

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1223**

BDS Laundry Management Company,
Appellant,

vs

Haven, LLC, et al.,
Respondents,

ABC Corporation, et al.,
Defendants.

**Filed May 17, 2021
Affirmed
Gaïtas, Judge**

Hennepin County District Court
File No. 27-CV-20-6347

Mark V. Steffenson, Henningson & Snoxell, Ltd., Maple Grove, Minnesota (for appellant)

Justice Ericson Lindell, Greenstein Sellers PLLC, Minneapolis, Minnesota (for respondents)

Considered and decided by Gaïtas, Presiding Judge; Segal, Chief Judge; and
Kalitowski, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

In this dispute over non-renewal of an apartment-complex laundry-room lease, appellant-lessee BDS Laundry Management Co. (BDS) challenges the district court's rule 12.02(e) dismissal of its breach-of-contract and declaratory-judgment claims. BDS argues that the district court erred as a matter of law first, by concluding that the contract between BDS and respondent-lessor Haven, LLC (Haven) did not provide a right of first refusal; and second, by disregarding Haven's alleged failure to provide BDS with a competitor's lease. We affirm.

FACTS¹

This case involves a laundry-room lease between BDS and Haven. BDS is in the business of leasing laundry-room space in apartment complexes to provide coin-operated or card-operated laundry equipment to residents. Haven owns two apartment complexes in Anoka, and respondent Steven Scott Management, Inc., manages these complexes as an agent of Haven. BDS rented laundry-room space in the two Anoka apartment complexes under a seven-year lease that began on February 25, 2013, and expired on February 24, 2020 (the lease).

The lease contains a paragraph labeled "Non-Renewal Rights" that provides as follows:

¹ For the purposes of reviewing a dismissal under rule 12.02(e), we accept the facts alleged in the complaint as true and construe them in the light most favorable to the nonmoving party. *See DeRosa v. McKenzie*, 936 N.W.2d 342, 346 (Minn. 2019).

NON-RENEWAL RIGHTS. If this Lease is not renewed and Lessor desires to continue making laundry equipment available to its tenants by (I) leasing the Premises to another person or entity to provide laundry equipment, (II) renting laundry equipment, or (III) purchasing laundry equipment, Lessor may do so pursuant to a good faith commercially reasonable lease, rental agreement, or purchase order. For a lease or rental agreement, “commercially reasonable” shall mean, among other things, a lease with a term of sufficient length to enable Lessee to recover any investment in equipment and other costs associated with performing its obligations under the lease or rental agreement, plus reasonable overhead and profit. Lessor shall provide Lessee with an executed copy of any such lease, rental agreement, or purchase order, and Lessee shall have thirty days from the receipt of such executed copy to notify Lessor that it will substantially match the terms of such lease, rental agreement or purchase order.

The lease also provides that it “contains the entire agreement of the parties with respect to the subject matter of [the lease] and supersedes any and all prior contracts and understandings between the parties with respect to the same.”

Haven sent BDS a letter in November 2019 that confirmed the lease term would end in February, but indicated that BDS could submit a written proposal for a new lease. BDS responded with a written proposal in January 2020. Two months later, BDS received a letter from Haven that demanded BDS remove its equipment from the apartment laundry rooms on May 4, 2020. Believing that Haven had entered a new lease with a competitor, BDS requested a copy of the competitor’s offer, citing its right under the non-renewal rights section of the lease. Haven refused to provide a copy. BDS offered to shorten to 10 days the 30-day period that the non-renewal rights clause of the lease gives BDS to review the competitor’s lease, but Haven again declined.

BDS commenced this lawsuit, asserting three counts: (I) “Breach of Lease–Specific Performance”; (II) “Breach of Lease–Damages”; and (III) “Declaratory Judgment.” The complaint alleges that Haven breached the lease by denying BDS its contractual right “to substantially match the competing offer and obtain a new lease for the Properties if it did so.” As to specific performance and declaratory judgment, the complaint seeks a court determination that the lease provides BDS a “right of first refusal” that compels Haven to enter into a new lease with BDS if BDS substantially matches the competitor’s lease.

