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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A24-0424

A24-0425

Industrial Equities - River Road, LLC,
Plaintiff,

vs.

Curtis 1000, Inc,
Respondent,

Industrial Equities, LLP,
Appellant (A24-0424),

Industrial Equities - River Road, LLC,
Appellant (A24-0425),

vs.

Curtis 1000, Inc,
Respondent.

Filed September 23, 2024
Affirmed in part, reversed in part, motion denied
Jesson, Judge*

Anoka County District Court
File No. 02-CV-19-5631

Mark L. Johnson, Sybil L. Dunlop, Katherine M. Swenson, Amran A. Farah, Greene Espel PLLP, Minneapolis, Minnesota (for respondent)

Michael V. Ciresi, Katie Crosby Lehmann, Jacob F. Siegel, Melissa A. Goodman, Ciresi Conlin LLP, Minneapolis, Minnesota (for appellants Industrial Equities, LLP, and Industrial Equities – River Road, LLC)

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

Considered and decided by Johnson, Presiding Judge; Bratvold, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

This lawsuit centers on the installation of flooring in a warehouse built by appellant Industrial Equities, LLP (contractor) for use by respondent Curtis 1000, Inc. (tenant). The warehouse was owned by appellant Industrial Equities River Road, LLC (landlord), which had entered into a lease agreement with tenant. After tenant withheld rent alleging material defects in the warehouse flooring, landlord filed a lawsuit against tenant. Tenant responded with a counterclaim alleging that landlord materially breached its lease by not ensuring the correct floor was put down. And tenant filed a third-party complaint against contractor alleging that it negligently constructed the floor. A jury found that tenant breached its lease by refusing to pay rent and the associated late fees. And while the jury concluded the landlord breached the lease by not laying the proper flooring, tenant's breach-of-contract claim against landlord ultimately failed and no damages were awarded because the jury found that tenant suffered no harm. Finally, the jury found contractor liable to tenant for negligent construction of the warehouse floor.

On appeal, contractor argues the district court erred when it denied a motion for judgment as a matter of law (JMOL) that requested the court overturn the jury's verdict on the negligence claim because it improperly conflated tort and contract duties of care. Landlord also appeals and claims that the district court abused its discretion by denying a motion for the enforcement of contractually mandated attorney fees. Because no record

evidence established that the contractor breached its duty to tenant to construct the warehouse floor in a workmanlike manner, we reverse the district court's denial of contractor's motion for JMOL. But we affirm the court's denial of landlord's motion for attorney fees because the district court acted within its broad discretion by concluding that landlord's affidavit did not satisfy the requirements articulated in Minnesota General Rule of Practice 119.02. We also deny tenant's motion to strike certain parts of the appellate record.

FACTS

In December 2017, contractor—a commercial real estate developer, investor, and manager—responded to a build-to-suit request for proposal (RFP) that tenant had issued.¹ Tenant, a commercial printing company, sought to consolidate its three printing facilities into one warehouse space. The RFP stated that tenant needed a warehouse that was between 200,000 to 250,000 square feet, was built to printing industry standards, and was outfitted to fit its specific business needs. In its proposal, contractor recommended that tenant lease a warehouse owned by landlord. Landlord and contractor are separate business and legal entities but share the same owner. According to contractor, with certain renovations the warehouse would match tenant's requirements. One such renovation that contractor proposed was the construction of a “7 [foot] reinforced and sealed concrete floor.” Tenant

¹ Our statement of facts is drawn from the evidence presented at trial. As this appeal stems from a denied motion for JMOL, we view this evidence in the light most favorable to the nonmoving party, which in this case is tenant. *See Christie v. Est. of Christie*, 911 N.W.2d 833, 838 n.5 (Minn. 2018).

accepted contractor's proposal and subsequently entered into a lease with landlord for the warehouse.

The lease between landlord and tenant included a section that listed the improvements landlord would make to the warehouse so that it met tenant's specific business needs. One such "improvement" was the construction of a "7 [foot] reinforced and sealed concrete floor." Landlord and tenant never discussed what "reinforced" meant and the lease did not define the term. The lease also did not discuss whether a piece of plastic, known as a vapor barrier, would be placed between the ground and the concrete in order to reduce the amount of air containing water able to permeate the concrete slab.

