This opinion is nonprecedential except as provided by Minn.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
A25-2169

Sibley Plaza Limited Partners, LP, et al.,
Respondents,

vs.

MSP Tobacco and Vapor, Inc.,
Appellant.

Filed July 20, 2026
Affirmed
Bentley, Judge

Ramsey County District Court
File No. 62-HG-CV-25-2066

Peter J. Gleekel, Aaron S. Brown, Larson • King, LLP, St. Paul, Minnesota (for respondents)

Carol R. M. Moss, Steven R. Liening, Hellmuth & Johnson, Edina, Minnesota (for appellant)

Considered and decided by Ede, Presiding Judge; Bentley, Judge; and Halbrooks, Judge.[*]

NONPRECEDENTIAL OPINION

BENTLEY, Judge

Appellant-lessee rented commercial property in a shopping center from respondents-lessors. The lease contained a clause permitting respondents to relocate

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

appellant to another part of the center. After respondents invoked the relocation clause and appellant failed to relocate, respondents terminated the lease. Appellant did not vacate the property. Respondents brought an eviction action, and the district court granted summary judgment in their favor. Appellant now challenges the district court's summary judgment order, arguing that its performance under the relocation clause was excused by the lease's force majeure clause,[1] by the respondents' breach of the implied covenant of good faith and fair dealing, and under the common-law doctrines of impossibility and frustration of purpose. Appellant also argues that the district court made legal and evidentiary errors in its order. We affirm.

FACTS

In 2011, predecessors in interest to appellant-lessee MSP Tobacco and Vapor, Inc., entered into a commercial lease with respondent-lessor Sibley Plaza Limited Partners, LP, to rent a space in a shopping center for a tobacco-products shop. The lease included the following terms:

> Article 31: Holding Over
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> In the event Tenant remains in possession of the Premises after the Expiration Date and without the execution of a new lease, it shall be deemed to be occupying the Premises as a month-to-month tenancy. . . . The month-to-month tenancy may be canceled by either party by notice effective at the end of the calendar month first succeeding the thirtieth day following the date of notice.
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> . . . .

[1] A force majeure clause is "a contractual provision allocating the risk of loss if performance becomes impossible or impracticable, especially as a result of an event or effect that the parties could not have anticipated or controlled." *Fitness Int'l, LLC v. City Ctr. Ventures, LLC*, 9 N.W.3d 526, 529 n.1 (Minn. 2024) (quotation omitted).

> Article 37: Force Majeure
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> The time within which any of the parties hereto shall be required to perform any act or acts under this Lease, except for payment of monies, shall be extended to the extent that the performance of such act or acts shall be delayed by . . . governmental regulations or controls, . . . or any other cause beyond the reasonable control of such party . . . ; provided, however that the party entitled to such extension hereunder shall give notice to the other party of the occurrence causing such delay.

The lease was later assigned to MSP Tobacco, as lessee, and to respondent Sibley Plaza Limited Partners, LLC (Sibley Plaza) as lessor. The parties amended the lease again in November 2019, extending it through December 31, 2024, and including an option term permitting MSP Tobacco to extend the lease for one five-year term if it is not in default. The amendment also included the following relocation clause:

> 16. Relocation. At Landlord's option, and upon ninety (90) days written notice to Tenant . . . , Landlord may relocate Tenant into an alternative premises within the Shopping Center, which premises shall be mutually agreeable to Landlord and Tenant. . . . In the event the terms of the relocation cannot be agreed upon between Landlord and Tenant within sixty (60) days after Landlord's delivery of the Relocation Notice, then at Landlord's option Landlord may terminate this Amended Lease and Tenant shall be required to vacate the Premises on [or] before the expiration of the ninety (90) day period following delivery of the Relocation Notice.

In April 2024, Sibley Plaza initiated discussions with MSP Tobacco about a potential relocation of the store to another vacant space. MSP Tobacco's owner "was open to the idea" because "it was a bigger space." However, in St. Paul, the license necessary to sell tobacco products is tied to a business's location, so the relocation would require MSP Tobacco to obtain a new license. Still, the property manager stated in his deposition that

MSP Tobacco's owner said he "work[s] with the cities all the time" and that the parties would "figure this out." Accordingly, on May 17, 2024, Sibley Plaza provided written notice to MSP Tobacco that it was exercising its right to relocate the store to another vacant unit in the shopping center. Sibley Plaza stated that, if the parties failed to agree on relocation terms, then Sibley Plaza would "elect to terminate the Lease effective August 31, 2024." Sibley Plaza also allowed for an extension until September 30 if MSP Tobacco chose to appeal any license denial with the city, and informed MSP Tobacco that, if that was not enough time, Sibley Plaza retained the discretion to "allow for more time to work through the city process."

