

*This opinion is nonprecedential except as provided by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
A24-0359**

Northtown Mall Territories LLC,
Appellant,

vs.

398 Northtown Drive BLA LLC, dba Cloud Kitchens,
Respondent.

**Filed September 9, 2024
Affirmed
Reyes, Judge**

Anoka County District Court
File No. 02-CV-23-5615

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Minnesota (for appellant)

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(for respondent)

Considered and decided by Reyes, Presiding Judge; Wheelock, Judge; and Florey,
Judge.*

NONPRECEDENTIAL OPINION

REYES, Judge

After a court trial in this eviction action, appellant-landlord argues that the district court abused its discretion by (1) determining that the lease was ambiguous and that

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

respondent-tenant did not materially breach the lease terms and (2) admitting hearsay evidence. We affirm.

FACTS

This case concerns the eviction of a tenant at a property commonly known as the Northtown Mall (the mall), located in Blaine. In June 2020, the mall’s then-owner, WPG Northtown Venture, LLC (WPG), entered into a ten-year lease with tenant-respondent 398 Northtown Drive BLA LLC, d/b/a Cloud Kitchens (Cloud Kitchens) to occupy and operate the mall’s food court. In August 2023, WPG sold the mall to appellant Northtown Mall Territories LLC (Northtown) and assigned the lease to Northtown.

Just a few days after purchasing the mall, Northtown sent two consecutive notices of default to Cloud Kitchens, alleging that Cloud Kitchens had violated multiple provisions of the lease. Specifically, Northtown asserted that Cloud Kitchens had violated the lease’s “permitted use” provision by failing to operate “substantially all” of the leased premises during the required days and hours, and further violated the lease by failing to maintain the premises in a clean and orderly manner. The second notice, sent August 30, 2023, instructed Cloud Kitchens to cure the violations within 30 days to avoid an eviction action. After Cloud Kitchens denied Northtown’s allegations and the cure period expired, Northtown filed a verified eviction complaint against Cloud Kitchens, alleging that it had materially breached the lease and failed to cure the breach within the cure period.

The district court held a three-day court trial before a referee in January 2024. The district court heard testimony from Felix Reznick, an owner and managing member of Northtown; Melissa Winther, the mall’s general manager; and Riley Andrews, a senior

regional operations employee of Cloud Kitchens. The district court also received numerous exhibits, including pictures and videos of the food court, comparison videos of the Maplewood Mall and Rosedale Mall food courts, screenshots from Cloud Kitchens' website and its online advertisement for food-court licensees, email correspondence regarding the food court's management, and data tables outlining sales percentages from Cloud Kitchens' food-court licensees.

The district court determined that Northtown "failed to prove both that [Cloud Kitchens] materially breached the terms of the lease and that [Cloud Kitchens] failed to perform according to the terms of the lease." The district court ordered that Cloud Kitchens remain in possession of the premises and awarded it costs and disbursements.

This appeal follows.

DECISION

I. The district court did not err by determining that Northtown failed to show that Cloud Kitchens materially breached the lease.

Northtown first argues that the district court erred by determining that Cloud Kitchens did not materially breach the lease because (1) it erroneously and implicitly determined that the lease was ambiguous by considering parol evidence to interpret the lease and (2) Cloud Kitchens failed to operate the food court or maintain the premises in accordance with the unambiguous terms of the lease and failed to cure its violations within the cure period.¹ We disagree.

¹ Because it is not at issue, we need not address Northtown's additional argument that the lease's nonwaiver provision must be enforced. Cloud Kitchens agrees that Northtown has

A. Standard of Review.

As an initial matter, we are compelled to clarify the standard of review. Eviction actions are governed by Minnesota Statutes chapter 504B (2022 & Supp. 2023). *SVAP III Riverdale Commons LLC v. Coon Rapids Gyms, LLC*, 967 N.W.2d 81, 85 (Minn. App. 2021). An eviction is “a summary court proceeding to remove a tenant or occupant from or otherwise recover possession of real property.” Minn. Stat. § 504B.001, subd. 4. In eviction actions, which are civil in nature, “generally the only issue for determination is whether the facts alleged in the complaint are true.” *Cimarron Village v. Washington*, 659 N.W.2d 811, 817 (Minn. App. 2003). A landlord must establish grounds for eviction by a preponderance of the evidence. *Nationwide Hous. Corp. v. Skoglund*, 906 N.W.2d 900, 908 (Minn. App. 2018), *rev. denied* (Minn. Mar. 28, 2018).