After the lease was signed, contractor went ahead with making the improvements to the warehouse, and during the renovation, contractor reported only to landlord. A subcontractor specializing in concrete was hired to install the warehouse floor. But the contract signed between contractor and the subcontractor, unlike the lease agreement, specified that the floor would be "7 [foot] unreinforced." The concrete floor that was eventually laid in the warehouse did not have a vapor barrier and sat on a "3-inch limestone base" which, according to contractor's owner, was meant to "support, strengthen, and make stronger the concrete."

Tenant moved into the warehouse in December 2018. Immediately upon move in, tenant noticed cracks in the floor. It notified contractor, who subsequently hired a third-party engineer to examine the floor and determine if it was "constructed in accordance with [American Concrete Institute (ACI)] standards." The engineer determined that the floors were unreinforced and declared that "[i]f the concrete had been reinforced, then the

cracking would still occur but it would be less noticeable.” However, the engineer ultimately concluded that “the design of the slab did not require reinforcement[,]” and that the “[c]racks are consistent with normal drying shrinkage of the concrete slab. Shrinkage of concrete and resultant cracking is a normal performance characteristic of concrete, particularly unreinforced concrete.”

About a month after it moved in, tenant discovered that, along with cracking, the floor was also “warping” and “curling.” According to tenant, this proved to be a problem because tenant’s business required the use of forklifts and these forklifts now had to reduce their operating speed when going over areas of the floor that were curled or warped.² But despite tenant’s complaints, it continued to operate its printing business out of the warehouse.

On February 28, 2019, tenant informed landlord that it had encountered “material defects” in the construction of the floor of the warehouse and as a result, would be withholding rent until such defects were repaired. In March 2019, landlord sent tenant a notice of default for nonpayment of rent. Tenant still did not pay rent and landlord made no moves to change the warehouse floors. Finally, in June 2019, landlord initiated a lawsuit against tenant for breach of contract based on nonpayment of rent and late fees.³ As a

² The uneven floor also forced tenant to decrease the speed of its printing machines to prevent stacks of paper from falling over.

³ After the lawsuit was filed, tenant paid landlord the rent it owed for March through June 2019, but it did not pay any of the associated late fees or interest.

defense, tenant declared that landlord's claim was "barred, in whole or in part, by its own material breaches of the Lease."

Tenant also asserted a counterclaim against landlord. It alleged that landlord materially breached the lease by failing to "construct the floor of the premises with a 7 [foot] sealed and reinforced concrete floor." According to tenant, a "reinforced" floor had rebar imbedded in it to prevent curling, which was something the warehouse floor lacked. Tenant also filed a third-party complaint against contractor for negligence. Tenant claimed that contractor was negligent because it failed to "ensure that the concrete floor was reinforced as required by the Lease."

A six-day jury trial was held in April 2023. Most of the testimony at trial revolved around whether the floors were "reinforced" and whether a vapor barrier should have been installed under the concrete. The owner of both landlord's and contractor's business testified that the lease did not define the term "reinforced" and did not contain a specific "flatness" requirement. The owner explained that, in his opinion, the concrete floor in the warehouse was reinforced because a limestone base was laid down before the concrete was poured. The owner's son, who worked for contractor as a manager at the time the floor was poured, testified that he did not know the difference between a reinforced and unreinforced concrete slab but stated that it was his understanding that "the limestone base acted as a reinforcement."

Additionally, experts from both sides gave conflicting testimony on whether the floor in the warehouse was "reinforced," whether a vapor barrier should have been installed, and how the current floor impacted the usability of the space. But regardless of

whether the testifying experts believed the floor was reinforced or unreinforced, they all agreed that the warehouse floor met industry standards, Minnesota and international building codes and was consistent with the standards articulated by the ACI.

At the close of evidence, the jury was instructed, in relevant part, that “[a] general contractor owes a duty of care to erect a building in a reasonabl[y] good and workmanlike manner.” The jury was informed by the district court that to find contractor negligent, it must conclude contractor breached this duty by not installing a vapor barrier and/or not reinforcing the floor with rebar.

