. However, the "writing" that appellants claim to have provided in-person with the new address, although technically in writing, did not comply with the written-notice requirements outlined in the lease agreement. Appellants do not contend that this writing satisfied the written-notice requirement; rather they argue that because Public Storage received the new address in several formats, including in writing during an in-person store visit, respondent should have updated its records accordingly, and this is what appellants believed would happen. However, appellants' version of events is not contrary to the district court's determination that it was undisputed that no written notice of an address change was "sent", e.g., mailed, as required under the lease agreement. Since the record indicates that there was no genuine issue of material fact that no written notice was sent, the district court did not err in dismissing Penelope Isleman's conversion and civil-theft claims on this additional ground raised by appellants.

B. Margaret Isleman's claims

Appellants first argue that the district court improperly “treat[ed] as not credible Penelope Isleman’s testimony that in May 2013 Public Storage’s employee not only authorized, but encouraged, Penelope Isleman to store Margaret Isleman’s property in [the unit] rented by Penelope Isleman.” In response to this point, respondent argues that the district court considered this testimony but correctly determined that no reasonable person would conclude Penelope Isleman’s telephone request to the local store employee would modify the written rental contract with Public Storage. Respondent emphasizes that the Agreement explicitly states that it can only be modified in writing, and that no agents are authorized to make any other agreements or modifications.

Appellants also argue that the district court misconstrued the willfulness requirement of conversion in dismissing Margaret Isleman’s claim. Appellants contend that willful interference “simply means an act that is intentional rather than accidental” and that Public Storage certainly intended to take control of all the property in the storage locker as part of the lien-foreclosure sale. Appellants contend that respondent should be liable to “anyone who had an interest in property in the unit,” even if it was unaware of those interests at the time of the foreclosure sale, reasoning that “[c]onversion done innocently or in ignorance is nonetheless conversion.”

In granting summary judgment on the conversion claim, the district court determined as a matter of law that respondent did not “willfully” interfere with Margaret Isleman’s property because she was not authorized under the rental agreement to store her personal property in the storage locker. The court also determined that respondent did not

deprive Margaret Isleman of her property interest—rather Penelope Isleman deprived Margaret Isleman of this interest by placing her mother’s property in the storage locker and failing to make the required written notification to Public Storage regarding the additional property that was to be stored in the rental unit.

Conversion occurs when a person “willfully interferes with the personal property of another without lawful justification depriving the lawful possessor of use and possession.” *Williamson v. Prasciunas*, 661 N.W.2d 645, 649 (Minn. App. 2003) (quotations omitted). “The elements of common law conversion are: (1) plaintiff holds a property interest; and (2) defendant deprives plaintiff of that interest.” *Id.* Based on the record, the willful interference and deprivation-of-interest elements were lacking since (1) Public Storage was enforcing a valid lien foreclosure under the terms of its lease agreement with Penelope Isleman; (2) Margaret Isleman’s property was being improperly stored in the unit without the required written notification; and (3) Public Storage was unaware that Margaret Isleman’s property was in the unit at the time of the foreclosure sale.

As to Margaret Isleman’s civil-theft claim, the district court found that she could not establish that Public Storage “stole” her property under the ordinary meaning of the word—that respondent took it “wrongfully and surreptitiously . . . for the purpose of keeping it and/or using it.” The court went on to state that “Margaret Isleman cannot establish that [Public Storage] took her personal property for the purpose of keeping it and/or using it. Rather, [Public Storage] was enforcing its contract with [Penelope Isleman].”

Appellants (1) take issue with the district court’s discussion of the primary intention of Minn. Stat. § 604.14 as providing “a recovery if merchandise or other property is stolen from a retail store;” (2) remark that the court’s definition of steal was “dubious;” and (3) challenge the court’s statement that “[Margaret Isleman] cannot establish that [Public Storage] took her personal property for the purpose of keeping it and/or using it. Rather, [Public Storage] was enforcing its contract with [Penelope Isleman].” Appellants further argue that “Public Storage was not enforcing a contractual right to take and sell the property, as it had no such right” because it failed to comply with the Liens Storage Act.

Under Minn. Stat. § 604.14, subd. 1 (2018), “A person who steals personal property from another is civilly liable to the owner of the property for its value when stolen plus punitive damages of either \$50 or up to 100 percent of its value when stolen, whichever is greater.” This court has interpreted “steal” to mean “that a person wrongfully and surreptitiously takes another person’s property for the purpose of keeping it or using it.” *TCI Bus. Capital, Inc. v. Five Star Am. Die Casting, LLC*, 890 N.W.2d 423, 431 (Minn. App. 2017); *see also Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 896 N.W.2d 115, 126 (Minn. App. 2017), *aff’d*, 913 N.W.2d 687 (Minn. 2018) (citing *TCI* with approval and again applying the same definition of steal to the civil-theft statute). “This definition makes clear that for a person to steal something, there must be some initial wrongful act in taking possession of the property.” *Staffing Specifix, Inc.*, 896 N.W.2d at 126.

