This opinion is nonprecedential except as provided by Minn.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
A25-0986

Doran MGC I, LLC,
Appellant,

vs.

Vein Clinics of America, Inc.,
Defendant,

Phlebology Management, LLC, d/b/a USA Vein Clinics,
Respondent.

Filed April 20, 2026
Reversed and remanded
Bentley, Judge

Hennepin County District Court
File No. 27-CV-24-8223

Julia J. Nierengarten, Jonathan D. Miller, Meagher + Geer, P.L.L.P., Minneapolis, Minnesota (for appellant)

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Considered and decided by Frisch, Chief Judge; Bentley, Judge; and Smith, John, Judge.[*]

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

NONPRECEDENTIAL OPINION

BENTLEY, Judge

This appeal stems from a grant of summary judgment in a lease-assignment dispute. Because there are unresolved issues of material fact, we reverse the district court's grant of summary judgment and remand for further proceedings.

FACTS

The following facts, taken from the summary-judgment record and stated in the light most favorable to appellant-lessor Doran MGC I, LLC, frame our consideration of the issues on appeal.[1]

The Lease

Doran entered a ten-year commercial lease with defendant-lessee Vein Clinics of America (VCA) in November 2018 for a premises located in Maple Grove.[2] The lease provides that failure to pay rent constitutes a default or breach of the lease but that any such default is subject to a cure period. Specifically, "Tenant shall have the opportunity to cure

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[1] Some documents in the record are not accessible to the public. *See* Minn. R. Civ. App. P. 112.02. But "we are not precluded 'from mentioning the contents' of confidential or sealed documents when the information is 'relevant to the particular issues or legal argument being addressed in the proceeding.'" *Life Time, Inc. v. Zurich Am. Ins. Co.*, 25 N.W.3d 901, 904 n.1 (Minn. App. 2025) (quoting Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 4), *rev. denied* (Oct. 29, 2025). We also are not "constrained from disclosing information contained in the publicly filed briefs." *Id.*; Minn. R. Civ. App. P. 112.03. Any reference to confidential documents herein is based on the parties' publicly filed briefs, other public records, or is relevant to our determination of the issues on appeal.

[2] VCA did not appear in this appeal.

such default for a period of ten (10) days after written notice of the default from Landlord to Tenant."

The lease also limits the lessee's ability to assign the lease. Section 10.1 of the lease reads, "Tenant shall not, in any manner, assign or transfer this Lease or sublet any portion of the Premises, whether voluntary or by operation of law, without the prior written approval of Landlord." It also requires that "[a]ny transferee, subtenant or assignee of Tenant, including, without limitation, any Permitted Transferee, must adhere to the Permitted Use. Tenant shall provide Landlord with notice of any assignment or sublease prior to consummation." Section 10.1 includes an exception to the written approval requirement, however, which states:

> Notwithstanding the foregoing to the contrary and provided that Tenant is not then in default beyond any applicable notice and cure period, upon advance written notice to Landlord, Tenant may assign this Lease or sublease all (but not part) of the Premises (each a "Permitted Transfer") without Landlord's consent to any of the following (each a "Permitted Transferee"): (i) the assignment or sublease to any subsidiary or other affiliate of Tenant, and/or (ii) the assignment or sublease to any person or entity which succeeds to the business of Tenant at the Premises as a result of any sale, transfer, reorganization, joint venture, merger, consolidation or issuance, pledge, sale, redemption, conversion, or other disposition (by operation of law or otherwise) from time to time of any stock, membership, partnership or other direct or indirect ownership interest or assets of Tenant.

For any assignment, the lease provides that "[a]ny transferee, subtenant or assignee of Tenant must execute an agreement assuming all of the obligations of Tenant under this Lease effective as of the execution of such agreement and provide a representation regarding compliance with the OFAC [Office of Foreign Assets Control, United States Department of the Treasury]."