Appellate courts review a district court’s factual findings in an eviction action for clear error. *Cimarron*, 659 N.W.2d at 817. Appellate courts will not disturb the district court’s findings “unless they are manifestly contrary to the evidence and without reasonable evidentiary support,” *Cap. Warehouse Co. v. McGill-Warner-Farnham Co.*, 149 N.W.2d 31, 35 (Minn. 1967), and will defer to a district court’s credibility determinations and not reweigh evidence, *Fairmont Hous. & Redevelopment Auth. v. Winter*, 969 N.W.2d 839, 850 (Minn. App. 2021). As to mixed questions of fact and law, we “correct erroneous applications of law but defer to the district court’s ultimate conclusions, which we review for [an] abuse of discretion.” *NY Props., LLC v. Schuette*,

not waived the right to enforce the lease’s terms, but maintains that Cloud Kitchens has not violated the lease’s terms to trigger enforcement.

977 N.W.2d 862, 865 (Minn. App. 2022), *rev. granted* (Minn. Apr. 27, 2022) *and appeal dismissed* (Minn. Aug. 24, 2022). Although Northtown contends that we must “review evidence as it appears in the record,” it omits that we also must “view the evidence in a light favorable to the [district court’s] findings.” *Id.*

A tenant’s violation of a lease may justify eviction if the violation is of a *material* lease term. Minn. Stat. § 504B.285, subd. 5. “[T]he general rule applicable to contracts is that rescission of a contract is justified only by a material breach or substantial failure in performance,” which is “consistent with the principle that forfeitures are disfavored.” *Cloverdale Foods of Minn., Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 49 (Minn. App. 1998). Therefore, a district court must “not only [determine] the truth of the allegations in the complaint, but also whether the allegations, if found to be true, demonstrate[] a material breach of the lease agreement.” *Id.* A material breach is one that “goes to the root or essence of the contract” and “is significant enough to permit the aggrieved party to elect to treat the breach as total (rather than partial), thus excusing that party from further performance and affording it the right to sue for damages.” *BOB Acres, LLC v. Schumacher Farms, LLC*, 797 N.W.2d 723, 728 (Minn. App. 2011) (quotations omitted), *rev. granted* (Minn. June 14, 2011) *and appeal dismissed* (Minn. Aug. 12, 2011).

B. The district court did not implicitly determine that the lease was ambiguous by considering parol evidence.

Northtown appears to argue that, because the district court admitted parol evidence to interpret the lease, it implicitly found that the lease was ambiguous. We disagree.

When a lease's language is ambiguous, district courts may consider parol, or extrinsic, evidence to explain the parties' intent. *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 913 N.W.2d 687, 692 (Minn. 2018). "A contract is ambiguous if its language is reasonably susceptible of more than one interpretation." *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). However, a contract is not ambiguous solely because the parties interpret it differently. *Staffing Specifix*, 913 N.W.2d at 692.

The district court's order does not indicate whether it found the lease ambiguous.² But the record refutes Northtown's argument because the district court *did not* receive the alleged parol evidence, consisting of the affidavit of the prior CEO of WPG, Louis Conforti, as an exhibit. Further, we do not presume error on appeal, *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464 (Minn. 1944), and Northtown has pointed to nothing in the record to show that the district court relied upon the affidavit when issuing its decision. Northtown's argument is therefore unavailing.

C. The district court did not abuse its discretion by determining that Northtown failed to show that Cloud Kitchens materially breached the lease.

Northtown argues that the district court abused its discretion by determining that Cloud Kitchens did not materially breach multiple lease provisions because it

² The district court did not issue a memorandum of law with its decision, and we lack the benefit of insight into the reasoning behind its decision. We strongly encourage district courts to provide a thorough record of their findings and analysis to permit effective appellate review.

misinterpreted the lease and made clearly erroneous findings regarding Cloud Kitchens' compliance with the lease. We are not persuaded.

