

NO. C8-97-1616

State of Minnesota
In Court of Appeals

CLOVERDALE FOODS OF MINNESOTA, INC.,

Appellant,

vs.

PIONEER SNACKS, INC.,

Respondent.

APPELLANT'S BRIEF AND APPENDIX

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APPELLANT'S BRIEF AND APPENDIX

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LEGAL ISSUES

1. Did the Trial Court err when it denied Cloverdale's motion for a directed verdict?

The Trial Court did not address this issue.

2. Did the Trial Court err when it concluded that the retaliatory eviction statute applied in this case?

The Trial Court did not address this issue.

3. Did the Trial Court err when it permitted irrelevant evidence to be considered by the Jury?

The Trial Court did not address this issue.

4. Did the Trial Court err when it instructed the Jury that the retaliatory eviction defense was available?

The Trial Court did not address this issue.

5. Even if the retaliatory eviction statute were available, did the Trial Court err when it incorrectly instructed the Jury?

The Trial Court did not address this issue.

STATEMENT OF THE CASE

Plaintiff/Appellant (hereinafter "**Cloverdale**") commenced its action in unlawful detainer on January 22, 1997 in the City of Mankato, County of Blue Earth, State of Minnesota. **A. 025 - 045.** In its Complaint, Cloverdale alleged that it was the legal owner of property located at 1802 First Avenue, Mankato, Minnesota (hereinafter the "**Plant**"), which had been leased to Defendant/Appellee (hereinafter "**Pioneer**") pursuant to a lease dated July 16, 1993 (hereinafter the "**Lease**"). **Complaint ¶1; A. 025.** Cloverdale claimed that it was entitled to restitution of the Plant because Pioneer violated terms of the Lease requiring Pioneer to obtain Cloverdale's consent prior to making improvements and/or renovations to the Plant and by failing to obtain necessary building permits. **Complaint ¶2.; A. 026.** Pioneer served its Answer on Cloverdale on or about January 23, 1997. Pioneer demanded a Jury trial. Prior to trial, Cloverdale moved the Trial Court to exclude evidence of Pioneer's affirmative defenses which Cloverdale argued were unavailable to Pioneer as a matter of law. **A. 048 - 057.** The Trial Court denied Cloverdale's Motion.

The Jury trial was held on August 19 and 20, 1997, with the Honorable James D. Mason presiding. **A. 002.** After Pioneer introduced its evidence before the Jury, Cloverdale moved for a directed verdict. **T. Vol. II at 176; A. 071.** The Trial Court denied Cloverdale's motion and permitted the facts to be determined by the Jury. **T. Vol.**

II at 178-179; A. 073-074. The Jury rendered a special verdict in favor of Pioneer. A. 002-003. Judgment was entered on August 28, 1997. A. 002. Cloverdale served and filed its Notice of Appeal on September 3, 1997. A. 001.

STATEMENT OF FACTS

Cloverdale is the landlord of the Plant, a commercial food processing and packaging facility in Mankato, Minnesota. **A. 025.** Pioneer is Cloverdale's tenant and has leased the Plant for Pioneer's commercial food processing and packaging activities since July 16, 1993. **A. 025.** Pursuant to its Lease with Cloverdale, Pioneer must obtain Cloverdale's written consent before to making any renovations or modifications to the Plant. **A. 033.** The Lease requires Pioneer to comply with all state and local laws and ordinances. **A. 033.** In the event of Pioneer's default of these provisions, Cloverdale is required give Pioneer ten days in which to cure the default. **A. 035.**

The Lease clearly states:

Tenant agrees to comply with all laws, ordinances, orders, rules or regulations (state, federal, municipal or promulgates by other agencies or bodies having jurisdiction thereof) relating to the use, condition or occupancy of the Leased Premises.

Lease ¶11; A. 033.

Tenant will not make any alterations, repairs, additions or improvements in or to the leased premises or add or subtract plumbing or wiring therein without the prior written consent of the Landlord (which will not be unreasonably withheld) as the other character of the alterations, additions, or improvements to the made to the Leased Premises.

Lease ¶13; A. 033.

