

*This opinion is nonprecedential except as provided by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
A20-1321**

William Miller,
Appellant,

vs.

Public Storage, a foreign Real Estate Investment Trust,
defendant and third-party plaintiff,
Respondent,

vs.

Penelope Isleman,
third-party defendant,
Appellant.

**Filed May 24, 2021
Affirmed
Connolly, Judge**

Anoka County District Court
File No. 02-CV-18-3689

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

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

Considered and decided by Connolly, Presiding Judge; Hooten, Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellants, a mother and her adult son, challenge the grant of summary judgment dismissing his conversion and civil-theft claims and her fraud counterclaims against respondent, owner of the storage facility in which mother had stored property that respondent subsequently sold. Because we conclude that no genuine issues of material fact preclude the summary judgment and that respondent is entitled to judgment as a matter of law, we affirm.

FACTS

In January 2012, appellant Penelope Isleman (P.I.) signed a lease to rent a storage space from respondent Public Storage. The lease identified her as “Occupant” and respondent as “Owner” and provided in relevant part:

3(a). . . . UNDER MINNESOTA LAW, OWNER HAS A LIEN UPON THE PROPERTY OR UPON THE PROCEEDS OF THE PROPERTY STORED BY OCCUPANT AT THE SELF-STORAGE FACILITY. THE LIEN COVERS OVERDUE RENT IF THE RENT . . . REMAIN[S] UNPAID FOR FIFTEEN (15) CONSECUTIVE DAYS, OWNER HAS THE RIGHT . . . TO ENFORCE AND SATISFY THE LIEN BY SELLING THE PROPERTY STORED BY OCCUPANT AT THE FACILITY. . . .

3(b). . . . 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 . . . 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. . . .

....

4. . . . The parties agree that in view of the limitations of value of the stored goods as provided in paragraph 5 below and the limitations as to Owner's liability as provided in paragraph 7 below, the value of any claim hereunder is limited to \$5,000

5. . . . 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**

....

7. . . . Owner and Owner's Agents will have no responsibility to Occupant or to any other person for any loss, liability, claim, expense, damage to property or injury to persons ("Loss") from any cause, including without limitation, Owner's and Owner's Agents active or passive acts, omissions, negligence or conversion, unless the Loss is directly caused by Owner's fraud, willful injury or willful violation of law. Occupant shall indemnify and hold owner and Owner's Agents harmless from any loss incurred by Owner and Owner's Agents in any way arising out of Occupant's use of the Premises or the Property including, but not limited to, claims of injury or loss by Occupant's visitors or invitees. Occupant agrees that Owner's and Owner's Agents' total responsibility for any Loss from any cause whatsoever will not exceed a total of \$5,000. . . .

....

13(a). . . . 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.

....

16. . . . This Lease/Rental Agreement and any written amendment or addenda executed at the same time as this Lease/Rental Agreement, and any notices provided under this agreement by Owner, set forth the entire agreement of the parties with respect to the subject matter hereof and supersede all prior agreements or understandings with respect thereto. With the exception of posted rules and regulations . . . 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 [to monthly rent, etc.] as provided in paragraph 2 above, this Lease/Rental agreement may only be amended by a writing signed by the parties.

P.I. placed items in the storage facility space owned by herself and by her mother, Margaret Isleman (M.I.), and items given to her son, appellant William Miller (Miller), born in August 1997 and now age 23.

In 2013 P.I. moved to a different town. She called respondent and asked that M.I. "take over the [space]." Respondent's employee confirmed the monthly rate and payment deadlines with M.I., who agreed to "take over the payments." M.I. made payments, although she never received any notices, acknowledgments, or other mail from respondent.

Respondent continued to send mail relevant to the storage space, including notice of a rent increase, to P.I.'s old address. Although the mail was returned as undeliverable with a forwarding address that was entered into respondent's software, respondent continued to send mail only to P.I.'s old address.

In May 2015, rent payments became delinquent for a second time. After respondent sent a Notice of Enforcement of Owner's Lien—Notice of Sale and a Balance Due Letter to P.I.'s old address, both of which were returned as undeliverable, a sale was held.