MSP Tobacco applied for a new tobacco products shop license. The City of St. Paul denied the license under Saint Paul Legislative Code section 324.04(b)(1), (2) (2023), which states that a new license may not be issued to a current license holder without meeting all licensing requirements, including that the applicant cannot be located "within one-half mile (2,640 feet) of another establishment possessing a tobacco license."

Sibley Plaza's property manager began contacting local government officials by email to seek a solution that would enable MSP Tobacco to obtain a new license. A legislative aide to the city council explained to the property manager that this would require changes to the city ordinance, but he stated that "MSP [Tobacco] ha[d] followed the letter of the law and the expectations of its license," and expressed hope that the city council would "be able to make some space for them in the code." And in an October 2024 email, the aide asserted they had "the votes to get this done" and the ordinance amendment was on the council's agenda for early November.

In November, the aide emailed the property manager with an "unhappy update"—the ordinance was pulled from the city council's agenda "after [he] received a tip regarding MSP's failure to abide state law and city ordinance." The city sent a "Notice of Violation and Request for Imposition of $500 Matrix Penalty" to MSP Tobacco. The notice stated that an inspector with the city's department of safety and inspections visited the store and observed discounts on tobacco products in violation of Saint Paul Legislative Code section 324.07(k)(1)(2) (2023).[2]

Based on these developments, Sibley Plaza sent a notice of lease termination to MSP Tobacco, effective January 31, 2025. Sibley Plaza noted that it had been "willing to provide additional time and cooperate with Tenant's efforts to try to transfer its Tobacco Shop license to the New Premises," but the "City of St. Paul ha[d] decided not to move forward with the steps necessary to allow Tenant's Tobacco Shop license to transfer to the New Premises." Sibley Plaza stated that, "[d]ue to this development caused by Tenant's sale of illegal products, Landlord [was] not willing to provide any more additional time to come to an agreement on the terms of the relocation."

MSP Tobacco did not vacate the premises. On February 13, 2025, Sibley Plaza sent a notice to MSP Tobacco stating that MSP Tobacco was now a month-to-month tenant and giving notice that Sibley Plaza was terminating that month-to-month tenancy effective March 31. MSP Tobacco again failed to vacate, and on April 25, Sibley Plaza sent a notice

[2] MSP Tobacco maintains that it did not violate the city's discount ordinance. We include these facts because they help to understand the context in which this dispute arose, but whether MSP Tobacco actually violated the ordinance is immaterial to our analysis.

to quit the month-to-month tenancy effective May 31. Sibley Plaza filed an eviction complaint against MSP Tobacco in June.

The parties filed cross-motions for summary judgment. In its motion, Sibley Plaza cited the relocation clause and the holdover clause as demonstrating that MSP Tobacco had "no legitimate possessory rights" to the premises. MSP Tobacco argued in its motion that its "duty to relocate upon the landlord's demand [was] excused" because the lease "cannot require the tenant to do what city ordinances forbid: operate a tobacco store without a license." MSP Tobacco then invoked several common-law defenses: impracticability, impossibility, and frustration of purpose. MSP Tobacco also asserted that the force majeure clause in the lease excused MSP Tobacco's performance under the relocation clause, and that Sibley Plaza had violated the implied covenant of good faith and fair dealing.

After a hearing was held on the motions, the district court granted summary judgment in favor of Sibley Plaza. The district court concluded that "MSP Tobacco unlawfully holds over the premises and is subject to eviction pursuant to Minn. Stat. § 504B.285, subd. 1(a)(2) and (3)." The district court reasoned that the doctrines of impossibility and frustration of purpose are not recognized in Minnesota as defenses in an eviction action, and even if they did apply, MSP Tobacco "contributed to the impossibility or frustration of purpose." The district court also rejected MSP Tobacco's force majeure argument because, "[a]t best," that clause would "temporarily" toll MSP Tobacco's obligations. And the district court determined that Sibley Plaza had not acted in bad faith because "Sibley Plaza actively engaged in efforts to assist MSP Tobacco in lobbying for an amendment to the city's geographical ordinance."