Haven moved to dismiss the complaint for failure to state a claim upon which relief may be granted under Minnesota Rule of Civil Procedure 12.02(e). In doing so, Haven argued that the lease did not create a right of first refusal compelling it to enter into a new lease with BDS. Haven also suggested that any issue regarding its failure to provide a copy of the competitor’s lease was “moot” because, after the lawsuit commenced, Haven provided the document to BDS.

After a hearing, the district court granted Haven’s motion to dismiss the complaint. The district court concluded that the plain and unambiguous language of the lease does not create a right of first refusal, but instead “an *opportunity* for BDS, after the Lease expires, to submit a bid to match a competitor’s bid for a new laundry room lease,” which Haven may then accept or reject. Based on this determination, the district court dismissed the complaint in its entirety with prejudice.

Haven appeals.

DECISION

A complaint must “contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought.” Minn. R. Civ. P. 8.01. The district court may, upon motion, dismiss a complaint that “fail[s] to state a claim upon which relief can be granted.” Minn. R. Civ. P. 12.02(e). Dismissal under rule 12.02(e) is only proper “if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded.” *Finn v. All. Bank*, 860 N.W.2d 638, 654 (Minn. 2015) (quotation omitted). It is “immaterial whether or not the plaintiff can prove the facts alleged.” *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739 (Minn. 2000).

Appellate courts review de novo whether a complaint sets forth a legally sufficient claim for relief under rule 12.02(e). *DeRosa*, 936 N.W.2d at 346. In doing so, we consider only the facts alleged in the complaint, accepting those facts as true and construing all reasonable inferences in favor of the nonmoving party. *Id.*; see also *Sipe v. STS Mfg, Inc.*, 834 N.W.2d 683, 686 (Minn. 2013). We consider the complaint as a whole, “including the facts alleged throughout the complaint and the attachments to the complaint.” *Hardin Cty. Savs. Bank v. Hous. & Redev. Auth.*, 821 N.W.2d 184, 192 (Minn. 2012); see 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 . . . set forth in the pleading.”). The reviewing court is not bound by any legal conclusions stated in the complaint. *Finn*, 860 N.W.2d at 653-54.

Additionally, if the complaint contains a contract-based claim, “the court ‘may consider the entire written contract when the complaint refers to the contract and the

contract is central to the claims alleged.” *Baker v. Best Buy Stores, LP*, 812 N.W.2d 177, 180 (Minn. App. 2012) (quoting *In re Hennepin Cty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995)), *review denied* (Minn. Apr. 25, 2012). Contract claims that rely on an interpretation contrary to the unambiguous language of a written agreement are properly dismissed under rule 12.02(e). *See id.* at 182. Unless an ambiguity exists, the construction and effect of a contract is a question of law that we review de novo. *See Trondson v. Janikula*, 458 N.W.2d 679, 681 (Minn. 1990); *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004).

Minnesota courts “have long recognized the right of parties to freely contract, and will enforce legal rights according to contract terms.” *Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 784 (Minn. 2004). Accordingly, our goal in interpreting a contract “is to determine and enforce the intent of the parties.” *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323 (Minn. 2003). When the terms of a written agreement are clear and unambiguous, a court determines the intent of the parties based on the plain language of the document. *See Halla Nursery, Inc. v. City of Chanhassen*, 781 N.W.2d 880, 884 (Minn. 2010). Ambiguity exists only “when the language of a written document, by itself, is reasonably susceptible to more than one meaning.” *Trondson*, 458 N.W.2d at 681. “[W]hen a contractual provision is clear and unambiguous, courts should not rewrite, modify, or limit its effect by a strained construction.” *Travertine Corp.*, 683 N.W.2d at 271. And pursuant to the parol evidence rule, “evidence outside a written document may not be used to vary or contradict the unambiguous terms of the document.” *Webb v. Webb*, 360 N.W.2d 647, 649 (Minn. App. 1985).

BDS argues that the district court erred in dismissing its complaint by: (1) determining that BDS did not have a right of first refusal under the lease and (2) disregarding Haven's alleged failure to provide BDS with the competitor's lease. We examine each challenge in turn.