On January 8, 1997, Cloverdale discovered that Pioneer had made substantial renovations to the Plant without ever notifying Cloverdale or obtaining its written

consent. **Complaint ¶II; A. 040-044.** Pioneer contacted Cloverdale regarding financing that Pioneer wished to obtain through a lien. **T. Vol. I at 49 - 50; T. Vol. II at 118.** The financing agreement required the landlord's consent to a waiver of certain rights. Therefore, Cloverdale was required to inspect the Plant in order to protect its interests in the property. **T. Vol. I at 49-50.** In addition, Pioneer had failed to obtain building permits from the City of Mankato for the renovations. **Complaint ¶II; A. 026; T. Vol. I at 122-123.** On January 9, 1997, Cloverdale sent Pioneer a notice pursuant to the terms of the lease advising Pioneer of its violations and default of the Lease granting Pioneer ten days to cure the aforementioned violations. Pioneer did nothing to cure the breaches cited in the notice. **Complaint ¶III; A. 026; A. 040-044; T. Vol. I at 102.**

Pioneer did not dispute Cloverdale's allegations that it failed to cure any of its defaults prior to the expiration of the ten-day period. **T. Vol. II at 122-123.** Pioneer did not dispute that it failed to obtain Cloverdale's written consent for the renovations it made to the Plant and did not dispute that it failed to obtain building permits for any renovations as required by the Lease terms. **T. Vol. II at 144-117, 122-123.** Rather, Pioneer asserted that Cloverdale commenced the unlawful detainer action "in retaliation" for an unrelated lawsuit that Cloverdale commenced in 1994 and invoked the statutory retaliatory eviction defense of Minn. Stat. §566.03. **A. 046; T. Vol. II at 182-183.** Pioneer also asserted that it did not "materially" breach any of the terms of the Lease. **A. 046.** However, no instruction regarding "material breach" was given to the Jury. **A. 046; A. 090-096.**

Prior to trial, Cloverdale asserted that the retaliatory eviction defense was inapplicable under the facts presented by this case. A. 048-057. Nonetheless, the Trial Court introduced evidence of an unrelated lawsuit commenced by Cloverdale in Federal Court, as relevant to Cloverdale's "retaliatory motive." No evidence was introduced by Pioneer that demonstrated that it had at any time asserted any right protected by the retaliatory eviction defense statute.

Cloverdale moved for a directed verdict at the close of Pioneer's evidence. T. Vol. II at 176; A. 072-074. The Trial Court denied Cloverdale's motion and permitted the undisputed facts related to Pioneer's default of the Lease to go to the Jury. T. Vol. II 178-179; A. 073-074. The Jury found in favor of Pioneer, specifically noting on the Special Verdict Form that it found that Cloverdale brought the unlawful detainer action against Pioneer in retaliation for the prior lawsuit. A. 097.

ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT DENIED CLOVERDALE'S MOTION FOR A DIRECTED VERDICT.

The Minnesota Supreme Court in Reinhardt v. Colton, 337 N.W.2d 88 (Minn. 1983) outlined the relevant factors for Appellate Review of a trial court's determination of a motion for a directed verdict.

In reviewing a trial court's order for a directed verdict, this court makes an independent determination of the sufficiency of the evidence to present a fact question for a jury determination. We must accept as true all evidence in a light favorable to the adverse party and affirm the order only where (1)

in the light of the evidence as a whole, it would clearly be the duty of the trial court to set aside a contrary verdict as being manifestly against the entire evidence, or where (2) it would be contrary to the applicable law of the case.

Reinhardt v. Colton, 337 N.W.2d 88 (Minn. 1983)(citations omitted). Consistent with the law articulated in Reinhardt, the denial of Cloverdale's Motion for a directed verdict must be reversed. A review of the applicable law and the record demonstrates that grant of a directed verdict was the only proper course of action in this case because no fact question existed which was appropriate for a Jury determination.

