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STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1931

Roanaq Osman,
Respondent,

vs.

Girum Tibebu,
Appellant.

Filed July 21, 2025
Reversed and remanded
Ross, Judge

Hennepin County District Court
File No. 27-CV-24-9175

Ronald J. Walsh, Walsh Law, Maple Grove, Minnesota (for respondent)

Mark J. Manderfeld, Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Landlord Roanaq Osman and tenant Girum Tibebu entered into a five-year lease of property for commercial use. Tibebu continued to lease the property for more than 10 years. Osman delivered a notice of lease nonrenewal, which he followed with an eviction action. The district court referee presiding over the eviction hearing concluded that the lease had not been extended, meaning that a month-to-month lease was in effect and that the landlord's notice of nonrenewal was therefore effective. Tibebu argues on appeal that the lease did not require lease extensions to be in writing, that the lease had extended by performance or oral agreement, and that the district court's findings are inadequate to support its decision. Because we hold that the lease did not require extensions to be in writing, we reverse and remand for further proceedings and findings.

FACTS

Roanaq Osman entered into a written "Commercial Lease Agreement" with Girum Tibebu. That October 2013 agreement obligated Tibebu to pay Osman $27,000 annually to possess auto-repair and related office space in Minneapolis for a five-year term through September 2018. Tibebu then operated an auto-repair shop on the premises for over 10 years. In March 2024, Osman gave Tibebu a document entitled, "Notice of Non-Renewal of Lease." Tibebu did not vacate and, about three months later in June 2024, Osman sued to evict him.

The eviction action resulted in a bench trial before a district court referee, and a central issue was whether the parties had orally extended the original five-year lease to run through 2028. The dispute focused on two clauses in the written agreement. The first is the extension clause, which gave Tibebu the right to extend the lease but does not specify how or when he could act on the right:

> After the Term of five years the Tenants will have the first right to either extend or purchase the premises in "AS IS" condition as the last day of their lease.

The second is the amendment clause, which expressly requires lease amendments or modifications to be in writing:

> No amendment, modification, or waiver of any condition, provision, or term of this Lease shall be valid or of any effect unless made in writing, signed by the party or parties to be bound, or its duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification, or waiver.

The parties provided somewhat inconsistent testimony about their understandings of the lease and the nature of Tibebu's tenancy.

Both parties gave competing testimony about whether the original lease had been extended. Tibebu testified that he and Osman twice orally agreed to additional five-year lease terms, meaning that the lease was currently in its third five-year term that would end in September 2028. He said that he and Osman signed no written agreement other than the original lease. Osman testified that, after the first five-year term, he told Tibebu that if he wanted an extension, a new written lease was required. He said that he gave Tibebu a copy of a lease to sign but that Tibebu did not sign it. Neither party entered a copy of this proposed lease into evidence. Osman testified that he believed that the lease converted to a month-to-month tenancy at the end of the original lease term. But he said that he had "never written to [Tibebu]" to tell him he was a month-to-month tenant. Tibebu testified that the first time he heard the term "month-to-month" was after the eviction action commenced.

Witnesses testified differently about discussions between January and March 2023 concerning a new lease. Tibebu testified that they spoke in January 2023, when Osman asked him to pay increased rent or face eviction. Tibebu said that he refused to sign written lease agreements that Osman and his real-estate agent brought for him to sign in January and February 2023. Osman testified that in January 2023 he offered to sell the property to Tibebu based on the right to purchase in the extension clause in the 2013 lease agreement.

Tibebu claimed that the parties had engaged in a third round of discussions in August 2023. He testified that he had met with Osman shortly before the purported second five-year extension was set to expire, and that Tibebu understood that he and Osman had agreed to extend the lease for a third five-year term. Tibebu stated that they shook hands and that Osman did not bring up the possibility of signing a new lease.