The jury found tenant liable for breaching its lease by not paying rent and awarded landlord \$123,711 in damages to compensate for tenant’s nonpayment of rent and late fees. It then rejected tenant’s breach-of-contract claim against landlord. The jury found that landlord failed to provide a “suitable 7-inch reinforced and sealed concrete floor that complied with the lease,” but concluded that tenant suffered no harm from landlord’s failure—a required element of tenant’s claim. Finally, the jury found that contractor was negligent for failing to ensure the floor was properly constructed and awarded tenant \$1,058,398 in damages.

Following the verdict, contractor filed a posttrial motion for JMOL with respect to tenant’s negligence claim. Contractor claimed, in relevant part, that the jury’s finding that it breached a duty of care owed to tenant was “manifestly contrary” to the evidence presented at trial. The district court denied contractor’s motion. It reasoned that because tenant was a third-party beneficiary to the construction contract between landlord and contractor, contractor owed tenant a duty to build the warehouse in a reasonably good and

workmanlike manner, and that there was sufficient evidence in the record to support the jury's conclusion that contractor breached that duty.

Landlord also filed a posttrial motion. It moved for the enforcement of costs and attorney fees from tenant based on the jury's verdict that tenant breached the lease by not paying rent. Landlord sought \$1,851,746.90. Alongside the motion for costs and fees, landlord filed an affidavit justifying the amount of attorney fees it was requesting from tenant. *See* Minn. R. Gen. Prac. 119 (detailing the procedures parties must undergo when applying for attorney fees, including filing an affidavit providing details about how it calculated the requested number of fees). By landlord's own admission, "[t]he affidavit did not include a day-by-day reproduction of counsel's time entries." "To preserve attorney-client privilege," landlord offered to provide "more detailed billing and expense records . . . for the Court's in-camera review upon request."

The court never requested that any additional documents be submitted. At a hearing on the motion for fees and costs, landlord again offered to provide the court with additional documentation containing privileged billing information for in-camera review and to "prepare a redacted copy of the billing statements" for tenant. Tenant objected, arguing that the proffered documentation was untimely, and that the information should have been included as part of the initial affidavit. The district court stated that it would accept the proffered documents "with the proviso [that the court was] going to listen to [tenant's] objection to determine whether [the documents were] appropriate" and whether they should be reviewed.

The district court subsequently denied landlord's motion for attorney fees because landlord's affidavit did not comply with the requirements listed in Minn. R. Gen. Prac. 119.02. According to the court, this noncompliance made it impossible to determine if the fees requested were reasonable.⁴ The district court did not consider the additional documentation when making its decision.

Landlord and contractor appealed. While this appeal was pending, tenant filed a motion to strike, arguing that the additional billing records submitted to the district court during the motion hearing were not a part of the appellate record and therefore could not be relied on by this court when reviewing the case.

DECISION

I. The district court erred by not granting contractor's motion for JMOL with respect to tenant's negligence claim.

Contractor argues that the district court erred by denying its posttrial motion for JMOL on tenant's negligence claim. It contends that the court improperly concluded contractor was negligent based on a breach of a contractual duty rather than a duty imposed by law. A court may grant a party's motion for a JMOL if "a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." Minn. R. Civ. P. 50.01(a). Appellate courts "review de novo a district court's decision to deny a motion for judgment as a matter of law, applying the same standard used by the district court and viewing the evidence in the light most

⁴ The court granted landlord's motion with respect to other miscellaneous costs not related to attorney fees.

favorable to [the nonmoving party].” *Christie*, 911 N.W.2d at 838 n.5 (quotation omitted); *see also Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 54-55 (Minn. 2019).

We begin this de novo review by examining the law governing negligence. To establish a negligence claim, four elements must be proven: (1) the existence of a duty of care; (2) breach of that duty; (3) causation; and (4) injury. *Bjerke v. Johnson*, 742 N.W.2d 660, 664 (Minn. 2007). Whether a defendant owes a duty to a plaintiff is a threshold question and “in the absence of a legal duty, the negligence claim fails.” *Domagala v. Rolland*, 805 N.W.2d 14, 22 (Minn. 2011) (quotation omitted). “[T]he existence of a duty [is] a question of law⁵, which [courts] review de novo.” *Bjerke*, 742 N.W.2d at 664. Whether a breach of said duty occurred is a question for the fact-finder, *Wear v. Buffalo-Red River Watershed Dist.*, 621 N.W.2d 811, 815 (Minn. App. 2001), *rev. denied* (Minn. May 15, 2001), and a reviewing court will not set aside a jury verdict “if, in the record, there is any competent evidence reasonably tending to sustain the verdict,” *Gieseke ex rel. Diversified Water Diversion, Inc. v. IDCA, Inc.*, 844 N.W.2d 210, 220 (Minn. 2014) (quotation omitted).