I. The lease did not provide BDS with a right of first refusal.

BDS's requests for relief in the complaint rely on the premise that the lease contains a "right of first refusal." The district court determined that the plain and unambiguous language of the lease creates no such right, and accordingly dismissed the claims. We begin with an instructive background on rights of first refusal before analyzing BDS's specific arguments.

A right of first refusal traditionally refers to "[a] potential buyer's contractual right to meet the terms of a third party's higher offer." *Black's Law Dictionary* 1586 (11th ed. 2019). Such a right "limits the right of the owner to dispose freely of its property by compelling the owner to offer it first to the party who has the first right to buy" (or lease) the property. *Dyrdal*, 689 N.W.2d at 784 (quotation omitted). The right is similar to an option;² it typically becomes an option if a triggering condition precedent occurs, such as that "the owner must have received a bona fide offer from a third party which he or she is willing to accept." *Park-Lake Car Wash, Inc., v. Springer*, 352 N.W.2d 409, 411 (Minn. 1984). "An option to purchase or an option to renew a lease must, like any other contract,

² An option refers to "[a]n offer that is included in a formal or informal contract; esp., a contractual obligation to keep an offer open for a specified period, so that the offeror cannot revoke the offer during that period." *Black's Law Dictionary, supra*, at 1319.

be definite and certain in its terms or provide a method of ascertaining the terms with certainty.” *King v. Dalton Motors, Inc.*, 109 N.W.2d 51, 51-52 (Minn. 1961). Contractual phrases that, through “continued and repeated use in real estate transactions,” signal the existence of such a right include “first option,” “right of first refusal,” or “first chance to buy.” *Id.* at 53.

Here, the parties’ lease does not contain any of the phrases typically understood to confer a right of first refusal. It does not contain the phrase “right of first refusal,” nor does it discuss an “option” or first priority for BDS to re-lease the properties. To the contrary, the lease specifically provides that, in the event it is not renewed, Haven may, if it wishes to continue making laundry equipment available to its tenants, lease the properties to a new person or entity pursuant to a good faith, commercially reasonable lease.

If Haven enters such a lease, it “shall provide [BDS] with an executed copy . . . and [BDS] shall have thirty days from the receipt of such executed copy to notify [Haven] that it will substantially match the terms of such lease.” Nowhere does the lease state that Haven must terminate the third-party lease and enter a new lease with BDS if BDS substantially matches the terms of the third-party lease. The only mandatory language in the non-renewal rights clause is that Haven “shall” provide BDS with an executed copy of the third-party lease and BDS “shall” have 30 days to notify Haven that it will match the terms. On its face, this language is not sufficiently definite to create a right of first refusal for BDS. *See King*, 109 N.W.2d at 51-52.

BDS nonetheless contends that the plain language of the lease creates a right of first refusal—which ripens into an option if Haven enters a good faith, commercially reasonable

lease with a third party—through the use of the word “match.” In other words, BDS asserts that if Haven enters a new lease with a third party and provides that lease to BDS, such action constitutes an “offer” that can then be “unilaterally” accepted by BDS via substantially matching the terms of the third-party lease. In support of its interpretation of the term “matches,” BDS cites two Minnesota cases and two cases from other jurisdictions.

In *Park-Lake Car Wash*, the parties entered into a lease for real property that provided that “Lessor shall not sell either the leased premises or the said adjoining premises without first giving Tenant the privilege to purchase the same at the best bona fide offer by the lessor [sic] at any time during the period or extended period of this lease.” 352 N.W.2d at 410. The lease went on to provide specific timing requirements and payment requirements in regards to the best bona fide offer. *Id.* There was no dispute in *Park-Lake Car Wash* that the lease language created a right of first refusal in favor of the tenant. *See id.* at 412. Instead, the dispute regarded “whether the tenant . . . properly exercised its right of first refusal under the lease to purchase the leased premises so as to be entitled to specific performance of the contract thereby created.” *Id.* at 411. In other words, the court analyzed whether the tenant had sufficiently “match[ed]” the terms of the bona fide third-party offer; it did not consider whether the word “match”—not present in the relevant contract language there—*created* a contractual right of first refusal. *See id.* at 411-12.