The referee signed a proposed order evicting Tibebu, believing that "[t]he sole issue in this case is whether the parties reached an agreement whereby a five . . . year extension is valid." He found that "[t]here was credible testimony from both parties that [in September 2018] an oral agreement extended the lease term for an additional . . . five years" and that no new written lease was ever executed. The referee reasoned that any purported oral extension was invalid because "the lease is vague as to how many times the tenancy may be renewed" but was "definitive" that no amendment to the lease is enforceable unless it is in writing. The referee therefore determined that the parties could not orally agree to a five-year extension at any time during the tenancy. The referee held that the agreement had converted to a month-to-month tenancy and had remained so since the original lease expired in fall 2018. He concluded that, therefore, the March 2024 notice of nonrenewal validly ended the tenancy. He made no finding as to whether a lease extension occurred in August 2023.

Tibebu sought judicial review. The district court judge filed an order affirming the decision. The district court held that the referee had not "clearly err[ed]." Any oral agreement to extend the lease, the court reasoned, was irrelevant because the lease did not allow for oral extension, meaning that the tenancy had been month-to-month since fall 2018. The district court's order also observed that rent had increased in October 2018, changing a lease term.

Tibebu appeals.

DECISION

Tibebu raises several interrelated issues on appeal, arguing principally that the district court erroneously determined that the lease required extensions to be in writing, that he extended the lease by oral agreement or performance, and that the district court failed to make necessary findings to support its decision. The threshold argument requires us to interpret a contractual agreement, a task we undertake *de novo*, *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004), while we review the district court's related factual findings for clear error, *see Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). For the following reasons, this review leads us to conclude that the district court's decision rests on its erroneous construction of the lease agreement and that it therefore failed to make necessary fact findings.

Tibebu convincingly contends that the district court erred by determining that the lease's amendment clause, which required amendments to be in writing, applied to the lease's extension clause. The amendment clause expressly applies to alterations of a "condition, provision, or term" of the agreement itself. Exercising the extension clause, which afforded Tibebu "the first right to either extend or purchase the premises" after "the Term of five years," does not constitute an alteration of a term of the agreement. It instead would constitute the application of an express term of the agreement. Caselaw confirms this plain understanding, as we have explained that an extension "merely continues the original lease." *Unity Invs. Ltd. P'ship v. Lindberg*, 421 N.W.2d 751, 754 (Minn. App. 1988). Exercising the contracted right to extend does not in the ordinary sense or in the context of the specific language at issue here require any change to any term of the lease, and therefore is not an amendment. We hold that the amendment clause, including its writing requirement, does not apply to the extension clause.

The district court erred not only by determining that the amendment clause required the extension right to be exercised in writing; it relatedly erred by implicitly finding that the parties entered into a 2018 oral agreement to extend but by then invalidating that oral agreement. Because the written lease agreement is silent as to how Tibebu could exercise his right to extend, the district court should have determined how the right must be exercised, perhaps by considering the parties' conduct. This is because the primary goal of contract interpretation is to determine and enforce the parties' intent, *Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 622 (Minn. 2022), and a court may augment its interpretation of a contract to address gaps or omissions in the contractual language by looking to the parties' course of performance, *see J.J. Brooksbank Co. v. Budget Rent-A-Car Corp.*, 337 N.W.2d 372, 375–76 (Minn. 1983). The district court's finding that "[t]here was credible testimony from both parties that an oral agreement extended the lease term for an additional five . . . years" might aid it in determining what Osman and Tibebu understood about whether the original lease could be extended by oral agreement. But the district court made insufficient findings about how the 2018 oral agreement—or any of the parties' other conduct—reflected their understanding of the extension clause. And unlike the district court, this court does not engage in fact finding. *See Johnson v. Johnson*, 84 N.W.2d 249, 254 (Minn. 1957). We therefore must remand the case to the district court to decide how the parties intended the extension clause to be exercised and to include fact findings based on the evidence presented by the parties.