Appellant's argument requires us first to interpret the lease, which is a question of law that we review de novo. *Alpha Real Est. Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 311 (Minn. 2003). “[L]eases are contracts to which we apply general principles of contract construction,” and they should be interpreted with a goal to “ascertain and enforce the intent of the parties.” *RAM Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1, 14 (Minn. 2012) (quotation omitted). “Intent” is shown by the parties’ objective manifestations by their oral or written words and their conduct. *Cap. Warehouse*, 149 N.W.2d at 35-36. We agree with the parties that the lease’s language is clear and unambiguous, so we apply “its plain and ordinary meaning.” *RAM*, 820 N.W.2d at 14-15 (quotation omitted).

1. The district court did not abuse its discretion by determining that Cloud Kitchens used, occupied, and operated substantially all of the leased premises continuously and actively for a food court.

Northtown argues that the district court abused its discretion by determining that Cloud Kitchens did not materially breach the lease by failing to operate “substantially all” of the premises because six of 12 spaces in the food court were unoccupied through the cure period.³

³ Northtown further argues that the plain language of the lease allows it to evict Cloud Kitchens even without it violating a material term. But Northtown waived this argument by failing to raise it below. *See Hoyt Inv. Co. v. Bloomington Com. & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988) (“[A]n undecided question is not usually amenable to appellate review.”). Even if the issue were properly before us, it fails on the merits because Minnesota law is clear that only a material breach justifies eviction. *See Minn. Stat.*

The relevant portions of the lease specify that Cloud Kitchens defaults and breaches the lease by “any failure . . . to perform or observe any other of the non-monetary terms, provisions, conditions and covenants of this [l]ease for more than thirty (30) days after written notice of such failure.” The “[l]eased [p]remises” include the entire food court, and the “[p]ermitted [u]se” of the premises is that it

shall be occupied and used by [Cloud Kitchens] and its . . . licensees solely for the purpose of (i) a shared kitchen food hall that is open to the public and (ii) a take-out and delivery component and (iii) provided that [Cloud Kitchens] operates a food hall that is open to the public, any lawful use that does not otherwise violate the exclusives and/or prohibited uses . . . (so long as the food hall is of sufficient in size and capacity to service the Center’s shoppers, customers and invitees of the Center).

(Emphasis added.) As for using and occupying the premises, “[t]he Permitted Use is a material consideration” and “[Cloud Kitchens] will . . . continuously operate (or cause to be operated) and conduct business in the Premises.”

The lease requires that “substantially all of the [p]remises,” which is the entire food court, be actively used, occupied, and operated, in good faith, by Cloud Kitchens. (Emphasis added.) Based on our interpretation of the lease’s unambiguous terms, the district court did not clearly err by finding that Cloud Kitchens complied with these lease terms. Testimony at trial established that Cloud Kitchens has consistently operated the premises as a public food hall with a take-out and delivery component, consistent with the permitted use. Andrews testified that mall visitors always have access to the food court

§ 504B.285, subd. 5; *Cloverdale*, 580 N.W.2d at 49 (noting “general rule” that breach must be material to justify contract rescission).

but that the food court licensees operate based on self-scheduled hours. She also testified that oftentimes a licensee's sign will be up well before it has gone "live," and several current licensees at the food court went "live" after Northtown filed its eviction complaint.

Although Northtown maintains that the plain meaning of "substantially" under lease section 8.8 is contrary to the district court's interpretation, its argument interprets the "premises" as referring only to the restaurant spaces, not the entire food court. Further, Cloud Kitchens' argument that allowing eviction under these circumstances would make another section of the lease superfluous is persuasive. Section 8.2(b) of the lease provides:

Notwithstanding the foregoing, *if the Premises remains 100% vacant for a cumulative period of at least one (1) year* (and such vacancy is not due to a Permitted Closure, as herein defined) *without Landlord's consent, then Landlord shall have the option* (the "Take-Back Option"), exercisable by Landlord upon not less than thirty (30) days' prior written notice to Tenant (a "Take-Back Notice"), *of terminating this Lease*, unless at least ten [(10)] days before the effective date of such termination by Landlord, Tenant re-opens for business in the Premises, in which event such Take-Back Notice shall be deemed null and void. . . .