Here, both contractor and tenant agree that contractor owed tenant a duty to erect the warehouse in a “reasonably good and workmanlike manner.” That duty has been long imposed on builders in Minnesota independent of the underlying contract.

⁵ We note that the question of whether contractor owed tenant a duty of care was improperly submitted to the jury. But the district court acknowledged this mistake in its order denying contractor’s motion for JMOL and proceeded to analyze why—as a matter of law—contractor did, in fact, owe tenant this duty.

See Keiper v. Anderson, 165 N.W. 237, 239 (Minn. 1917); *Brasch v. Wesolowsky*, 138 N.W.2d 619, 623 (Minn. 1965). As we previously explained, in Minnesota, “a contractor . . . has a duty, *independent of the contract itself*, to erect a building in a reasonably good and workmanlike manner.” *Arden Hills N. Homes Ass’n v. Pentom, Inc.*, 475 N.W.2d 495, 500 (Minn. App. 1991) (quotation omitted), *aff’d as modified*, 505 N.W.2d 50 (Minn. 1993) (emphasis added).⁶

As a result, the issue before us is simply whether there is competent evidence to conclude that a reasonable jury could have found that contractor did not construct the floor in a reasonably good and workmanlike manner. *See* Minn. R. Civ. P. 50.01(a). To answer this question, we first examine the scope of this duty. We then turn to review the evidence before us.

⁶ The district court, relying on *Arden Hills*, 475 N.W.2d at 500, correctly stated that this was the duty contractors owe to contractees. The court then went on to say that contractor in this case owed tenant this duty because tenant was a third-party beneficiary to the construction contract between landlord and contractor. *See, e.g., Julian Johnson Const. Corp. v. Parranto*, 352 N.W.2d 808, 810-11 (Minn. App. 1984) (discussing the interplay between the duties owed to third-party beneficiaries of a contract and negligence claims). Although the court articulated the general duty contractors owe—including to third-party beneficiaries—it erred by analyzing whether that duty was breached under a third-party beneficiary theory. Duties owed to third-party beneficiaries is a legal concept rooted in contract law, and to prove negligence—a tort claim—a defendant must have breached a duty that is “imposed by law, not merely one imposed by contract.” *D & A Dev. Co. v. Butler*, 357 N.W.2d 156, 158 (Minn. App. 1984). And we further observe that tenant did not plead a third-party beneficiary claim against contractor, so the question of whether contractor was liable for such a claim was not submitted to the jury. Finally, we note that the underlying contract counterclaim brought by tenant against landlord failed because tenant could not establish harm and the alleged breach committed by contractor is based on the same evidence.

A building that is erected in a “reasonably good and workmanlike manner” is one that is “characterized by quality craftsmanship” and “constructed or performed in a skillful way or method.” *See Black’s Law Dictionary* (12th ed. 2024) (defining “good and workmanlike”). This includes, but is not necessarily limited to, constructing a building that meets the applicable building codes. *See Bruner & O’Connor Construction Law* § 9:79 Workmanlike performance: Warranting a standard of conduct; *see also Dillig v. Fisher*, 142 Ariz. 47, 50-51, 688 P.2d 693, 696-97 (Ct. App. Div. 2 1984) (concluding that a builder did not construct a roof in a workmanlike manner because the roof did not conform to city building codes); *Lapierre v. Samco Dev. Corp.*, 103 N.C. App. 551, 555, 406 S.E.2d 646, 648 (1991) (stating that evidence was presented that a garage was not constructed in a workmanlike manner because it violated state building code); *In re Tailford*, No. 12-32369, 2014 WL 1256038, at *8 (Bankr. N.D. Ohio Mar. 26, 2014) (“Ohio’s requirement that a contractor has a duty to perform services in a workmanlike manner implies that the work will be completed according to applicable building and zoning codes.”).⁷