In *Minar v. Skoog*, the parties similarly did not dispute whether the contract at issue created a right of first refusal. 50 N.W.2d 300 (Minn. 1951). There, the lease provided, “If the lessor elects to sell said building, the lessees *shall have the first option* of purchasing the same.” *Id.* at 301 (emphasis added). Again, the dispute regarded whether the lessee

sufficiently exercised the right of first refusal, specifically through unequivocal acceptance. *Id.* at 302. Indeed, the supreme court explained that it would “assume, without so deciding” that the option in the lease was “sufficiently definite” so as to create a valid contract. *Id.* at 301. Nowhere did the court interpret the term “match.”

The cases that BDS cites from other jurisdictions have no precedential value. But even if considered for persuasive value, they similarly fail to support BDS’s proposition that “the word ‘match’ consistently has been found by courts to have the plain and ordinary meaning of creating a right of first refusal.” See *In re Estate of Owen*, 855 N.E.2d 603, 606 (Ind. App. 2006); *Miller v. LeSea Broad., Inc.*, 87 F.3d 224, 225-27 (7th Cir. 1996).³

³ In the Indiana Court of Appeals case, a decedent’s will provided that:

If at any time [the] 80 acres or any part thereof shall be placed for sale, then my friends Rodney and Carol Logan shall be permitted first opportunity to purchase the real estate or they shall be given the opportunity to match any offer made for the purchase of the real estate.

Owen, 855 N.E.2d at 607. The court analyzed whether the will language created a valid right of first refusal, as opposed to a “related right of preemption.” *Id.* at 612. The court ultimately held that the “opportunity to purchase” clause created a right of preemption, while the “opportunity to match” clause created a right of first refusal. *Id.* at 612. Importantly though, the will in *Owen* regarded the right-holder’s pre-sale abilities—it involved their ability to match *an offer*, not their ability to match an already-executed contract as in this case currently before us. See *id.* at 606. Specific contract language governs the rights of contracting parties, and the language examined in *Owens* significantly differs from the lease language we consider here. See *Dyrdal*, 689 N.W.2d at 784. In other words, we disagree that, based on the *Owen* case, the term “match” is commonly understood to signal a right of first refusal.

In BDS’s second extra-jurisdictional case, *Miller*, the parties again did not dispute whether the relevant contract language created a right of first refusal. 87 F.3d at 225-27. The contract at issue gave the plaintiff—a television-station employee—the right, for as long as he was employed by the defendant and for two years after, to “match” any offer to

Ultimately, BDS has not shown that the term “match” is commonly understood to convey a right of first refusal. In the absence of authority supporting that specific interpretation, we will not read a first-refusal right into a contract that does not otherwise contain one. *See Travertine Corp.*, 683 N.W.2d at 271 (“[W]hen a contractual provision is clear and unambiguous, courts should not rewrite, modify, or limit its effect by a strained construction.”). We therefore conclude, as did the district court, that the contract here permits BDS only the opportunity to present an offer that matches the terms of a third-party contract, which Haven can then either accept or reject.

BDS further objects that interpreting the non-renewal rights clause to allow Haven to accept or reject a matching offer from BDS renders this clause “meaningless.” Haven counters that this is not true, as the right to see a competitor’s terms and then make a matching offer has value. Even though this right has less value than the right that BDS desires—to compel Haven to accept BDS’s matching terms—it is a fundamental rule of contract law that parties may contract freely and courts must enforce the terms of the contract. *Dyrdal*, 689 N.W.2d at 784. Accordingly, when the contract fails to use language sufficient to confer a right of first refusal, we will not read one in to provide greater value to BDS. *Travertine Corp.*, 683 N.W.2d at 271.