In an unlawful detainer proceeding, the only genuine issue of material fact is whether the "facts alleged in the complaint are true." Minneapolis Community Development v. Smallwood, 379 N.W.2d 554, 555 (Minn. App. 1985)(review denied); see also Minn. Stat. §566.15. If it is undisputed that the facts alleged in the complaint are true, the plaintiff is entitled to a writ of restitution. Smallwood, 379 N.W.2d at 555; MAC-DU Properties v. LaBresh, 392 N.W.2d 315, 317 (Minn. App. 1986)(review denied). Cloverdale alleged in its Complaint that Pioneer breached covenants of its Lease with Cloverdale in the following respects: (1) Pioneer failed to obtain building permits for the alterations it made to the Plant; and (2) Pioneer failed to obtain or attempt to obtain the consent Cloverdale for alterations it made to the Plant.¹ **Complaint; A. 025-044.**

Pursuant to the terms of the Lease, Cloverdale gave Pioneer ten days' notice in order to

¹ Cloverdale claimed that Pioneer violated the provisions of ¶¶11, 13 of the Lease. **Complaint Exhibit A; A. 033.**

cure said defaults of the Lease on January 9, 1997. **Complaint at ¶3; Complaint Exhibit A at A. 026.** Pioneer failed to cure these defaults or even to attempt to do so prior to the expiration of the ten days. These facts alleged in the Complaint remain undisputed, and as a matter of law Cloverdale was entitled to judgment in its favor. **T. Vol. II at 106, 114, 122-123.** Therefore, the Trial Court erred when it denied Cloverdale's motion for a directed verdict. **T. Vol. II at 176-178.**

In support of its claims, Cloverdale introduced the terms of the Lease and instances where Pioneer had breached the Lease terms. Robert George, President of Pioneer Snacks, admitted that Pioneer Snacks had not obtained building permits for any of its alterations to the Plant until ten days after it received notice from Cloverdale on January 9, 1997.² **T. Vol. II at 122-123.** The testimony was clear that the President of Pioneer agreed to the provision of the Lease which required that Pioneer comply with all city ordinances. **T. Vol. II at 131-132.** Moreover, the President of Pioneer did not dispute that Pioneer never obtained Cloverdale's written consent for the alterations it made to the building pursuant to the requirements of the Lease. **T. Vol. II at 142.**

² As a matter of law, "[a] landlord's right to action for unlawful detainer is compelled upon a tenant's violation of a lease condition. Subsequent remedial action by a tenant cannot nullify a prior lease violation." Minneapolis Community Development v. Smallwood, 379 N.W.2d 554, 556 (Minn. App. 1985). Therefore, although some testimony may point to building permits obtained subsequent to the expiration of the ten-day notice period, this cannot create a genuine issue of material fact.

II. THE TRIAL COURT ERRED WHEN IT CONCLUDED THAT THE RETALIATORY EVICTION STATUTE APPLIED IN THIS CASE.

The Appellate Court's standard of review of the trial court's application of the law, including interpretations of statutes, are subject to *de novo* review. Igel v. Comm'r of Revenue, 566 N.W.2d 706, 708 (Minn. 1997). "Questions of statutory constructions of questions of law are fully reviewable by the Appellate Court." Metropolitan Sports Facilities Commission v. County of Hennepin, 561 N.W.2d 513, 515 (Minn. 1997).

The Trial Court erred in its conclusion that the defense to an unlawful detainer action of "retaliatory eviction", as set forth in Minn. Stat. §566.03 (hereinafter the "**retaliatory eviction defense**"), is applicable to Cloverdale's unlawful detainer action against Pioneer. Moreover, the record clearly demonstrates that the Trial Court's misapplication of the retaliatory eviction defense prejudiced Cloverdale and resulted in the Jury verdict in favor of Pioneer.

The record demonstrates how the Trial Court's error resulted in prejudice to Cloverdale in many respects. First, the Trial Court permitted the Jury to consider irrelevant and prejudicial testimony regarding an unrelated action that was commenced in 1994 by Cloverdale against Pioneer under the justification that the retaliatory eviction defense applied. **T. Vol. I at 30-31, Vol. I at 120-122, Vol. III at 220-221; A. 090-096.** Second, the Trial Court gave jury instructions contrary to law which included the retaliatory eviction defense despite its inapplicability. **T. Vol. II at 213-214; A. 090-096.**

Third, even if the retaliatory eviction defense were available to Pioneer in this action, the Trial Court gave improper jury instructions and incorrectly stated the applicable law of the retaliatory eviction defense. **Vol. III at 213-214; A. 080-081.** Moreover, the special verdict form submitted to the jury was misleading on its face and contrary to established law and reflected the error in the Trial Court's instruction to the jury. **A. 097.**

