

NO. C8-97-1616

STATE OF MINNESOTA
IN COURT OF APPEALS

CLOVERDALE FOODS OF MINNESOTA, INC.,

Appellant,

vs.

PIONEER SNACKS, INC.,

Respondent.

RESPONDENT'S BRIEF

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STATEMENT OF THE CASE

Appellant Cloverdale Foods ("Cloverdale") initiated this unlawful detainer action on January 20, 1997, seeking restitution of the premises leased by Respondent Pioneer Snacks, Inc. ("Pioneer Snacks"). (Appellant's Appendix - A.056 A.044). The matter came for trial before a jury on August 19-20, 1997, the Honorable Judge James D. Mason, Judge of Blue Earth County District Court, presiding. (A.002).

The jury returned its special verdict, finding that Pioneer Snacks did not breach its lease with Cloverdale and that the eviction action was brought by Cloverdale in retaliation for Pioneer's assertion of rights under a contract between the two parties. (A.097 - A.098). Based upon the jury verdict, Judge Mason determined that Cloverdale Foods was not entitled to restitution of the premises, and that Pioneer Snacks was entitled to judgment, together with costs and disbursements. Judge Mason entered judgment on August 21, 1997. (A.002 - A.003) Cloverdale filed this appeal on September 3, 1997. (A.001 - A.013).

STATEMENT OF THE FACTS

Background of Facts

Respondent Pioneer Snacks, Inc. is a tenant of an industrial building in Mankato, Minnesota, which is owned by Appellant Cloverdale Foods of Minnesota, Inc. (A.029 - A.030). Pioneer produces meat snack products such as beef jerky and meat sticks. Pioneer Snacks began its business relationship with Cloverdale Foods in 1991. (Trial Transcript Vol. II, p. 65). In this initial business relationship, Pioneer Snacks contracted with Cloverdale Foods for Cloverdale to produce and package various meat snack products. (Vol. II, pp. 65-66) This relationship was unsuccessful. (Vol. II, p. 65). As a result of the breakdown in the initial business relationship, Pioneer Snacks entered into an agreement with Cloverdale to lease Cloverdale's building in Mankato and purchase all of Cloverdale's manufacturing equipment located in that plant. (Vol. II, pp. 66-67; A.029 - A.039).

Cloverdale Foods of Minnesota, Inc. commenced this unlawful detainer action in January, 1997, alleging that Pioneer had breached the lease by installing improvements to the building without Cloverdale's prior written consent and by Pioneer's failure to obtain building permits from the City of Mankato in connection with the installation of those improvements. (A.026; Vol. I, pp. 77-82; Vol. II, pp. 97-98). The eviction action was not based upon a failure to pay rent. (A.026; A.211-A.212). This matter was tried before a jury in Blue Earth County in August, 1997. (A.002). The jury found that Pioneer had not breached the lease and, further, that Cloverdale had commenced the unlawful detainer action in retaliation for Pioneer's assertion of contract claims against Cloverdale. (A.097 - A.098).

Federal Case

Prior to this unlawful detainer action, in March, 1994, Cloverdale commenced a lawsuit against Pioneer Snacks in the United States District Court for the District of Minnesota alleging that it had not obtained sufficient profit for services rendered to Pioneer in connection with the manufacture and packaging of Pioneer's products. (Vol. I, pp. 101-04; 120-21). Pioneer Snacks asserted a counterclaim in that case, alleging that Cloverdale had failed to satisfy its obligations under the packaging and manufacturing agreement and, that Cloverdale had caused Pioneer to sustain business damages. (Vol. I, p. 121).

In December, 1996, United States District Judge David Doty issued an Order of Summary Judgment narrowing the issues for trial and ordering a trial date in early 1997. On January 29, 1997, Cloverdale and Pioneer were scheduled to conduct a settlement conference before a magistrate judge in St. Paul. (Vol. I, pp. 102-03; Vol. II, p. 95). The settlement conference was held on January 29, 1997 in St. Paul. A settlement was not achieved.

The original trial date of the eviction case was set for the day after the first settlement conference in the federal case, January 30, 1997. The parties appeared before Judge James Mason of the Blue Earth County District Court on January 30 for the purpose of obtaining a continuance of the unlawful detainer case until after the trial of the federal case. The Court continued the eviction trial to August, 1997, as a result of the then pending federal case. (Vol. II, p. 96).

The federal case went to trial in March, 1997. Cloverdale was denied damages by the federal court jury. Pioneer obtained a verdict on its counterclaim in the amount of \$264,000 against Cloverdale Foods, which judgment has not been paid to this date and was not paid at the time of the trial of this case. (Vol. I, p. 121).