purchase the television station “upon the exact terms and conditions as contained in the offer.” *Id.* at 225. The dispute turned on whether the term “exact” in the contract precluded the plaintiff from claiming that the differences in his offer were immaterial. *Id.* at 225-27. Like *Owen*, the *Miller* court did not determine whether the term “match” *created* a right of first refusal, and the contract at issue permitted the plaintiff to match an *offer*—not an already-executed contract. *See id.*

BDS also makes a variety of arguments based on parol evidence, or evidence outside the four corners of the lease. Specifically, BDS references the parties' negotiations leading up to the execution of the lease in 2013 and other leases between the same parties. But the lease provides that it is "the entire agreement of the parties with respect to the subject matter of [the lease] and supersedes any and all prior contracts and understandings between the parties with respect to the same." Absent ambiguity, "evidence outside a written document may not be used to vary or contradict the unambiguous terms of the document." *Webb*, 360 N.W.2d at 649. Here, the unambiguous language of the lease does not confer a right of first refusal, so we will not look to the parties' negotiations and other contracts to discern their intent. *See Apple Valley Red-E-Mix, Inc. v. Mills-Winfield Eng'g Sales, Inc.*, 436 N.W.2d 121, 123 (Minn. App. 1989) ("Pursuant to general contract law, the terms of a final and integrated written expression may not be contradicted by parol evidence of previous understandings and negotiations for the purpose of varying or contradicting the writing." (quotation omitted)), *review denied* (Minn. Apr. 26, 1989).

In sum, the district court properly dismissed BDS's claims as relying on an erroneous interpretation of the lease in regards to a right of first refusal.

II. The complaint does not plead an independent claim upon which relief can be granted based on BDS's failure to provide the competitor's lease.

BDS next argues that the district court erred by disregarding a "fundamental aspect" of its breach of contract claim: that Haven refused to fulfill its obligation under the lease to provide BDS with the competitor's lease. BDS asserts that because the complaint alleged a separate breach of contract claim based on Haven's failure to turn over the

competitor's lease, this court must reverse the district court's decision and remand for further litigation.

Haven responds that it was not obligated to provide the competitor's lease within any particular timeframe under the plain language of the lease. It further contends that the record before the district court reflected, and BDS does not dispute, that Haven provided BDS the lease copy after this litigation commenced.⁴

“A breach of contract is a failure, without legal excuse, to perform any promise that forms the whole or part of the contract.” *Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014). The elements of a breach-of-contract claim are “(1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant.” *Id.* (quotation omitted).

On appeal, BDS characterizes the failure to provide the competitor's lease as an independent breach-of-contract claim. But the complaint did not characterize this as an independent contract violation. Instead, the complaint included the competitor-lease requirement as a component of the broader right-of-first-refusal based claim. Specifically, the complaint asks the district court for an order requiring Haven to provide BDS the

⁴ To support its assertion that it disclosed the third-party lease, Haven cites an email attached to an affidavit that it filed in district court with its motion to dismiss the complaint. Although “a court may consider documents referenced in a complaint without converting the motion to dismiss to one for summary judgment,” the court is not allowed to consider additional documents attached to the motion to dismiss. *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490-91 (Minn. 2004) (emphasis omitted). We accordingly decline to consider the fact that Haven disclosed the lease after this litigation commenced, and it has no bearing on our analysis.

competitor lease copy and, “if BDS substantially matches the competing offer, requiring [Haven] to enter into a new lease with BDS containing the terms of the substantially matching offer from BDS.”

As we have already explained, the parties’ lease did not provide BDS with a right of first refusal, or a right to force Haven to abandon its contract with the competitor and enter one with BDS. Moreover, under the plain language of the lease, the competitor-lease requirement merely facilitates the opportunity to match the competitor’s terms. BDS does not request an opportunity to match, but instead requests that the court compel Haven to enter into a new lease with BDS. Put differently, the complaint does not explain, nor does BDS clarify on appeal, how Haven’s failure to provide the competitor’s lease could support damages or other relief independent of the right-of-first-refusal argument. We accordingly hold that the district court did not err by dismissing the complaint in its entirety for failure to state a claim upon which relief can be granted. *See* Minn. R. Civ. P. 12.02(e).

Affirmed.