A cursory review of the history and legislative purpose behind the statutory retaliatory eviction defense demonstrates why the defense is unavailable to Pioneer under the circumstances presented in this action. The Minnesota Legislature enacted, Minn. Stat. § 566.03, the retaliatory eviction defense to an unlawful detainer proceeding, to address the concern that a tight housing market unfairly favored landlords over the legal rights of low income residents. Landlord-Tenant: Proving Motive in Retaliatory Eviction - Minnesota's Solution, 61 Minn. Law Rev., 523, 525 (1977). The Legislature reasoned:

[c]onsistently enforced housing codes can mitigate the adverse effects of this disparity in bargaining power, but they depend for their effectiveness on private reporting of violations. Enforcement should be seriously jeopardized if landlord could evict tenants who report violations to the authorities.

Landlord-Tenant: Proving Motive in Retaliatory Eviction - Minnesota's Solution, 61 Minn. Law Rev., 523, 525 (1977). Therefore, the design of the retaliatory eviction defense statute is applicable only where the landlord threatens eviction in retaliation for a tenant reporting violations of housing codes or exercising other legal or contractual rights intertwined with the landlord-tenant relationship. University Community Properties, Inc.

v. Norton, 246 N.W.2d 858 (Minn. 1976); Landlord-Tenant: Proving Motive in Retaliatory Eviction - Minnesota's Solution, 61 Minn. Law Rev., 523, 525 (1977).³ Moreover, in furtherance of the original purpose of the statute, the application of Minn. Stat. §566.03 is typically invoked only to address the problems of residential tenants threatened with eviction from their homes. See University Communities Properties, Inc. v. Norton, 246 N.W.2d 858 (Minn. 1976); Parkin v. Fitzgerald, 240 N.W.2d 828 (Minn. 1976); White Earth Housing Authority v. Schwabe, 375 N.W.2d 568 (Minn. App. 1985); Barnes v. Weis Management Company, 347 N.W.2d 519 (Minn. App. 1984).

The Minnesota Supreme Court in Norton urged the restriction of the application of defenses under Minn. Stat. §566.03 to "situation where the landlord has increased rent or decreased services as a penalty for the tenant's act of reporting a violation of any health, safety, housing, or building code ordinance." Norton, 246 N.W.2d at 862. Moreover, the Minnesota Supreme Court emphasized that no authority existed that permits the

³ The availability of the retaliatory eviction defense was broadened by amendment of Minn. Stat. §566.03 in 1976. Minn. Stat. §566.03. The Minnesota Supreme Court's decision was published shortly after the amendment of §566.03 had been adopted by the legislature and the law applied in Norton was a version of the statute prior to 1976. Norton, 246 N.W.2d at 860, n. 1. The 1976 amendment eased the burden of proof on the Defendant to prove retaliatory motive. See Minn. Stat. §566.03; Landlord-Tenant: Proving Motive in Retaliatory Eviction - Minnesota's Solution, 61 Minn. Law Rev., 523, 525 (1977). The reasoning and policy behind the conclusions in Norton remain valid because the decision in Norton was not concerned with retaliatory motive. Rather, the Minnesota Supreme Court in Norton addressed the scope of rights that a tenant may assert is protected by Minn. Stat. §566.03 and restricted these rights to include only those related to the landlord-tenant relationship. Norton, 246 N.W.2d at 862.

person aggrieved under an unrelated contract to assert any dispute regarding that contract as a defense. Id. Permitting the application of the defense of "retaliatory eviction" to a commercial tenant simply because of contract action, the terms of which are wholly unrelated the tenant's rights as a tenant of the leased premises, happened to be ongoing when the unlawful detainer proceeding is commenced creates greater rights for tenants than the Minnesota Legislature ever intended and would judicially re-write every lease between commercial entities in Minnesota. Tenants who may also be large companies and sophisticated, such as Pioneer, would be allowed to use a statute designed to protect low income residential tenants from uninhabitable and unsafe living conditions to avoid the performance of its duties under its leases simply because an action had commenced against it in an unrelated matter at any time in the past. Moreover, Cloverdale brought its unlawful detainer action against Pioneer because Pioneer had not complied with the building ordinances of the City of Mankato. It is absurd that Pioneer should be able to invoke Minn. Stat. 566.03 "retaliatory eviction" defense to avoid complying with the same laws that Minn. Stat. 566.03 was written to help enforce. Companies such as Pioneer and Cloverdale enter into a multitude of contracts every day during the ordinary course of business, and one or more contractual issues may be in litigation at any one point in time. Permitting the application of the "retaliatory eviction" statute under the circumstances in the instant case would lead to absurd results.