Consent to Changes Required by USDA Regulations

Cloverdale's primary claim of breach of the Lease was Pioneer's failure to obtain prior written consent from Cloverdale for improvements to the building. A substantial component of Pioneer's defense to the unlawful detainer action was the implication of regulations from the United States Department of Agriculture (hereafter "USDA"). (A.045). The USDA plays an important role in regulatory oversight of Pioneer's Mankato operation. (Vol. II, pp. 25-28). In fact, the agent assigned to Pioneer's facility, Arlen Stegenga, has an office set aside for his use in the Mankato building. (Vol. II, p. 28).

Robert George, the President of Pioneer Snacks, testified that the USDA required certain alterations regarding the flow of meat products through the Pioneer plant in order to satisfy USDA regulations. (Vol. II, p. 71). The USDA regulations require a "one-way street" for the movement of meat products through the course of the manufacturing process. (Vol. II, p. 70-72). The regulations forbid the intersection of raw and cooked products during the flow of meat in the manufacturing and packaging process. (Vol. II, pp. 25-26; 35-36).

As a consequence of these regulations, Pioneer Snacks was required by the USDA to make certain changes in the flow of product through the Mankato building. (Vol. II, pp. 70-72). These requirements necessitated various improvements and changes with respect to doors, walls, and floor drains in the building. (Id.; Floor Plan of Plant - Trial Exhibit 14). Arlen Stegenga of the USDA testified that he required these changes to be made and that if Pioneer had not made these changes, it would have been in substantial noncompliance. (Vol. II, pp. 37-38; USDA Process Deficiency Reports-Trial Exhibits 15 & 16). In most circumstances, noncompliance leads to a closure of the noncomplying facility. (Vol. II, p. 26).

It is noteworthy that Cloverdale Foods makes no mention of the USDA regulations issue in the entirety of its appeal. Pioneer argued at the time of the trial, and Cloverdale admitted, that since the USDA required certain structural changes in the building, it would have been unreasonable for Cloverdale Foods to have denied the consent to such changes. (Vol. I, pp. 84-94). The lease agreement states that the landlord shall not unreasonably deny permission to make alterations, repairs, additions, or improvements to the building. (A.033). Thus, the issue with respect to the failure to obtain written consent to various changes was defeated by the evidence of USDA requirements.

Consent to Changes Known by Cloverdale

Cloverdale based its eviction action in part on the argument that Pioneer Snacks made changes to the facility without the written consent of Cloverdale. (A.026). However, Larry Huether, plant manager for Cloverdale, knew of the changes that were to be made to the building and did not object. (Vol. I, p. 149; Vol. II, pp. 79 & 116-17; Letter from Robert George to Don Russell, dated January 17, 1997 - Trial Exhibit 20). Furthermore, Robert George specifically listed the changes to the building that were necessary and required by the USDA (in a letter to Don Russell, President of Cloverdale). (Letter from Bob George to Don Russell, dated August 14, 1995 - Trial Exhibit 2). James Miller, Executive Vice President of Cloverdale Foods, responded to this letter and stated that it was the tenant's responsibility to make the majority of the changes listed in the letter from Robert George. (Letter from James Miller to Robert George, dated September 1, 1995 - Trial Exhibit 11).

James Miller also became aware of the various changes made to the Mankato plant at the deposition of Robert George, taken on April 24, 1996 in relation to the federal case. (Vol. I, pp. 104-07). James Miller and counsel for Cloverdale in this eviction action were present at this

deposition. (Vol. I, p. 104). Robert George testified at this deposition that many changes were made to the plant including "redoing walls, redoing doors, redoing floors, redoing ceilings, redoing walls, putting up glass board, painting, scraping off paint." (Vol. I, p. 106). Cloverdale, thus, knew of these changes eight months prior to the initiation of this eviction action.

Building Permits

The second breach alleged by Cloverdale Foods was for Pioneer's failure to obtain building permits for several of the improvements to the building. (Vol. II, pp. 98-99). Pioneer did not deny that in some circumstances proper permitting had not been obtained prior to commencing work at the building. (Vol. II, p. 121).

However, the most dramatic evidence on this issue was that Cloverdale Foods itself, as the owner of the building, had failed to obtain building permits when it performed substantial work at the Mankato facility. (Vol. I, pp. 78-83). James Miller of Cloverdale, the Executive Vice President in charge of facilities, admitted that Cloverdale Foods had not obtained building permits for several substantial pieces of work at the Mankato building during the same period of time it complains Pioneer Snacks had failed to obtain building permits from the City of Mankato for lesser work at the building. (Vol. I, pp. 79-82).