Here, the summary-judgment record, viewed in the light most favorable to appellants, could not support a finding that Public Storage, in believing it had complied

with the requirements of the Liens on Storage Act, including mailing and publishing the required foreclosure notices, “surreptitiously” took Margaret Isleman’s property for the purpose of keeping it or using it. This is sufficient grounds to uphold the district court’s grant of summary judgment. Further we observe that there is no genuine issue of material fact that respondent also took possession of the contents of the storage locker without the requisite “initial wrongful act” because, as the district court observed, Margaret Isleman voluntarily placed her property in the rental locker, and all property in that unit was subject to a valid lien by Public Storage. Margaret Isleman voluntarily remained unaware of the Agreement her daughter had entered into with Public Storage and the obligations arising from that contract, including the specific written-notice and contact-information requirements. Because the undisputed facts do not show that respondent wrongfully took the contents of the storage unit initially, the district court did not err as a matter of law in granting summary judgment on the civil-theft claim. *See Staffing Specifix, Inc.*, 896 N.W.2d at 126.

III. Denial of motion for punitive damages

This court reviews an order denying a motion to amend a complaint to add punitive damages for an abuse of discretion. *Bjerke v. Johnson*, 727 N.W.2d 183, 196 (Minn. App. 2007), *aff’d*, 742 N.W.2d 660 (Minn. 2007). When moving to add a claim for punitive damages, “the moving party must present prima facie evidence that clearly and convincingly shows the defendant’s ‘deliberate disregard’ for the safety of others.” *Id.* (quoting Minn. Stat. § 549.20, subd. 1(a) (2006)). “Deliberate disregard” means the defendant “has knowledge of facts or intentionally disregards facts that create a high

probability of injury to the rights or safety of others” and “deliberately proceeds to act” either “in conscious or intentional disregard of the high degree of probability of injury” or “with indifference to the high probability of injury.” Minn. Stat. § 549.20, subd. 1(b). The movant must present “admissible, probative, and competent evidence” of these factors. *In re 3M Bair Hugger Litig.*, 924 N.W.2d 16, 24 (Minn. App. 2019), *review denied* (Minn. Mar. 27, 2019). Evidence that merely “raise[s] questions” as to the actor’s culpability is insufficient. *Id.*

After noting that appellants’ only remaining claims were for breach of contract and violation of the Liens Storage Act, the district court observed that punitive damages are not permitted for breach-of-contract claims and that the Liens Storage Act has no provision providing for punitive damages. The court concluded that, even if punitive damages were permitted for such claims, the prima facie evidence established respondent’s conduct was at most negligent, not “malicious” or “done in deliberate disregard of the rights of others” as Minnesota’s punitive-damages statute requires. *See* Minn. Stat 549.20, subd. 1(a).

Appellants argue that the evidence established a prima facie case that respondent showed “deliberate disregard” for their rights by (1) repeatedly mailing important notices to an outdated address despite notification from the Postal Service of a new mailing address; (2) having a company policy of sending all notices to customers with the postal notice of “return service requested” so that mail could not be forwarded by the Postal Service and instead had to be returned as undeliverable; and (3) proceeding with the lien-foreclosure auction even after respondent received a payment of \$128.40 for the rental unit. Appellants contend that Public Storage’s failure to send statutorily required notices to its

occupant's last-known address was a clear violation of the Liens Storage Act and that this practice was exacerbated by respondent's "deliberate" corporate policy of sending out these notices with "return service requested" so that they could not be automatically mailed to an occupant's updated address.

Respondent emphasizes that the Liens Storage Act was changed in 2014, and the recent amendments changed the mailed-notice requirements. Under the prior version of the Act, Public Storage was only required to send notices to the address listed on the rental agreement. Respondent argues that, at the time of the foreclosure proceedings, it did not believe that the Act's 2014 amended mailed-notice requirements applied to this case because Penelope Isleman's lease agreement had been entered into two years prior to the new law and respondent interpreted the "extended after" language in the statute as not encompassing prior rental agreement with indefinitely continued leases, such as Penelope Isleman's month-to-month lease. Respondent maintains that, because this interpretation of the law was a "reasonable understanding," its failure to comply with the amended mailed-notice requirements cannot be seen as a deliberate disregard of appellants' rights.

As respondent points out, the overdue balance on the storage locker exceeded the \$128.40 payment that was received in the spring of 2015 and, under the terms of the Agreement, Public Storage was entitled to foreclose on the unit based on the delinquent payments. We see no error in the district court's conclusion that respondent did not present evidence establishing a prima facie case that respondent maliciously or deliberately disregarded appellants' rights by enforcing its contractual remedy of foreclosing on its lien after the unit's occupant had defaulted on rental payments.

Moreover, based on the primary conduct at issue here—failure to send foreclosure notices to Penelope Isleman’s last known address rather than the address listed on the rental agreement—the district court reasonably determined that respondent’s conduct did not rise to the level of deliberate disregard required by Minn. Stat § 549.20, subd. 1(a). As the district court observed, respondent did send out the statutorily required notices, albeit to an outdated address. While respondent’s understanding of its legal obligation under the new law may have been erroneous and in violation of the Liens Storage Act, the district court did not abuse its discretion in concluding that such conduct failed to demonstrate a deliberate disregard for appellants’ rights, and thus properly denied appellants’ motion to amend the complaint to add a claim for punitive damages.

Affirmed.