MSP Tobacco appeals.

DECISION

MSP Tobacco challenges the grant of summary judgment for Sibley Plaza. Summary judgment is appropriate "if the movant shows 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. Appellate courts review a grant of summary judgment de novo and resolve all factual inferences against the moving party. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017).

MSP Tobacco challenges the district court's grant of summary judgment for Sibley Plaza on two overarching grounds. First, MSP Tobacco disputes under the terms of the lease that its failure to relocate renders it subject to eviction as a holdover tenant under Minnesota Statutes section 504B.285, subdivision 1(a)(2) and (3) (2024). MSP Tobacco maintains that the lease's force majeure clause permits it to extend or delay performance of the relocation clause in this circumstance and, alternatively, that it is relieved from performance because Sibley Plaza breached the implied duty of good faith and fair dealing when it invoked the relocation clause. Second, MSP Tobacco maintains that its duty to perform under the relocation clause is excused based on the common-law defenses of impossibility and frustration of purpose. We address each set of arguments in turn.

I

We turn first to MSP Tobacco's arguments under the terms of the lease. When discerning the meaning of a lease, courts apply standard rules of contract interpretation. *Amoco Oil Co. v. Jones*, 467 N.W.2d 357, 360 (Minn. App. 1991). We must give "unambiguous contract language" its "plain and ordinary meaning." *Metro. Airports Comm'n v. Noble*, 763 N.W.2d 639, 645 (Minn. 2009). Appellate courts may use dictionary definitions to determine a word's plain meaning. *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016).

MSP Tobacco does not dispute that it has not complied with the relocation clause. Under the relocation clause, Sibley Plaza had the "option" to terminate the lease if "relocation cannot be agreed upon" within 60 days. Sibley Plaza formally notified MSP Tobacco that it was invoking the relocation clause in May 2024, and it gave MSP Tobacco an extension to obtain a license for the new location. MSP Tobacco did not obtain a new license and failed to reach an agreement with Sibley Plaza about relocating within the time proscribed.

MSP Tobacco maintains it was not required to relocate under the terms of the lease because the force majeure clause and the implied covenant of good faith and fair dealing relieved it of its obligation to reach a relocation agreement with Sibley Plaza.[3]

With respect to the force majeure clause, MSP Tobacco argues that the city ordinance setting a minimum distance between licensed tobacco shops is a government regulation that falls under the language of the force majeure clause. The clause provides that the time to perform an act required by the lease "shall be extended" if performance of that act is "delayed by . . . governmental regulations or controls." MSP Tobacco maintains

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[3] MSP Tobacco also argues that, prior to receiving the notice to relocate, it invoked an option to extend the lease for five years, and it therefore is still within its current lease term. Even if the option was exercised, Sibley Plaza terminated the lease under the relocation clause, so any lease extension does not alter our decision to affirm.

that the timeframe for its performance under the relocation clause is thus delayed for as long as the city ordinance is in place. We are not persuaded.

The force majeure clause unambiguously states that a party's performance may be "extended" if that performance is "delayed" by a government regulation. Giving these terms their plain and ordinary meaning, we understand the clause to allow a party to temporarily postpone performance to a later time. *See The American Heritage Dictionary of the English Language* 479, 626 (5th ed. 2018) (defining "delay" as "[t]o postpone until a later time; defer" and "extend" as "[t]o put off; postpone"). But MSP Tobacco's interpretation of the force majeure clause effectively excuses MSP Tobacco from performance of the relocation clause altogether. This outcome does not align with the intent for temporary relief reflected by the force majeure clause's language. *See Robert W. Carlstrom Co. v. German Evangelical Lutheran St. Paul's Congregation of the Unaltered Augsburg Confession at Jordan*, 662 N.W.2d 168, 173 (Minn. App. 2003) (stating that, in interpreting contracts, we must "give effect to the intentions of the parties as expressed in the whole of the document"). If the parties intended for the clause to allow for indefinite delays caused by force majeure events, they could have included such language in the contract. *See, e.g.*, *Clark v. City of St. Paul*, 934 N.W.2d 334, 338 (Minn. 2019) (providing an example of contract language excusing performance if a force majeure event occurred). Here, the language of the force majeure clause reflects an intention to excuse only temporary delays and allow temporary extensions of deadlines, and so an indefinite excusal of performance is beyond the clause's scope. [4]

We therefore conclude that the district court did not err by determining that the force majeure clause does not excuse MSP Tobacco's performance under the relocation clause.