(Emphasis added.)

"A court ascertains the parties' intent by putting itself in the parties' positions at the time they formed the contract and determining what they reasonably meant to accomplish in view of the contract as a whole, its plain language, and the surrounding circumstances." *Ecolab, Inc. v. Gartland*, 537 N.W.2d 291, 295 (Minn. App. 1995). The parties would not have included section 8.2(b) if Cloud Kitchens' conduct here justified eviction. The record supports the district court's determination that Cloud Kitchens did not materially breach the lease by failing to operate "substantially all" of the premises.

2. The district court did not abuse its discretion by determining that Cloud Kitchens continuously operated the premises open to the public.

Northtown next argues that the district court abused its discretion because Cloud Kitchens did not operate the premises open to the public on all days and hours that the mall's major tenants were open for business.

The lease provides that “[t]enant’s Premises shall be and remain open on all days and other hours established by Landlord for the Major Tenants of the Center.” Northtown’s hours of operation for its major tenants are Monday through Saturday, 11:00 a.m. to 8:00 p.m., and Sunday, 11:00 a.m. to 6:00 p.m. Northtown states that Cloud Kitchens breached the lease terms because certain spaces were not open during the mall hours.

Contrary to Northtown’s argument, the broad, unambiguous language of the lease requires the “[p]remises” to remain open during mall hours for major tenants. It does not require that individual licensees remain open during all mall hours. The record reflects that the premises remained open during mall hours, and the district court therefore appropriately determined that Cloud Kitchens did not materially breach the lease.

3. The district court did not abuse its discretion by determining that Cloud Kitchens operated the food court fully staffed and stocked.

Northtown next argues that the district court abused its discretion because Cloud Kitchens did not operate the food court fully staffed and stocked as a first-class food hall because it “does not require the restaurants to have staff working in the front service areas of the [s]paces in the [f]ood [c]ourt” and there is not “food out” for customers. Northtown

further points to Cloud Kitchens' use of electronic kiosks as proof that Cloud Kitchens has not maintained an adequate number of staff.

The lease provides that Cloud Kitchens will "continuously operate (or cause to be operated) and conduct business in the Premises, fully staffed and stocked." Although Northtown interprets "fully staffed and stocked" to require that Cloud Kitchens' licensees have food on display and human employees in addition to or instead of electronic kiosks, those requirements are not provided in this term.

Northtown also relies on section 8.8, which provides:

Tenant shall, throughout the Lease Term, in good faith, actively use, occupy and operate (or cause to be used, occupied and operated) substantially all of the Premises with fixtures and decor, an inventory of goods and merchandise and a staff of sales personnel adequate, sufficient and appropriate to operate the Premises as a first class, high quality and tasteful food hall consistent with food halls or food courts in other comparable regional shopping centers in the metropolitan area. The *foregoing description is intended only as a description* of the general quality of the merchandise or services Tenant may sell and the general quality of customer service, merchandising, fixturing and decor Tenant must maintain in the operation of the Premises. . . . Tenant shall operate its business at the Premises in a respectable, reputable, tasteful, competent and dignified manner in order to enhance the image of the Center as a whole and its reputation as a dignified and desirable place to shop and eat. . . .

(Emphasis added.) However, this provision provides only a "description of the general quality" of the food court's operation, and does not include explicit requirements. Nor has Northtown alleged that Cloud Kitchens' use of kiosks or failure to provide food displays has interfered with its permitted use of the premises. The record supports the district court's determination.

4. The district court did not abuse its discretion by determining that Cloud Kitchens did not materially breach the lease by failing to maintain the leased premises.

Northtown argues that the trial evidence shows that Cloud Kitchens materially breached the lease by failing to maintain the premises by (1) allowing the awnings above the restaurant spaces to be in disrepair; (2) leaving a damaged, unpolished concrete subfloor in the premises; (3) failing to have an employee devoted to cleaning the premises, resulting in it being dirty, overflowing trash receptacles and grease traps and a fruit fly infestation; and (4) having a staff “runner” clean exhaust hoods in the kitchens, as opposed to a third-party service provider.