In March 2017, P.I. and M.I. brought an action against respondent, alleging that M.I. had made the rent payments through June 2015. The district court denied P.I. and M.I.'s motion to replead their consumer-fraud claim, granted summary judgment dismissing P.I.'s conversion and civil-theft claims, granted summary judgment to respondent on M.I.'s conversion and civil-theft claims because M.I. was not a party to the lease, and denied M.I. and P.I.'s motion for leave to add a punitive-damages claim. This court affirmed those decisions. *Isleman v. Public Storage*, No. A20-0092, 2020 WL 6846352 (Minn. App. Nov. 23, 2020), *review denied* (Minn. Feb. 16, 2021) (*Isleman I*).¹

In June 2018, Miller, whose request to intervene in *Isleman I* had been denied, brought a separate action against respondent, alleging conversion and civil theft. The

¹ The district court also determined that P.I. was entitled to partial summary judgment on her claim that respondent violated the Minnesota Liens on Personal Property in Self-Storage Act, Minn. Stat. §§ 514.970-.979 (2020), specifically the provision that “[a]ny notice the owner is required to mail to the occupant . . . shall be sent to the last known mailing address of the occupant, if the last known mailing address differs from the mailing address listed by the occupant in the rental agreement and the owner has reason to believe that the last known mailing address is more current.” Minn. Stat. § 514.974(3). However, that determination was not challenged on appeal, and this court did not address it.

district court dismissed those claims under Minn. R. Civ. P. 12.02(e) (failure to state a claim on which relief can be granted); this court reversed the dismissal and remanded the claims. *See Miller v. Public Storage*, No. A18-2155 (Minn. App. June 24, 2019).

On remand in October 2020, the district court granted respondent's motion for summary judgment dismissing with prejudice Miller's conversion and civil-theft claims, denied Miller's motion for partial summary judgment on collateral-estoppel grounds on those claims, and dismissed P.I.'s consumer-fraud and false-advertising counterclaims as barred by the statute of limitations. Appellants challenge these determinations.

DECISION

This court reviews a district court's grant of summary judgment 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). "We will affirm the [grant of summary] judgment if it can be sustained on any grounds." *BFI Waste Sys. LLC v. Bishop*, 927 N.W.2d 314, 325 (Minn. App. 2019) (quotation omitted), *review denied* (Minn. June 26, 2019). When considering a grant of summary judgment, we "need not adopt the district court's reasoning and may enter judgment on any appropriate legal grounds." *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012).

1. Summary Judgment on Miller's Claims of Conversion and Civil Theft

On appeal, Miller argues that he is entitled to damages because respondent "could not claim any lawful interest in [the] property at issue," i.e., the property in P.I.'s unit. But respondent had a lien on the property stored in P.I.'s unit under both Minn. Stat. § 514.972, subd. 1, ("The owner . . . has a lien against the occupant on the personal property stored

under a rental agreement in a storage space . . . or on the proceeds of the personal property subject to the defaulting occupant's rental agreement in the owner's possession.") and paragraph 3(a) of the lease; paragraph 3(b) obliged P.I. to notify respondent in writing if the property belonged to anyone else, and she did not do so. Miller's argument that respondent "could not claim any lawful interest" in the property is unpersuasive.

Miller also argues that he is entitled to damages because the fact that the property was in the possession of P.I. and M.I., rather than of himself, "does not permit [respondent] to escape liability for conversion and civil theft." But respondent's lien on the property stored in P.I.'s space depended not on who possessed the property but rather on the property's location in one of respondent's storage spaces on which the rent payment was overdue. The lease provided at paragraph 3(b) that respondent was "not . . . liable to [P.I.] or anyone else for the removal or sale of personal property which [was] owned by someone other than [P.I.]" unless P.I. had notified respondent in writing that someone else owned the property, which P.I. had not done. The lease also provided at paragraph 16 that it "set forth the entire agreement of the parties with respect to the subject matter [there]of," i.e., the storage space and its contents, so no oral or other communication between P.I. and anyone else could have altered or eliminated its provision. Respondent was therefore not liable under the lease to Miller for the sale of the property and was entitled to summary judgment dismissing Miller's claims.

The district court based its award of summary judgment dismissing Miller's conversion and civil-theft claims on the fact that, because Miller was a minor when the property was sold, he had no enforceable ownership interest in it. See 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”); *Thomas B. Olson & Assocs. v. Leffert, Jay & Polglaze*, 756 N.W.2d 907, 920 (Minn. App. 2008) (“[L]ack of an enforceable interest in the subject property is a complete defense against conversion.”), *review denied* (Minn. Jan. 20, 2009).

The district court concluded that Miller did not have an ownership interest in the property because he had not acquired it through one of the means provided in the Minnesota Uniform Transfers to Minors Act, Minn. Stat. §§ 527.21-.44 (2020). Appellants argue that this conclusion is “plainly at odds with American law” and support their argument with caselaw from Wyoming, California, and Illinois. But whether the property belonged to Miller, as he now claims it did, or to P.I. and M.I., as they previously claimed it did, *see generally Isleman I*, 2020 WL 6486352, it is undisputed that, when the property was in P.I.’s space and the rent on that space was overdue, respondent had a lien on the property and is entitled to summary judgment on Miller’s conversion and civil-theft claims.