Here, the jury heard no testimony that the warehouse floor violated any building code. In fact, each expert, including tenant’s expert, agreed that the warehouse floor as it stood conformed to state and international building codes and complied with the standards provided by the ACI. Tenant’s expert was specifically asked if there were “[a]ny code violations or violation[s] of American Concrete Institute’s guidance” to which he replied, “No, not at all.” He also acknowledged that neither the Minnesota nor international

⁷ While cases from other jurisdictions are not binding on this court, we believe these have persuasive value and thus incorporate them into our analysis.

building codes required such a vapor barrier be installed for this specific warehouse. Contractor's expert also stated that even the number of cracks in the floor were consistent with the amount of cracking expected by ACI standards.

Furthermore, despite opining that the floor was unreinforced because it did not contain rebar, tenant's expert testified that the floor was not "defectively made" and showed no signs of "poor workmanship." This testimony echoed that of contractor's expert who stated that the warehouse floor, which in his professional opinion was reinforced, had "no significant or material curling" of the concrete slab.

As for tenant's ability to use the warehouse for commercial printing, tenant's expert did express some concern that the curling of the floor may affect the warehouse's usability. However, he also admitted that the amount of floor curling found at the warehouse was the amount generally found in a "normal warehouse" and that the cracks in the floor "have no bearing on the serviceability of [tenant]." Again, this matched contractor's expert's opinion that the warehouse floor had "sufficient capacity for its intended use." We therefore conclude that no competent evidence was presented that supports the jury's finding that contractor breached its duty to construct the warehouse floor in a reasonably good and workmanlike manner.

To persuade us otherwise, tenant first claims that the contractor breached the tort duty to build in a workmanlike manner because it did not install a reinforced floor as specified in the contract between tenant and landlord. But the very caselaw that establishes the workmanlike tort duty explains, when examining the scope of the duty, "[t]here may be a breach of contract without negligence." *Arden Hills*, 475 N.W.2d at 500. Just as there

may be negligence without a breach of contract. *Id.* In sum, the parameters of the tort duty are not dictated by the terms of the contract. And here, with regard to the floor, no competent evidence was presented that established the floor was not up to code, was constructed in less than a workmanlike manner, or that it was not usable for tenant's purposes.

Tenant further asserts that the decision not to install a vapor barrier was negligent and highlights the fact that at trial its expert testified that, despite the lease not requiring one, based on "site-specific data" the expert would have recommended a vapor barrier be installed. But this testimony alone is not sufficient to sustain the jury's verdict. As discussed above, the evidence—including tenant's expert's testimony—established that the contractor's work on the floor was "performed in a skillful way or method," *see Black's Law Dictionary* (12th ed. 2024) (defining "good and workmanlike"), and that the floor was usable for tenant's commercial needs. Moreover, even though a vapor barrier was not installed, all parties agreed that installation of the floor was "characterized by quality craftsmanship" and up to code. *Id.* Thus, tenant presented no evidence that would lead a reasonable jury to conclude contractor breached its duty to construct a floor in a workmanlike manner by not installing a vapor barrier.

We understand that here tenant was provided with a warehouse that did not meet its expectations. But because the evidence presented at trial presents "no legally sufficient evidentiary basis for a reasonable jury to find" that contractor breached its duty of building in a workmanlike manner, *see* Minn. R. Civ. P. 50.01(a), we conclude that the district court

erred by denying contractor's motion for JMOL. Accordingly, we reverse the jury's verdict on tenant's negligence claim.

II. The district court did not abuse its discretion by refusing to consider landlord's additional documentation and denying its motion for attorney fees due to noncompliance with Minnesota General Rule of Practice 119.02.

We now turn to landlord's claim that the district court abused its discretion by denying its motion for attorney fees. "Generally, attorney fees are not recoverable in litigation unless there is a specific contract permitting or a statute authorizing such recovery." *Northfield Care Ctr., Inc. v. Anderson*, 707 N.W.2d 731, 735 (Minn. App. 2006) (quoting *Barr/Nelson, Inc. v. Tonto's, Inc.*, 336 N.W.2d 46, 53 (Minn. 1983)). Here, the lease between landlord and tenant provided for these fees. The lease stated that "[i]n the event of a Default by Tenant, . . . Tenant will be liable for all expenses incurred by Landlord in order to enforce Landlord's rights and remedies on account of that Default. Such enforcement expenses include, without limitation, reasonable attorneys' fees[.]"