As for the implied covenant of good faith and fair dealing, MSP Tobacco argues that Sibley Plaza acted in bad faith by invoking the relocation clause even though MSP Tobacco could not obtain a new license, thereby preventing MSP Tobacco from performing. MSP Tobacco maintains that Sibley Plaza's bad-faith conduct relieved MSP Tobacco of its duty to perform under the relocation clause. Again, we are not convinced.

"Under Minnesota law, every contract includes an implied covenant of good faith and fair dealing requiring that one party not unjustifiably hinder the other party's performance of the contract." *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 502 (Minn. 1995) (quotation omitted). Parties also may not "take advantage of the failure of a condition precedent when the party itself has frustrated performance of that condition." *Id.* A party acts in bad faith when it refuses "to fulfill some duty or contractual obligation based on an ulterior motive." *Sterling Cap. Advisors, Inc. v. Herzog*,

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[4] Sibley Plaza separately argues that the force majeure clause does not apply to this situation at all because the city ordinance does not prevent MSP Tobacco from complying with the relocation clause or other obligations in the lease—it could operate a different business that does not need a tobacco license. We need not decide that question because, even assuming without deciding that the city ordinance provided a basis to invoke the force majeure clause, the plain language of the clause provides only a temporary delay of performance, not the indefinite relief MSP Tobacco seeks. *See Metro. Airports Comm'n*, 763 N.W.2d at 645.

575 N.W.2d 121, 125 (Minn. App. 1998). Bad faith does not include a party "asserting or enforcing its legal and contractual rights." *Id.* (quotation omitted).

The undisputed facts demonstrate that Sibley Plaza did not violate its duty of good faith and fair dealing by hindering MSP Tobacco's performance of its lease obligations. Sibley Plaza property management spoke with MSP Tobacco's owner about relocating and the owner was "open to the idea" and would "figure . . . out" the licensing aspect. When MSP Tobacco's new license was first denied, Sibley Plaza initiated conversations with St. Paul city officials and staff about obtaining an exception to the ordinance to permit the relocation. Emails exchanged between Sibley Plaza and city officials show that Sibley Plaza continuously advocated for the amendment and tracked its progress until it was removed from the city council's agenda. Sibley Plaza's efforts to communicate with MSP Tobacco and the city to reach a solution do not reflect an unjustifiable hindrance of MSP Tobacco's performance of the relocation clause. Viewing the record in the light most favorable to MSP Tobacco, we do not identify any genuine issue of material fact here warranting reversal of summary judgment.

MSP Tobacco also argues that Sibley Plaza's termination of the lease and notices to quit the month-to-month tenancy reflect bad-faith conduct. But a party does not act in bad faith by asserting its contractual rights. *Sterling Cap. Advisors*, 575 N.W.2d at 125. Sibley Plaza had the right to exercise its option to terminate the lease under the relocation clause if no agreement was reached. Further, the holding-over clause permits Sibley Plaza to send a notice to quit a holdover month-to-month tenancy. After MSP Tobacco failed to vacate and became a month-to-month tenant, Sibley Plaza exercised that contractual right accordingly. Because facts viewed in the light most favorable to MSP Tobacco reflect that Sibley Plaza followed the terms of the lease and exercised its rights under those terms, we again do not discern any genuine issue of material fact with respect to MSP Tobacco's bad-faith claim.

In sum, we conclude that MSP Tobacco's performance of the relocation clause was not excused based on the terms of the lease or covenants implied therein.

II

MSP Tobacco next asserts that its performance under the relocation clause was excused based on two common-law defenses—impossibility and frustration of purpose. With respect to impossibility, MSP Tobacco argues that the unforeseeable change in St. Paul's city ordinances made it impossible to relocate, and its performance is thus discharged. As for the frustration-of-purpose defense, MSP Tobacco asserts the purpose of the lease would be frustrated if it relocated because it could not operate a tobacco shop in the new location, so it is excused from relocating. We agree with the district court's determination that these defenses are not applicable in an eviction proceeding under Minnesota Statutes sections 504B.281-.371 (2024).