III. THE TRIAL COURT ERRED WHEN IT PERMITTED IRRELEVANT EVIDENCE TO BE CONSIDERED BY THE JURY.

Where the Trial Court's decision to admit or exclude evidence is based on an erroneous view of the law or an abuse of discretion, it is reversible error where the improper evidentiary ruling results in prejudice. TMG Life Ins. Co. v. County of Goodhue, 540 N.W.2d 848, 851 (Minn. 1995); Uselman v. Uselman, 464 N.W.2d 130, 138 (Minn. 1990).

In the instant case, the Trial Court improperly admitted evidence of a prior lawsuit commenced by Cloverdale against Pioneer in 1994, based upon the erroneous view that the retaliatory eviction defense was available to Pioneer. The prejudicial result is obvious from the jury's conclusion that "Cloverdale's action to evict Pioneer Snacks in retaliation for Pioneer Snacks' dispute of an earlier lawsuit." **Special Verdict Form ¶4; A. 097.**

Despite the inapplicability of the retaliatory eviction defense in this case, the Trial Court admitted testimony regarding facts irrelevant to the determination of Pioneer's compliance with the lease. **T. Vol. 120-121.** Counsel for Cloverdale had during the trial repeatedly objected to the introduction of evidence related to the Federal Lawsuit unrelated to the unlawful detainer action and set forth the following argument to the Trial Court:

[T]his prior lawsuit is also completely irrelevant, and for the reasons that we've pointed out, it does not, in fact, prove or tend to prove a retaliatory intent of the statute. . . . Therefore, any and all references to the Federal

Court lawsuit are improper and the Jury should be told to disregard and simply focus on the issues on this case.

T. Vol. I at 31-32.

Absent the applicability of the defense of "retaliatory eviction," evidence of the unrelated contract action between Cloverdale and Pioneer was inadmissible because it does not tend to prove any issue before the Jury in the unlawful detainer proceeding. Minn.R. Evid. 403. Moreover, even if the retaliatory eviction defense were available, the evidence introduced is not relevant to establish any retaliatory motive that Pioneer alleged that Cloverdale had when commencing the unlawful detainer action. The evidence of the unrelated contract action commenced by Cloverdale in 1994 did not tend to prove that Pioneer asserted any right protected by Minn. Stat. §566.03. The testimony merely brought before the Jury the irrelevant but highly inflammatory fact that Cloverdale had recently had a judgment entered against it in the amount of \$264,000. **T. Vol. I at 120.**

IV. THE TRIAL COURT ERRED WHEN IT INSTRUCTED THE JURY THAT THE RETALIATORY EVICTION DEFENSE WAS AVAILABLE.

It is reversible error for the trial court to give erroneous jury instructions where the erroneous instruction leads to prejudice. Bond v. Charleson, 374 N.W.2d 423, 428-429 (Minn. 1985); Apache v. Midwest Sav. Ass'n, 456 N.W.2d 729, 732 (Minn. App. 1990)(review denied). Although "[i]n determining jury instructions, trial courts have broad discretion, a party is entitled to a specific instruction on his theory of the case only 'if there is evidence to support the instruction and it is in accordance with applicable

law.” State Farm Fire & Cas. Co. v. Short, 459 N.W.2d 111, 113 (Minn. 1990)(citing Sandhofer v. Abbot-Northwestern Hosp., 283 N. W.2d 362, 367 (Minn. 1979)).

In Bond, the Trial Court “described to the jury four ‘obstacles’ to the formation of the contract: duress, fraud, lack of consideration, and violations of security law.” Bond, 374 N.W.2d at 428. However, the record in Bond was devoid of any evidence to support the conclusion that duress was available as a defense as a matter of law. Bond, 374 N.W.2d at 428. The Minnesota Supreme Court concluded that “instructing the jury that duress was available as a defense justified the order of granting a new trial” where the jury had concluded that the contract in question was not valid. Bond, 374 N.W.2d at 428-429.