Contractually mandated attorney fees, such as the ones at issue here, are considered to be a form of money damages that parties agree to when signing a contract, which entitles parties to a jury trial on the issue of the reasonableness of their requested fees. *United Prairie Bank-Mountain Lake v. Haugen Nutrition & Equip., LLC*, 813 N.W.2d 49, 56 (Minn. 2012). Landlord waived this right to a jury trial, choosing instead to avail itself of the procedures and requirements articulated in Minnesota General Rule of Practice 119. Rule 119 provides a procedure for parties seeking more than \$1,000 in attorney fees. The rule states that such a request must be "made by motion." Minn. R. Gen. Prac. 119.01.

Along with the motion, a party seeking fees “shall” be required to submit an “affidavit of any attorney of record which establishes the following:”

1. A description of each item of work performed, the date upon which it was performed, the amount of time spent on each item of work, the identity of the lawyer or legal assistant performing the work, and the hourly rate sought for the work performed;

2. The normal hourly rate for each person for whom compensation is sought, with an explanation of the basis for any difference between the amount sought and the normal hourly billing rate, if any;

3. A detailed itemization of all amounts sought for disbursements or expenses, including the rate for which any disbursements are charged and the verification that the amounts sought represent the actual cost to the lawyer or firm for the disbursements sought; and

4. That the affiant has reviewed the work in progress or original time records, the work was actually performed for the benefit of the client and was necessary for the proper representation of the client, and that charges for any unnecessary or duplicative work has been eliminated from the application or motion.

Minn. R. Gen. Prac. 119.02.

“A district court has discretion to strictly enforce or to waive the requirements of rule 119 when considering a motion for attorney fees.” *Rooney v. Rooney*, 782 N.W.2d 572, 577 (Minn. App. 2010). Moreover, the awarding of attorney fees under rule 119 is discretionary. *Peterson v. City of Elk River*, 312 N.W.2d 243, 246 (Minn. 1981). Therefore, an appellate court reviews the denial or award of such fees for an abuse of discretion. *Green v. BMW of North America, LLC*, 826 N.W.2d 530, 534 (Minn. 2013); *see also Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 331 (Minn. App. 2007) (“We will not

reverse the district court's decision on attorney fees absent an abuse of discretion."), *rev. denied* (Minn. Aug. 21, 2007).

The district court did not grant landlord's motion for attorney fees because it determined landlord's affidavit did not comply with the requirements listed in rule 119.02.

The court explained that the affidavit

does not provide a detailed description of each item of work performed or the corresponding dates. The normal hourly rates included involve an imprecise range of rates for work that spanned approximately four years. The affiant must also indicate that the work was actually performed for the benefit of the client. [Landlord] represents that it subtracted all fees that were solely done for the benefit of [contractor] and not for [Landlord]. Absent a detailed description of the work performed, the Court cannot reliability test the accuracy of that claim.

The court reached this conclusion without reviewing the additional documents landlord offered at the motion hearing for in-camera review.

The district court did not abuse its discretion by denying landlord's motion. The affidavit contained charts summarizing: (1) the total hours each attorney invoiced, (2) the range of hourly rates they charged between May 2019 and May 2023, and (3) the total amounts charged for costs and disbursements, such as "copying and document production," "expert fees," and "court reporters and depositions." Attached to the affidavit was "exhibit B," which was a "summary indicating the time, type of work categories, and hourly rates charged by each attorney and paralegal involved." Notably, because landlord and contractor were represented by the same law firm, the affidavit explained that the attorney fees requested were only for work done on landlord's case, not contractors. Thus, the total

number of fees and costs associated with the case had, according to the affidavit and exhibit B, been reduced by subtracting any hours worked on issues relating to contractor.