Eviction actions "are summary proceedings that are intended to adjudicate only the limited question of present possessory rights to the property." *Deutsche Bank Nat'l Tr. Co. v. Hanson*, 841 N.W.2d 161, 164 (Minn. App. 2014). Grounds for an eviction action include when the tenant "holds over real property after termination of the time for which it is demised or leased" or when a "tenant at will holds over after the termination of the tenancy by notice to quit." Minn. Stat. § 504B.285, subd. 1(a)(2), (3).

Defendants to an eviction action may generally only raise defenses that fit within the proceeding's limited scope, *see Deutsche Bank Nat'l Tr. Co.*, 841 N.W.2d at 164, several of which are identified in the eviction statute, *see, e.g.*, Minn. Stat. § 504B.285, subds. 2 (providing a retaliation defense), 3 (providing a defense when a landlord increases rent or decreases services as a penalty for a tenant's lawful act). MSP Tobacco does not invoke any statutory defense. The Minnesota Supreme Court has also recognized two common-law defenses to eviction actions—breach of the covenant of habitability, and retaliation for complaints about material violations of the law, residential covenants, or the lease—but both defenses apply only to residential leases, not commercial ones. *SVAP III Riverdale Commons LLC v. Coon Rapids Gyms, LLC*, 967 N.W.2d 81, 86 (Minn. App. 2021) (reviewing supreme court cases).

Neither of MSP Tobacco's asserted defenses has been recognized in the context of an eviction proceeding. To the contrary, in *SVAP III*, we considered and rejected the availability of impossibility or frustration of purpose as defenses in this context. *Id.* at 86-87. In that case, a landlord commenced an eviction action against its commercial tenant for failure to pay rent during the COVID-19 pandemic, and the district court granted summary judgment to the landlord. *Id.* at 83-84. The commercial tenant appealed, arguing that material facts were in dispute based on the doctrines of impossibility and frustration of purpose. *Id.* at 84-85. Recognizing that these defenses had not yet been applied in an eviction action, we held that the commercial tenant "may not defend against SVAP's eviction action by asserting the common-law doctrines of impossibility or frustration of purpose." *Id.* at 86-87.

MSP Tobacco argues that our holding in *SVAP III* is limited only to eviction actions for nonpayment of rent. We disagree for two reasons.

First, we did not state in *SVAP III* that these common-law defenses may be available in other types of eviction actions. *Id.* at 85-87. In *SVAP III*, we clarified that the defenses of impossibility and frustration of purpose may still be available in "another type of action, such as an action by [landlord] to recover damages for [tenant's] unpaid rent, an action by [tenant] for reformation or rescission, or an action by [tenant] alleging ejectment." *Id.* at 87 n.2. But each of those examples is a type of legal action that is distinct from an eviction. We are unpersuaded that the circumstances underlying the eviction action here differ materially from those in the nonpayment-of-rent eviction action in *SVAP III*, and applying the reasoning in *SVAP III*, we discern no basis to conclude that common-law defenses are applicable in this case.

Second, it is the role of the Minnesota Supreme Court, not this court, to recognize new common-law rights and defenses. In *SVAP III*, we reasoned that we were "disinclined to recognize for the first time common-law affirmative defenses of impossibility or frustration of purpose in an eviction action alleging non-payment of rent" because "[w]e have stated many times that the task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court." *Id.* at 86 (quotation omitted). We decline to extend the law here for the same reason. We therefore conclude that the doctrines of impossibility and frustration of purpose are unavailable as defenses in this action and cannot excuse MSP Tobacco's obligation to relocate.[5]

We conclude that none of the contractual or common-law defenses that MSP Tobacco raises excuses its performance under the relocation clause. Accordingly, we further conclude that the district court did not err by granting summary judgment for Sibley Plaza in this eviction action.

Affirmed.

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[5] Because we reject these defenses, we also decline to reach MSP Tobacco's argument about the evidentiary and legal errors in the district court's summary-judgment order. MSP Tobacco acknowledged at oral argument that those issues would be relevant only if the common-law defenses apply.