After construing the lease based on the evidence, which may include but need not be limited to the parties' conduct, the district court must also determine whether Tibebu asserted his contractual right to extend and whether Osman acquiesced to any assertion of that right. Although the district court implicitly found that Osman and Tibebu orally agreed to extend the lease in 2018, it made no findings as to whether Osman orally asserted a right to extend in 2023. We further observe that the district court may consider whether the extension clause remains operational after a first extension and, if so, whether Tibebu asserted his right to extend by performance. *See Quade v. Fitzloff*, 100 N.W. 660, 661 (Minn. 1904); *Kean v. Story & Clark Piano Co.*, 140 N.W. 1031, 1032 (Minn. 1913). Without factual findings on whether Tibebu in 2023 asserted his right to extend, assuming he had the right at that point, and whether Osman acquiesced, we cannot determine the nature of Tibebu's leasehold when he received the notice of nonrenewal in March 2024.

Osman suggests that Tibebu's failure to extend in writing means that, under the lease's holdover clause, Tibebu converted to a month-to-month lease in October 2018. The holdover clause provides that, if Tibebu remained in possession of the premises with Osman's permission "after the expiration of [the] Lease without the execution of a new Lease, [he] shall be deemed to be occupying the Premises as a Tenant[] from month-to-month." For the same reasons we have just outlined, however, the district court's findings are not sufficient for us to determine whether the original lease was extended or had instead expired in March 2024. We cannot determine whether the holdover clause applies.

If the district court determines on remand that Tibebu properly asserted his right to extend and that Osman acquiesced, it must also determine, for the purposes of the statute of frauds, whether the purported extensions were in fact extensions or were instead renewals, a determination that may depend on whether the parties must negotiate lease terms before beginning a new lease period:

> If any contractual term for the additional period must be negotiated or determined, the statute of frauds requires a new lease, and the new period is a renewal. If the lease is continued by the party holding the option merely on timely notice or on some other condition, no new lease is required, and the option is an extension.

Med-Care Assocs., Inc. v. Noot, 329 N.W.2d 549, 551 (Minn. 1983). If the district court finds on remand that Tibebu extended the lease in 2018 and 2023, no new written lease would be required, and the lease period would not be void under the statute of frauds. *See id.*; Minn. Stat. § 513.05 (2024). But if the district court finds that either of the purported extensions required additional negotiations or determinations for lease terms and were therefore actually renewals, the absence of a written lease means that the agreement would be void under the statute of frauds. *See Med-Care*, 329 N.W.2d at 551; Minn. Stat. § 513.05. These legal questions hang on findings as to whether Tibebu's purported extensions were, in fact, extensions.

The district court may also consider whether the statute-of-frauds exception for part performance applies here. The supreme court has recognized that the doctrine of part performance may remove an oral agreement to "extend" a lease—whose terms have changed—from the statute of frauds. *Atwood v. Frye*, 273 N.W. 85, 86–87 (Minn. 1937); *see also Pierce v. Hanson*, 179 N.W. 893, 894 (Minn. 1920) ("The part performance necessary to remove the bar of the statute from an oral contract varies with the nature and purposes of the contract."). But we cannot determine whether the part-performance exception applies here because we lack sufficient findings regarding the parties' post-2023 performance.

Osman last suggests that the lack of a definite end date in the lease means that it is a perpetual contract. A perpetual contract is one that continues forever unless there is a breach or mutual agreement to end the contract. *See Glacial Plains Coop. v. Chippewa Valley Ethanol Co.*, 912 N.W.2d 233, 237 (Minn. 2018). Perpetual contracts are disfavored as a matter of public policy. *Id.* at 236. We need not decide whether the lease could be extended in perpetuity because that question is not properly before us. The question presented is not whether the lease *could* be extended perpetually but whether Osman and Tibebu in fact extended it in 2018 and again in 2023, leaving Tibebu on a term lease when Osman delivered his notice of nonrenewal. We express no opinion on how the perpetuity argument should be decided.

Tibebu asks us for additional relief, including ruling on allegedly contradictory district court findings, expunging the eviction judgment against him, awarding him costs and disbursements, and ordering the district court to release funds it holds. We leave these issues for the district court to first address.

We have highlighted the issues that the district court should address with fact findings and consequent legal determinations. We emphasize that some findings and consequent legal conclusions might render the need to make other suggested findings unnecessary. In further proceedings, the district court may rely on the existing record to make the necessary findings or it may, in its discretion, reopen the record for additional evidence and argument.

Reversed and remanded.