As to the awnings, Northtown conceded at trial that the condition of the awnings was not a material breach. Regarding the concrete floor, the lease does not specify a required floor type, and Andrews testified that the floor was a design choice consistent with the floors used in the Rosedale Mall. As to having an employee devoted to cleaning, Andrews testified that there are three employees devoted to cleaning the premises after hours, and that runners are responsible for cleaning the food court on an ongoing basis during operating hours. Although Winther testified regarding cleanliness issues, she also testified that Cloud Kitchens promptly remedied most of these issues when they arose. Lastly, although the lease does require that the tenant “obtain and maintain . . . a service contract for the regular cleaning, maintenance, repair and replacement of exhaust hoods” in the premises, Cloud Kitchens’ utilization of a “runner” to clean the hoods is not a material breach of the lease. The “root” of the contract here does not encompass which party cleans exhaust hoods in the premises. *BOB Acres*, 797 N.W.2d at 728.

5. The district court did not abuse its discretion by considering data produced by Cloud Kitchens regarding the food court's operations.

Northtown appears to argue that the data Cloud Kitchens presented at trial as proof of its “sales numbers” to in-person mall customers is false and misleading.

At trial, Andrews testified to the accuracy of the data, which she had compiled based on orders made through Cloud Kitchens' food-court-ordering technology and which the district court implicitly found credible. Although Northtown argues that the percentages are meaningless and inaccurate without more data, Andrews was thoroughly cross-examined regarding the data and its limitations. Northtown has not presented contrary data points despite its burden to show a material breach justifying eviction, *Skoglund*, 906 N.W.2d at 908, and we will not reweigh the evidence or make credibility determinations, *Fairmont*, 969 N.W.2d at 850.

In sum, the district court did not abuse its discretion when it determined that Cloud Kitchens did not materially breach the lease.

II. The district court did not abuse its discretion by allowing Cloud Kitchens to utilize Conforti's affidavit for impeachment purposes.

Northtown lastly argues that the district court abused its discretion by admitting Conforti's affidavit as impeachment evidence, that it erroneously relied on the affidavit to support its ruling, and that it should not have admitted the affidavit as evidence because it was hearsay. We are not persuaded.

Appellate courts will not reverse a district court's decision to admit or exclude evidence “unless it was an abuse of discretion or based on an erroneous view of the law”

and the error prejudiced the party challenging the error. *Cloverdale*, 580 N.W.2d at 51. At trial in an eviction action, “the rules of evidence and civil procedure apply” and any exhibits considered by the district court “generally require foundation.” *Schuetten*, 977 N.W.2d at 866. Generally, “[a]ll relevant evidence is admissible” unless otherwise excluded by law. Minn. R. Evid. 402. Hearsay, an out-of-court statement made by a declarant and offered as evidence to “prove the truth of the matter asserted,” is inadmissible absent an exception. *See* Minn. R. Evid. 801(c), 802, 803, 804. However, a hearsay statement offered “not to prove the truth of the matter asserted, but rather for impeachment purposes[,] falls outside the hearsay rule.” *State v. Carillo*, 623 N.W.2d 922, 928 (Minn. App. 2001), *rev. denied* (Minn. June 19, 2001).

Here, the district court did not admit Conforti’s affidavit into evidence. Instead, the district court allowed Cloud Kitchens to use the affidavit for the limited purpose of impeaching Reznick. Cloud Kitchens used the affidavit to challenge the credibility of Reznick’s testimony as to the parties’ intent when they entered into the lease, and to discredit Reznick’s testimony about Conforti, including Reznick’s statements that Conforti was not involved with the lease and that WPG did not enforce the lease consistent with Northtown’s interpretation because “[WPG] didn’t have time.” This evidence was relevant to the weight the district court gave Reznick’s testimony. *See* Minn. R. Evid. 402. Further, the district court sustained Northtown’s objections to Cloud Kitchens’ attempt to utilize the affidavit to corroborate Andrews’s testimony. The district court did not abuse its discretion.

Affirmed.