VCA Assignment to Phlebology Management, LLC

In September 2022, Ally Bank, as a secured party to a credit agreement with VCA, entered a "Bill of Sale and Assignment" selling all of VCA's assets to USA Vein Clinics. USA Vein Clinics is the trade name for respondent Phlebology Management, LLC. The record shows that Doran was alerted to the sale in an email exchange on September 13, 2022, when Doran's director of commercial management (Doran's director) contacted VCA about nonreceipt of September rent and VCA responded, "VCA was sold yesterday to another national vein group—all rents are expected to fund this week." Doran's director followed up by email on September 27, 2022, stating that, if VCA did not provide an update on September's rent by the end of the day, VCA would be placed in default. When VCA did not provide an update by the end of the day, Doran sent VCA a hard copy notice titled, "Landlord Notice of Tenant Default," which referenced a "failure to timely pay monthly rent and related charges totaling $17,109.00" and demanded that VCA "make full payment of the . . . amount due within ten (10) days to cure the Default." That notice also included a reminder that any assignment of the lease had to be approved by Doran, "except as expressly provided in section 10.1 of the Lease." On October 11, 2022, Doran filed an eviction complaint against "Vein Clinics of America, Inc., John Doe, Mary Roe, ABC business, and XYZ corporation."

Despite the notice of default and eviction complaint, the record shows that Doran's director and Phlebology's associate general counsel (Phlebology's G.C.) were in contact about the lease before and after the complaint was filed. On September 28, 2022, Phlebology's G.C. responded to Doran's warning email, which had been forwarded to Phlebology, expressing an interest in maintaining the location under a new lease. On October 4, 2022, Doran's director emailed Phlebology's G.C. the following:

> I spoke with ownership regarding The Vein Clinic lease. We haven't received any documents that verify that there has been any change in ownership. We would advise that you assign the current lease but if that isn't an option, we would need Vein Clinics to terminate the original lease. We would then be willing to enter into a lease with your group with the same lease terms.
>
> As it stands right now, we have this space in default and will be turning it over to our bankruptcy attorney on Friday, Oct 7th.

There was also communication about Phlebology making rent payments to Doran.

Those communications are referenced in part in Doran's eviction complaint, despite neither Phlebology nor its affiliates being a named party. In a section of the complaint titled, "Assignment of Leased Premises and obligation under Lease," the complaint references the restrictions on assignments and then states:

> In October 2022, [Phlebology's G.C.] communicated with Landlord's property manager about assisting an entity with agreeable lease terms for the Leased Premises. [Phlebology's G.C.] advised Landlord's property manager that his company hoped to have documentation from Tenant by or prior to October 7, 2022. Landlord did not receive that documentation to date.
>
> Tenant may also be in default under the Lease for purporting to assign its interest under the Lease to another entity, without Landlord's consent, even though Tenant is in default and may not assign its interest in the Leased Premises

> and obligations under the Lease without Landlord's consent. That default is a breach of the Lease.

The complaint then states that Doran had not given consent for any assignment.

Doran obtained a default judgment in its eviction action. According to the order, the writ of recovery of premises and order to vacate was to be "issued immediately upon request and payment of fee." Both parties concede that Doran never pursued the writ of recovery or paid the fee at that time. Instead, on November 4, 2022, Phlebology paid Doran $51,327 to cover the outstanding September, October, and November rent. Then, three days later, Doran received an executed "Assignment and Assumption of Lease Agreement" signed by both VCA and Phlebology. Though the agreement was not sent to Doran until November 7, the agreement itself states that it is "made as of this October 1, 2022."

Phlebology continued to occupy the premises and pay monthly rent to Doran through September 28, 2023. After that date, Phlebology stopped paying rent. Because of the "failure to timely pay monthly rent and related charges," Doran sent a new "Landlord Notice of Tenant Default" on November 10, 2023. That notice was addressed to VCA and copied Phlebology's G.C. Later that month, Doran filed an eviction complaint, once again naming "Vein Clinics of America, Inc., John Doe, Mary Roe, ABC business, and XYZ corporation." The complaint alleged VCA was in default based on its failure to pay rent. The district court entered a default judgment on the complaint in mid-December, and Phlebology vacated the premises one week later.

In April 2024, Doran sent VCA and Phlebology notice that it was terminating the lease and that the "tenant" was obligated to pay for the remainder of the lease.

Current Proceedings

Doran filed the current complaint alleging breach-of-contract claims against both VCA and Phlebology in April 2024. Doran sought to recover damages for breach of the lease, including unpaid rent and rent owed for the remainder of the lease term. Because VCA never appeared, the district court granted a default judgment against it for the full amount of damages alleged in the complaint. Doran pursued joint-and-several liability against Phlebology under the theory that Phlebology was a valid assignee under the lease. Eventually, Doran and Phlebology each moved for summary judgment. In its motion, Doran argued that summary judgment should be granted in its favor because the assignment of the lease to Phlebology was valid under the lease's terms or, in the alternative, because Doran waived the provision requiring prior written approval of an assignment.