The Minnesota Supreme Court in Bond speaks directly to the Trial Court’s error in the immediate case. The record is devoid of facts that as a matter of law could support the Trial Court’s jury instruction regarding the retaliatory eviction defense. The Trial Court gave the Jury instructions that the retaliatory eviction defense applied in Cloverdale’s action against Pioneer, above Cloverdale’s objection, and despite the clear inapplicability of the defense as a matter of law, described above. **T. Vol. II at 163-167; Jury Instructions A. 090-096; A. 048-057** . The prejudice to Cloverdale resulting from the Trial Court’s error is clearly demonstrated. The Jury in Cloverdale’s unlawful detainer action concluded that “Cloverdale’s action to evict Pioneer Snacks [was] in

retaliation for Pioneer Snacks' dispute of an earlier lawsuit." **Special Verdict Form ¶4:**

A. 097.

V. EVEN IF THE RETALIATORY EVICTION STATUTE WERE AVAILABLE, THE TRIAL COURT ERRED WHEN IT IMPROPERLY INSTRUCTED THE JURY.

Where the trial court gives jury instructions that are misleading and conflicting on important legal issues, it is reversible error. See Apache Plaza v. Midwest Savings Ass'n, 456 N.W.2d 729, 732 (Minn. App. 1990). The Appellate Court need not give deference to the trial court's decision of purely legal issues, although in general, trial courts have broad discretion in determining jury instructions. Short, 459 N.W.2d 111, 113 (Minn. 1990); Pine Valley Meats v. Canal Capital Corp., 566 N.W.2d 357, 361-362 (Minn. App. 1997)(review denied).

Assuming, arguendo, that under the facts presented on the record in this case the retaliatory eviction statute could apply, the Trial Court gave erroneous instructions regarding the burdens of proof and presumptions that the Jury may consider. The Trial Court instructed the jury that if the Trial Court found that Pioneer asserted its rights "in any way" within 90 days of Cloverdale's first notice to Pioneer after January 9, 1997, the of commencement of its unlawful detainer action, the Jury must presume that Cloverdale had a retaliatory motive for bringing the unlawful detainer action. **T. Vol. II at 213.** The Trial Court thereafter briefly mentioned that Cloverdale may rebut this presumption. **T. Vol. II at 214.**

The record does not contain any facts that could permit the Jury to presume that Cloverdale commenced the unlawful detainer proceeding for any right asserted by Pioneer that is protected by Minn. Stat. §566.03. Pioneer did not introduce any evidence to show that it asserted any rights protected by Minn. Stat. §566.03 within 90 days to Cloverdale. This deficiency was pointed out by Cloverdale's counsel to the court and was never rebutted by Pioneer. **T. Vol. II at 177.** As the Minnesota Supreme Court in Bond explained, a jury instruction that as a matter of law cannot be supported by the facts is reversible error where it results in prejudice. 374 N.W.2d at 428-429. In the instant case, the Trial Court incorrectly instructed the Jury on the scope and type of actions that the law protects through recognition of the retaliatory eviction defense of Minn. Stat. §566.03.

The Trial Court misstated the law where the Court's instruction to the Jury mandated that it presumed that Cloverdale had "retaliatory reasons" if the Jury found that Pioneer asserted its rights "in any way." **T. Vol. II at 213.** As the Minnesota Supreme Court stressed in Norton, the retaliatory eviction defense is only available to protect the rights enumerated in the Minn. Stat. §566.03, in order to equitably limit the potential cost to property owners from the possibility of lawsuit and protect to the alienability to private property rights in Minnesota. See Norton, 246 N.W.2d at 862. "In such an extensive and important field affecting such a large population and our basic economy, it is the legislature which can best determine the parameters of the rules to govern parties

relations, preferably after holding extensive public hearings. Courts do not possess the facilities to undertake the task.” Norton, 246 N.W.2d at 862. Therefore, reversal of the judgment is required in the immediate case were, despite the absence of facts which could support the conclusion, the Jury must presume that Cloverdale’s reasons for bringing its unlawful detainer proceeding was retaliatory if the Jury found that Pioneer asserted its rights “in any way.”⁴ Accepting the Trial Court’s interpretation of Minn. Stat. §566.03 would broaden the protection of the retaliatory eviction defense well beyond the parameters the legislature intended.