2. Denial of Miller’s Motion for Partial Summary Judgment

The district court in *Isleman I* determined that P.I. was entitled to partial summary judgment on liability for her claim that respondent violated the Minnesota Liens on Personal Property in Self-Service Storage Act, specifically Minn. Stat. § 514.974(3) (providing that “[a]ny notice the owner is required to mail to the occupant . . . shall be sent to the last known mailing address of the occupant, if the last known mailing address differs from the mailing address listed by the occupant in the rental agreement and the owner has reason to believe that the last known mailing address is more current”). The district court

reasoned that: (1) as of August 1, 2014, Minn. Stat. § 514.974(3) went into effect; (2) respondent increased P.I.’s rent after August 1, 2014, and was therefore obligated to send a notice of the increase to her last known mailing address; (3) “[respondent’s] employees repeatedly received returned mail with a forwarding address for P.I. and put P.I.’s forwarding address in [respondent’s] software system”; and (4) respondent failed to send the lien notice to P.I.’s last known address.² The district court concluded that respondent was liable to P.I. for that violation and granted her partial summary judgment on her statutory-violation claim.

Miller argues that this district court decision collaterally estopped the district court in his case from deciding that respondent is not liable to Miller for that violation. Collateral estoppel requires that: (1) the issue be identical to the issue previously litigated, (2) the estopped party be a party or in privity with a party to the prior adjudication, (3) there was a final judgment on the merits, and (4) the estopped party had a full and fair opportunity to be heard on the adjudicated issue. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004).

Miller’s argument for collateral estoppel states that: (1) the decision that respondent violated the statute was actually a decision that the foreclosure proceedings were illegal, based on Minn. Stat. § 514.973, subd. 1 (“An owner’s lien established under sections

² Respondent did not challenge the summary judgment awarded to P.I. on respondent’s liability for violation of the statute on appeal, and therefore this court did not address that issue in *Isleman I*, merely noting that “[t]he district court also granted [P.I.] summary judgment on the issue of liability on her claim that respondent violated the Liens Storage Act.” *Isleman I*, 2020 WL 6846352 at *3.

514.970 to 514.979 for a claim that has become due must be enforced as provided in this section.”); (2) Miller raised the issue of the legality of the foreclosure proceedings in this action; (3) Miller is in privity with P.I. because, like her, he is claiming compensation for respondent’s illegal sale of the property; (4) the district court’s decision that respondent was liable to P.I. for violating the statute “was clearly a final adjudication”; and (5) respondent had a full and fair opportunity to litigate because it could have sought appellate review of that decision. *See* Minn. R. Civ. App. P. 103.02, subd. 2. But respondent’s duty to P.I. under Minn. Stat. § 514.974(3) was based solely on P.I.’s having signed a lease as an occupant of a storage space; Miller had not signed the lease and was not an occupant. In regard to the lease on which the claim was based, there was no privity between P.I., who signed the lease and became an occupant, and Miller, who did neither. A court’s decision that an owner under a lease was liable to an occupant under that lease does not entitle a nonparty to the lease to sue the owner and get the same result.

Moreover, the same decision that imposed liability for P.I.’s statutory-violation claim on respondent denied all M.I.’s claims against respondent on the ground that she was not a party to the lease. *See Isleman I*, 2020 WL 6846352 at *7-8. The denial of Miller’s claim for partial summary judgment on liability for the statutory-violation claim was not collaterally estopped by the decision that respondent was liable to P.I. on that claim.

The district court here denied Miller’s claim for partial summary judgment on respondent’s liability for the statutory violation after concluding that the claims in this case were brought by a minor child and the claims in *Isleman I* were brought by an adult, so “none of the factual findings in [that case] are applicable to this case and collateral estoppel

does not apply” and quoting from *Kaiser v. N. States Power Co.*, 353 N.W.2d 899, 907 (Minn. 1984) the principle that, “[a] basic prerequisite to the application of collateral estoppel is that the issue now involved is identical to the one previously litigated.” We affirm the denial based on a somewhat different but in no way conflicting perspective. See *Isleman I*, 2020 WL 6846352 at *4 (citing *Archdiocese*, 817 N.W.2d at 163, for the proposition that this court “need not adopt the district court’s reasoning and may enter judgment on any appropriate legal grounds”).