After hearing the motions, the district court granted summary judgment in favor of Phlebology. The district court reasoned, "Under Section 10.1 of the Lease, Tenant may not assign the Lease if it is in default beyond any applicable notice and cure period and without advance written notice to the Landlord." The district court further determined that "[t]he record contains no issue of material fact about VCA's default for nonpayment of rent," and that

> Doran incorrectly argues that Phlebology's November 4, 2022 payment cured VCA's default for nonpayment of rent. Doran's argument is misplaced, because Section 10.1 of the Lease is clear and unambiguous. The Tenant may not assign the Lease if the Tenant is in default beyond any applicable cure period. There is no dispute of material fact that the cure period for nonpayment of rent expired on October 7, 2022, and Doran secured an eviction on October 31, 2022.

Summarizing its legal conclusion, the district court stated:

> Under the Lease, VCA is permitted to assign its rights in one of two ways; neither method was accomplished. Therefore, Phlebology never received a valid assignment, and as a matter of law cannot be held liable for breach of contract because there never was a valid contract between Phlebology and Doran.

Having determined that there was no valid contract between Doran and Phlebology, the district court determined that Doran's breach-of-contract claim failed as a matter of law.

Doran appeals.

DECISION

This is an appeal from a grant of a motion for summary judgment in favor of Phlebology. Summary judgment is proper if the moving party shows, by citing to specific parts of the record, including depositions, documents, affidavits, admissions, and interrogatory answers, that "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01, 56.03(a). A fact is material if it "is one of such a nature as will affect the result or outcome of the case depending on its resolution." *Zappa v. Fahey*, 245 N.W.2d 258, 259-60 (Minn. 1976).

Appellate courts review a grant of summary judgment de novo. *Bell v. St. Joseph Mut. Ins. Co.*, 990 N.W.2d 504, 507 (Minn. App. 2023), *rev. denied* (Minn. Aug. 8, 2023). That means we consider "whether there are any genuine issues of material fact and whether the court erred in its application of the law." *Louis v. Louis*, 636 N.W.2d 314, 318 (Minn. 2001). In doing so, we "view the evidence in the light most favorable to the party against whom summary judgment was granted." *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 150 (Minn. 2014). This court does “not resolve or decide issues of fact but only determine[s] whether there are issues of fact to be tried.” *Jonathan v. Kvaal*, 403 N.W.2d 256, 259 (Minn. App. 1987), *rev. denied* (Minn. May 20, 1987). Any doubt as to the existence of a genuine issue of material fact must be resolved in favor of finding that a fact issue exists. *Poplinski v. Gislason*, 397 N.W.2d 412, 414 (Minn. App. 1986), *rev. denied* (Minn. Feb. 18, 1987).

Doran argues that the district court erred in granting Phlebology’s summary-judgment motion and denying its own summary-judgment motion for two reasons. First, Doran maintains that the assignment from VCA to Phlebology was valid under the lease because the assignment agreement was dated October 1, 2022, and thus fell within the cure period in which an assignment without written approval was permitted. Second, Doran argues that, even if the assignment may not have been valid under the lease’s written terms, Doran waived the terms of the lease restricting assignments without landlord approval. Phlebology disputes that the assignment was executed as of October 1, 2022, and asserts that Doran did not waive the assignment requirements in the lease. Considering the record in the light most favorable to Doran, we conclude that Phlebology is not entitled to summary judgment because there are genuine questions of material fact with respect to both issues. We address each of Doran’s arguments in turn.

Validity of Assignment

Section 10.1 of the lease allows VCA to assign the lease to a "Permitted Transferee"[3] without Doran's written consent if VCA was "not then in default beyond any applicable notice and cure period." The provision then states that any such assignee "must execute an agreement assuming all of the obligations of Tenant under this Lease effective as of the execution of such agreement and provide a representation regarding compliance with the OFAC." The district court determined that any assignment of the lease between VCA and Phlebology was invalid because VCA was in default beyond any cure period by the time the parties signed the assignment agreement.