The Trial Court also failed to correctly instruct the Jury on the applicable law governing unlawful detainer proceedings and the burdens of proof necessary to establish and rebut the defense of “retaliatory eviction.” Moreover, the special verdict form the Trial Court submitted to the Jury was misleading and failed to address critical points of Minnesota law as required by statute. See Minn. Stat. §566.15.

In an unlawful detainer proceeding, the landlord is entitled to a writ of restitution if the Jury determines that the allegations in its complaint are true. MAC-DU Properties,

⁴ Moreover, the Special Verdict Form provided to the Jury is misleading, asks the Jury to incorrectly apply the law where the form asks the Jury to decide whether “Cloverdale’s action to evict Pioneer Snacks [was] in retaliation for Pioneer Snacks’ dispute of an earlier lawsuit.” **Special Verdict Form ¶4; A.- 97.** The Special Verdict Form compounds the Trial Court’s error by misstating the law. The retaliatory eviction statute does not apply simply because a landlord commences an unlawful detainer proceeding for any broad “retaliatory reason.” Rather, the retaliatory eviction defense is only available where the Landlord commences an unlawful detainer action in retaliation for the tenant asserting its rights protected by Minn. Stat. § 566.03 through *specific* conduct. No facts exist on the record that demonstrate any action on the part of Pioneer to exercise any right protected by Minn. Stat. § 566.03.

392 N.W.2d at 317. In the immediate case, the Trial Court failed to instruct the Jury that should they find that the allegations in Cloverdale's Complaint was true, the Jury should find in favor of Cloverdale. This error was compounded by the Special Verdict Form which omitted all language that is required by statute under Minnesota law. Minn. Stat. §566.15. Rather, the Trial Court omitted all clear references to the appropriate law and burden of proof which should entitle Cloverdale to possession of the Plant and included confusing and contradictory language which only served to emphasized Pioneer's purported defenses. The Trial Court never instructed the Jury that should it find that the allegations in Cloverdale's Complaint are true, that Cloverdale is entitled to immediate possession of the premises. A 090-096.

Moreover, the Trial Court's instructions to the Jury failed to properly instruct the Jury regarding the burdens of proof in establishing and rebutting retaliatory motive, the element essential to the defense. Minn. Stat. §566.03 Subd. 2 sets forth the following:

It shall be a defense to an action for recovery of premises following the alleged termination of a tenancy by notice to quit for the defendant to prove by a preponderance of the evidence that:

(1) The alleged termination was intended in whole or in part as a penalty for the defendant's good faith attempt to secure or enforce rights under a lease or contract, oral or written, or under the laws of the state, any of its governmental subdivisions, or the United States;

...
If the notice to quit was served within 90 days of the date of any act of the tenant coming within terms of clause (1) or (2) the burden of proving that the notice was not served in whole or in part for a retaliatory purpose shall rest with the plaintiff.

Minn. Stat. §566.03, Subd. 2.

Rather than instructing the Jury using the clear language of the statute, the Trial Court wholly failed to fairly or clearly instruct the Jury regarding the applicable law.⁵ The Trial Court, commanded the Jury to presume Cloverdale's retaliatory motive "[i]f you find that Pioneer asserted its rights in any way against Cloverdale within 90 days of Cloverdale's notice letter dated January 9, 1997" and mentioned in passing that "Cloverdale may rebut this presumption" without any instruction of what the Jury may find or look to in the evidence to find that Cloverdale had "rebutted" the presumption of retaliatory motive. **A. - 093.** Moreover, the Trial Court's jury instructions and special verdict form do not allow for the Jury to conclude that Cloverdale could have rebutted the presumption of retaliatory motive simply by the absence of any instruction of the significance of what it means to "rebut." The Jury was left without any guidance to correctly apply the law.

⁵ The Trial Court failed to read the applicable statute to the Jury, Minn. Stat. §566.03. "Where a statute applies, the court generally should read it to the jury." Kirsebon v. Connelly, 486 N.W.2d 172 (Minn. 1992). The Trial Court's instruction fundamentally departs from the language set forth by the legislature in the statute. **See A. - 090 to 096.**

CONCLUSION

For the reasons stated herein, Cloverdale respectfully requests that the Court of Appeals reverse the judgment of the district court.

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