3. Statute of Limitations

P.I. brought two fraud counterclaims based on allegations that (1) before she read or signed the lease, respondent’s television commercials had induced her to believe that she was allowed to store both property belonging to others and property worth more than \$5,000 in her rental space, and (2) after she signed the lease, respondent’s employees perpetuated the fraud by making statements contrary to the lease provisions. But, absent fraud or misrepresentation, “a person who signs a contract may not avoid it on the ground that [s]he did not read it or thought its terms to be different.” *Gartner v. Eikill*, 319 N.W.2d 397, 398 (Minn. 1982).

The 6-year fraud statute of limitations [set out in Minn. Stat. § 541.05, subd. 1(6) (2020)] begins to run when the aggrieved party discovers the facts constituting the fraud. We judge discovery of the fraud under the reasonable person standard. The facts constituting the fraud are deemed to have been discovered when they were actually discovered or, by reasonable diligence, should have been discovered.

Archdiocese, 817 N.W.2d at 172 (quotation and citations omitted).

The district court noted that: (1) P.I. signed the lease after viewing the commercials, (2) she did not assert that she had no opportunity or ability to read the lease before signing it, and (3) the lease plainly stated the terms of the agreement, with the monetary limit on stored property in boldface type. The district court then concluded that:

[a]ny alleged fraud in the television commercials viewed by [P.I.] prior [to] her signing of the rental contract thus should have been discovered upon reading the terms of the contract. Accordingly, [P.I.], using reasonable diligence, should have discovered any alleged fraud in the television commercials at the time [she] signed the rental contract in January of 2012.

P.I. filed her counterclaims for fraud in September and November 2019, more than seven years after January 2012 when she signed the lease. Because the six-year statute of limitations imposed by Minn. Stat. § 541.05, subd. 1(6), barred P.I.’s fraud claims, respondent’s motion for summary judgment dismissing them was granted.

On appeal, P.I. argues first that the district court erred by concluding that P.I. should have discovered the alleged fraud in January 2012 because “[respondent’s] wrongful conduct on which [P.I.’s] counterclaim is based continued through October 2013,” when its employees allegedly provided her with “deceptive assurances.” But the lease clearly states in paragraph 16 that it “**set forth the entire agreement of the parties**” and that “**no representative of Owner or Owner’s Agents is authorized to make any representations, warranties, or agreements other than expressly set forth herein.**” P.I. cannot avoid the lease by saying she thought it said something else. *See Gartner*, 319 N.W.2d at 398.

P.I. also argues that her damages did not accrue when she signed the lease on January 15, 2012, because she did not acquire standing to bring a claim under the consumer-fraud act when she signed the lease. The Minnesota Supreme Court has “chose[n] the some damage rule as a middle ground between the ‘occurrence’ and ‘discovery’ rules of accrual.” *Hansen v. U.S. Bank*, 934 N.W.2d 319, 327-29 (Minn. 2019). The “occurrence” rule states that the limitations period begins to run upon the occurrence of the negligent act, even if there is no actual damage at the time, and the “discovery” rule states that the cause of action accrues and the statute of limitations begins to run only when the plaintiff knows or should know of the injury. *Id.* at 329 n.5. “[S]ome damage may be created either by financial liability or the loss of a legal right. . . . The exact amount of financial loss need not be ascertainable for damage to have accrued.” *Id.* at 329.

Under the “some damage” rule, P.I.’s cause of action under the lease accrued when she signed the lease, became liable for rent payments, and was restricted as to whose property she could store and how much that property could be worth. She could have brought an action either to rescind the lease and reimburse her rent payment or to enjoin enforcement of some of the lease’s terms at any time after signing the lease in January 2012.

Thunander v. Uponor, Inc., 887 F. Supp. 2d 850 (D. Minn. 2012), a nonbinding federal district court case on which appellants rely to argue that P.I.’s cause of action did not accrue when she signed the lease, is distinguishable. The plaintiffs in that case were found to lack standing because their allegation of defects in the pipes in their home was not based on any testing of their pipes but rather on a memorandum stating that other pipes

from that manufacturer did not conform to a National Sanitation Foundation requirement. *Thunander*, 887 F. Supp. 2d at 864-65. Here, P.I. claims to have been injured by the discrepancy between the terms of respondent's lease and the implications of respondent's television commercial; her realization of that injury would have occurred as soon as she read the lease.³

The district court did not err in dismissing the fraud counterclaims as barred by the statute of limitations.

Affirmed.

³ Finally, appellants argue that "provisions in consumer contracts that are contrary to the representations or practices of the seller cannot serve as defenses to consumer fraud claims." Respondent asserts that this argument was never raised to the district court and is therefore not properly before this court, *see Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), and appellants do not oppose this assertion in their reply brief. Moreover, the argument has nothing to do with whether the statute of limitations bars appellants' claims.