Viewing the record as a whole, however, there is a discrepancy about the effective date of the assignment. Consistent with the district court's determination, Phlebology provided Doran with a written, executed assignment agreement on November 7, 2022. The emails in the record between VCA and Phlebology suggest that they signed the agreement around November 6, 2022. If the assignment was effective as of November 6 or 7, VCA was outside the ten-day cure period for its default, which began on September 27, and could not have assigned the lease to Phlebology without prior written approval. That said, the assignment agreement states that it was "made as of this October 1, 2022," and it does not include any other effective date or date of execution. On October 1, VCA would have been within the ten-day cure period. Phlebology's G.C. stated in his deposition that he did not remember why the agreement was dated October 1, but he "think[s] [he] had some

[3] The parties do not dispute that Phlebology would meet the definition of a "Permitted Transferee" under the terms of the lease.

discussions with [Doran's director] about that," suggesting the choice of date was intentional. Additionally, the sale of VCA's assets to Phlebology took place in September, and Phlebology had taken possession of the premises by at least October 1. Phlebology paid Doran rent for September, October, and November 2022. The district court did not address the October 1 date, nor did it address any of the other evidence suggesting that the assignment may have occurred during the cure period.

That unresolved issue amounts to a dispute of material fact because the validity of the assignment under the terms of the lease turns on its effective date. Put differently, the effective date of the assignment is material because it is a fact "of such a nature as will affect the result or outcome of the case depending on its resolution." *Zappa*, 245 N.W.2d at 259-60. Such conflicting evidence is best left to a fact-finder and should not be resolved at the summary-judgment phase. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997) (stating that on a motion for summary judgment a district court "is not to decide issues of fact," nor should it "weigh the evidence").

Waiver

Doran also asserts that, even if the assignment to Phlebology did not follow the strict terms of the lease, Doran waived the relevant lease requirements and accepted the assignment through its conduct.[4]

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[4] Doran raised its waiver argument before the district court, but the district court did not address the issue when ruling on the summary judgment motions. Because we review the grant of summary judgment de novo, *Bell*, 990 N.W.2d at 507, we consider the waiver argument in the first instance as part of our "independent review of the record." *Culberson v. Chapman*, 496 N.W.2d 821, 823 (Minn. App. 1993).

Minnesota law provides that waiver is "the 'intentional relinquishment of a known right.'" *In re Civ. Commitment of Giem*, 742 N.W.2d 422, 432 (Minn. 2007) (quoting *Carlson v. Doran*, 90 N.W.2d 323, 328 (Minn. 1958)). We have held that "[i]gnoring a provision in a contract will constitute waiver, and waiver may be found where a party continues to exercise rights under a contract even though he knows a condition has not occurred or cannot be performed." *Appollo v. Reynolds*, 364 N.W.2d 422, 424 (Minn. App. 1985) (citation omitted). The principal of waiver has also been applied to landlord-tenant law, including in cases of lease provisions restricting assignment. *See, e.g.*, *O'Neil v. A.F. Oys & Sons, Inc.*, 13 N.W.2d 8, 10 (Minn. 1944); *W.C. Hines Co. v. Angell*, 247 N.W. 387, 388-89 (Minn. 1933); *Cohen v. Todd*, 153 N.W. 531, 531 (Minn. 1915). "A covenant against assignments without the written consent of the lessor is one inserted for the lessor's benefit, and he may waive the requirement of written consent by his conduct." *O'Neil*, 13 N.W.2d at 10.

It is also well established in Minnesota law that "the existence of a waiver is a question for the fact-finder." *Mod. Heating & Air Conditioning, Inc. v. Loop Belden Porter*, 493 N.W.2d 296, 299 n.1 (Minn. App. 1992); *see also Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 367 (Minn. 2009) ("Waiver generally is a question of fact, and it is rarely to be inferred as a matter of law." (quotation omitted)); *Engstrom v. Farmers & Bankers Life Ins. Co.*, 41 N.W.2d 422, 424 (Minn. 1950) ("Waiver is ordinarily a question of fact for the jury."). When "only one inference can be drawn from the facts," the issue of waiver becomes a question of law. *Engstrom*, 41 N.W.2d at 424. This is not such a case.