Because landlord's affidavit provided only a broad overview and description of the work done in this case, it was not, on its own, sufficient to comply with rule 119.02. The affidavit contained broad summaries of the work done rather than a description of *each* item of work performed, and these summaries did not connect the work to any specific lawyer or legal assistant. Landlord's affidavit did not contain "[t]he normal hourly rate for each person for whom compensation is sought." *See* Minn. R. Gen. Prac. 119.02(2). Instead, it provided a range of hourly rates for each attorney that worked on the case. Nor did exhibit B address the shortcomings in the affidavit. The exhibit provided an hourly rate for the attorneys on the case but broke the work into general litigation phases that were months long instead of describing each work item completed. And most importantly, neither the affidavit nor exhibit B provided an accounting of how the law firm differentiated between the work done for landlord versus the work done for contractor. The district court was acting within its discretion when it concluded that it needed this information to ensure that tenant was not paying for work performed that was *not* for the benefit of the client or for "any unnecessary or duplicative work." *See* Minn. R. Gen. Prac. 119.02(4); *see also Rooney*, 782 N.W.2d at 577 (stating that "[a] district court has discretion to strictly enforce . . . the requirements of rule 119").

Nor are we persuaded by landlord's argument that it was an abuse of discretion for the district court *not* to review the additional documents proffered at the motion hearing

in-camera.⁸ As a general rule, documents that contain confidential or privileged information related to a motion for attorney fees may be submitted to the court for in-camera review. *See Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 776 N.W.2d 172, 180 (Minn. App. 2009) (concluding that rule 119 permits parties to “submit unredacted billing statements to a district court for in-camera review or, alternatively, . . . permit[s] [the] submission of redacted copies, with privileged material removed from all copies” (quotation omitted)). But the general permissibility of in-camera review following a motion for attorney fees is not at issue here. Rather, we must decide if the district court was *required* to conduct an in-camera review of the additional documents offered on the day of the hearing and not alongside landlord’s affidavit and motion.

It was not. Landlord points to no legal authority to support this legal proposition. Neither rule 119.03, the 1997 advisory comment to rule 119, nor *Riverview* stand for the proposition that the district court abused its discretion by not reviewing the additional documents. Rule 119.03 states that the district court “may require production of copies of additional record,” and that to protect confidential information found in these documents, the court “may” order these additional records be produced “for in-camera review.” Minn. R. Gen. Prac. 119.03. Not only is “may” permissive, *see* Minn. Stat. § 645.44, subd. 15 (2022), but rule 119.03 provides that the decision to request and review documents in-camera is within the *court’s discretion* and not the party seeking fees. The advisory

⁸ Tenant moved to strike landlord’s additional documentation from the appellate record because the district court did not rely on it when ruling on landlord’s motion for fees. We deny tenant’s motion to strike as moot because we did not review or rely on the documents when making our decision in this case.

comment to rule 119 “authorizes the court to review the documentation required by the rule in camera[,]” but it does not discuss whether a district court is *required* to accept documents for in-camera review. *See* Minn. R. Gen. Prac. 119, adv. comm. cmt 1997. And while *Riverview* established that a party may submit unredacted billing statements to a district court for in-camera review, the case contains no information if a court is required to accept confidential documents not submitted alongside the initial motion or affidavit. 776 N.W.2d at 180.

Juxtaposed against this dearth of authority is the language of rule 119 itself. That language specifies that everything a court needs to review a motion for attorney fees be contained in the affidavit. *See* Minn. R. Gen. Prac. 119.02 (stating that a party seeking fees “*shall*” be required to submit an “affidavit of any attorney of record which establishes the following”); Minn. Stat. § 645.44, subd. 16 (2022) (defining “shall” as mandatory). Further, Minnesota Rule of General Practice 14.07 provides a procedure parties must follow to submit documents for in-camera review. Rule 14.07 states that a party “must seek and obtain advance approval from the court by motion, with notice thereof to all parties, to submit a document to the court for in-camera review.” Landlord did not move to obtain advanced approval from the court to submit its additional documents.⁹

⁹ Additionally, the Minnesota Supreme Court has stated—albeit within the context of a motion for summary judgment—that late submissions deprive an opposing party of the right to “know what affidavits and other papers and evidence will be used in support of [a motion]” and to prepare “counter proof” and be heard. *Dunwell v. Warden*, 6 Minn. 287, 290-91 (Minn. 1861); *cf. State ex rel. Spurck v. Civ. Serv. Bd.*, 32 N.W.2d 574, 579-80 (Minn. 1948) (explaining that late submissions are problematic because an opposing party “does not know what evidence is offered or considered and, is not given an opportunity to test, explain, or refute” such evidence at the hearing).