Here, considering the record in the light most favorable to Doran, more than one inference could be drawn from the facts. There is evidence indicating that Doran waived the lease requirements, including that Doran accepted rent from Phlebology for over a year, in an amount and manner consistent with the terms of the lease; a Doran employee emailed a representative of Phlebology suggesting that Phlebology should assume VCA's lease, which Phlebology at least attempted to do through the assumption agreement; Doran did not seek the writ of recovery after the first eviction proceeding; and Doran accepted multiple months of back payment of rent from Phlebology. Other evidence in the record cuts against a finding of waiver. For example, the lease contains a provision that any waiver by Doran is not effective unless it is in writing and that acceptance of rent shall not be deemed a waiver.[5] Doran also raised its right to assert the assignment restriction provision

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[5] This lease provision, section 22.4, states:

> The failure of Landlord to enforce any term, covenant, condition, or breach of this Lease shall not be deemed a waiver of the right to do so thereafter. The acceptance by Landlord of Rent shall not be deemed a waiver of any term, covenant, condition, or breach of this Lease. No waiver of any term, covenant, condition, or breach shall be effective unless in writing.

We note that the existence of a nonwaiver provision in the lease is not dispositive of the waiver question. Caselaw supports that a contract term may be waived orally or by conduct, even when the contract contains a provision prohibiting oral waivers. *See Lamberton v. Conn. Fire Ins. Co.*, 39 N.W. 76, 77-78 (Minn. 1888) (holding that an insurance company had waived a contract's requirement of written notice of abandonment by orally assuring plaintiff that its property was insured, even though the contract had a provision against oral waivers); *see also Larson v. Hill's Heating & Refrigeration of Bemidji, Inc.*, 400 N.W.2d 777, 781 (Minn. App. 1987) ("The general common law rule is that a written contract can be varied or rescinded by oral agreement of the parties, even if the contract provides that it shall not be orally varied or rescinded."), *rev. denied* (Minn. Apr. 17, 1987). In other words, in its first eviction complaint. Considering the entire summary-judgment record, multiple inferences may reasonably be drawn from the facts. That renders summary judgment inappropriate. *Engstrom*, 41 N.W.2d at 424.

Phlebology relies heavily on *Starlite Limited Partnership v. Landry's Restaurants, Inc.* for the proposition that Doran could not waive the assignment restriction as a matter of law. 780 N.W.2d 396 (Minn. App. 2010). *Starlite* is inapposite because it involved waiver of defects in the formation of a contract. *Id.* at 398-99. In the context of contract formation, a party may not waive a term for the acceptance of the offer to contract. *Id.* at 399, 401. But, as this court explained, "[t]he law governing contract formation is distinct from that of contract performance." *Id.* at 398. Regarding contract performance, including adherence to assignment provisions, a party may waive contract terms. *See W.C. Hines*, 247 N.W. at 388. Unlike *Starlite*, this case is about contract performance—whether Doran waived terms in its existing contract with VCA, such that VCA could assign its rights under the contract to Phlebology without Doran's prior written consent. To the extent Phlebology argues that any such waiver attempted to form a new contract between Doran and Phlebology, Phlebology mistakes the effect of an assignment. An assignment does not form a new contract—it "operates to place the assignee in the shoes of the assignor, and provides

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Doran, through its conduct, may alter or waive provisions of the lease including the written waiver requirement or the provision stating that acceptance of rent does not constitute waiver. The presence of the nonwaiver provision does not resolve the dispute of fact as to whether, based on Doran's conduct, a waiver actually occurred.

the assignee with the same legal rights as the assignor had before assignment." *Ill. Farmers Ins. Co. v. Glass Serv. Co.*, 683 N.W.2d 792, 803 (Minn. 2004).

Phlebology also argues that Doran's waiver argument fails as a matter of law because Doran's actions were consistent with a tenancy-at-will or a month-to-month tenancy, rather than a waiver of the lease-assignment provisions. But that assertion only further demonstrates that the issue of waiver is a question of fact most appropriately resolved by a fact-finder. *See Engstrom*, 41 N.W.2d at 424.

In sum, even if VCA's assignment to Phlebology did not comply with the written terms of the lease, Phlebology may still have a valid assignment of the lease if Doran waived that noncompliance. Because multiple disputes of material fact remain in this case, Phlebology is not entitled to summary judgment. We therefore reverse and remand to the district court for further proceedings not inconsistent with this opinion.[6]

Reversed and remanded.

[6] On appeal, Phlebology also argues that the assignment was invalid because VCA was in default on additional, nonmonetary grounds. We do not reach these arguments because the district court did not address them and because we nonetheless reverse and remand on the factual issue of waiver, which would appear to apply to any alleged default.