Still, landlord makes two additional arguments as to why we should reverse the court's denial of its motion. We address each in turn.

Landlord first claims that it is per se an abuse of discretion for a district court to deny a motion for attorney fees if such fees were contractually mandated. When attorney fees are expressly authorized by contract, landlord is correct that it is generally considered an abuse of discretion for a district court to deny the award of such fees outright. *See State Bank of Cokato v. Ziehwein*, 510 N.W.2d 268, 270 (Minn. App. 1994) (affirming the award of attorney fees provided for in a loan document and stating that “Minnesota courts will enforce” a contract provision for attorney fees “as long as the fees are reasonable”), *rev. denied* (Minn. Mar. 15, 1994). Yet caselaw establishes that contractually mandated attorney fees are still subject to a district court or a jury's discretionary power to determine if the requested amount is reasonable. *See id.* (remanding the denial of contractually mandated attorney fees so the parties can file a petition and supporting documentation showing their request for fees is reasonable); *see also Bartley v. BTL Enters. Inc.*, 490 N.W.2d 664, 667 (Minn. App. 1992) (concluding “the guarantors are contractually obligated to pay [appellant's] reasonable attorney fees” and “revers[ing] the trial court on this issue and remand[ing] for a determination of reasonable attorney fees”).¹⁰

¹⁰ We also note that the nonprecedential cases cited by landlord in its brief also establish that a court retains the power to review the reasonableness of contractually mandated attorney fees. *See Town of Denmark v. Suburban Towing, Inc.*, No. A09-947, 2010 WL 1190756, at *5 (Minn. App. Mar. 30, 2010) (reversing the denial of contractually mandated fees and remanding “for a determination of reasonable attorney fees”); *Becker v. Olson*, No. A11-271, 2011 WL 4008307, at *7 (Minn. App. Sept. 12, 2011) (concluding the district court erred by denying appellant's motion for attorney fees that was based on a fee-shifting provision in a mortgage contract and remanding for a determination on what those

The district court did not deny landlord’s motion for attorney fees on the basis that it was not entitled to *any* fees. In fact, the court found that landlord was “entitled to enforcement costs and attorney fees as a threshold matter under the Lease.” The court’s denial of landlord’s motion was based on landlord’s failure to comply with rule 119.02, which meant that the court was unable to assess whether the fees requested were reasonable. As a result, not only was the court acting within its discretion here, but it was also following the requirement of the lease—which only entitled the landlord to “*reasonable* attorney fees.”

Next, landlord contends that the district court acted arbitrarily, therefore abusing its discretion, by denying its motion for almost \$2 million in fees based on “technical noncompliance” with rule 119.02 when the court had in its possession all the information it needed to determine if the motion was reasonable.¹¹ But as we have previously emphasized, “[a] district court has discretion to strictly enforce or to waive the requirements of rule 119 when considering a motion for attorney fees,” *Rooney*, 782 N.W.2d at 577, and based on our review of the record, we do not believe the district court

fees should be); *RPC Props., Inc. v. Olson*, No. A04-2034, 2005 WL 1804474, at *7 (Minn. App. Aug. 2, 2005) (determining that attorney fees were provided for in a lease and “direct[ing] the district court to determine the attorney fees, costs, and disbursements due to appellant” on remand); *Interstate One Realty v. Crippa*, No. C4-95-1253, 1996 WL 22319, at *1 (Minn. App. Jan. 23, 1996) (holding that a “promissory note provides that ‘[appellant] shall be responsible for any and all attorney fees and costs of collection’ [and] . . . remand[ing] this issue to the trial court to determine a reasonable award of attorney fees to appellant”).

¹¹ Landlord cites *Maple Ridge Homeowners Ass’n v. Hiscox Ins. Co., Inc.*, No. A23-0478, 2024 WL 413470 (Minn. App. Feb. 5, 2024) for support of its argument. We do not rely on *Maple Ridge* as it is nonprecedential, and therefore nonbinding, and because it involved a motion for sanctions, not attorney fees.

acted arbitrarily by strictly enforcing rule 119.02 merely because a large amount of money was on the line. Therefore, for all the reasons discussed above, we affirm the district court's denial of landlord's motion for attorney fees.

Affirmed in part, reversed in part, motion denied.