Pioneer Snacks was never cited by the City for failing to obtain building permits. (Vol. II, p. 98). Douglas Smith, a plumbing inspector for the City of Mankato testified that he did not give Pioneer a citation for failing to obtain permits. (Vol. I, p. 56). Mr. Smith further testified that he planned to continue to work with Pioneer so that the requirements of the City's building codes were satisfied. (Vol. I, p. 160). Jack Herrely, building inspector for the City of Mankato, testified that none of contractor work performed at the building for Pioneer was substandard and that Pioneer had complied with all of the City's requirements. (Vol. I, pp. 184 & 186). Pioneer

obtained the necessary building permits for the construction required by the USDA regulations and agreed to bring the building into compliance with the building codes with regard to any remaining problems. (Vol. II, p. 98).

Retaliation

This eviction case was commenced by Cloverdale for the purpose of trial strategy and leverage against Pioneer in connection with the settlement conference which was being conducted in connection with the federal case in January, 1997. (Vol. II, pp. 95-96; Minn. Stat. § 566.03, Subd. 2). The jury found that Cloverdale's eviction action was initiated in retaliation for Pioneer's assertion of its contractual rights in the ongoing federal case. (A.097).

Cloverdale's default notice letter dated January 9, 1997, was delivered to Pioneer shortly before the date of the settlement conference in the federal case. (Default Notice Letter, dated January 9, 1997 - Trial Exhibit 5). The settlement conference was scheduled for January 29, 1997. (Vol. I, pp. 102-03; Vol. II, p. 95). The eviction summons was served on Pioneer Snacks on January 20, 1997, just ten days prior to the settlement conference. (A.027). The original trial date of the eviction case was January 30, 1997. The proximity of these dates to the date of the settlement conference illustrates that that Cloverdale's actions were taken to put pressure on Pioneer in the federal case. (Vol. II, pp. 95-96).

Further illustrating the retaliatory motive, the terms of the lease between the parties provided an option for Pioneer Snacks to renew the lease or purchase the building. (A.030 - A.031). By claiming that Pioneer was in default under the lease, Cloverdale was under no obligation to honor either option. Therefore, the commencement of the unlawful detainer action prevented Pioneer from buying the Mankato facility as part of a settlement. Robert George

testified that "hardly anything" was discussed at the settlement conference because the relationship between the parties was "hostile" based, in part, upon the eviction action. (Vol. II, p. 96).

I. STANDARD OF REVIEW.

An appeal of judgment based on a jury verdict requires that this court consider all evidence in the light most favorable to the prevailing party. High Forest Truck Stop, Inc. v. LaCrosse Petroleum Equip. Co., 364 N.W.2d 810, 812 (Minn. Ct. App. 1985). The jury verdict must be sustained unless it is manifestly and palpably contrary to the evidence. Id. Special verdicts, like the one in this case, are "seldom overturned." Id. In reviewing the evidence, this court need only find sufficient, competent evidence reasonably tending to support and sustain the jury's finding. Krengel v. Midwest Automatic Photo, Inc., 203 N.W.2d 841, 844 (Minn. 1973). This court gives great deference to a jury's verdict where it is supported by sufficient evidence. Szyplinski v. Midwest Mobile Home Supply Co., 241 N.W. 2d 306, 309 (1976). Here, the trial record reflects more than sufficient evidence to sustain the jury's verdict, and cannot be disturbed.

II. THE JURY CORRECTLY DETERMINED THAT THERE WAS NO BREACH OF THE LEASE.

Pioneer Snacks' first defense against the unlawful detainer action was that any alleged violations were not breaches of the Lease. Pioneer Snacks produced evidence that: 1) Cloverdale had knowledge of Pioneer's planned improvements and had raised no objections; 2) that the improvements were required by the USDA; 3) that Cloverdale itself had not obtained building permits for improvements when made repairs as owner; and 4) no penalties were imposed upon Pioneer by the City of Mankato for failing to obtain permits. Accordingly, the jury's determination on the Special Verdict form that Pioneer Snacks had not breached the Lease was well-supported by the evidence, and cannot be disturbed. Szyplinski v. Midwest Mobile Home Supply Co., 241 N.W.2d at 309.

Cloverdale contends on appeal that the district court failed to include a jury instruction regarding "Material Breach." Appellant's Brief, at 5. However, the district court read to the jury, Jury Instruction 627 of the Jury Instructions Guidelines, entitled "Contract-Breach." (A.079). This instruction includes the concept of material breach. Id. Specifically, the instruction reads that a breach is "a failure without legal justification to perform all or any substantial part of what is promised ...[.]" Id. The jury was therefore properly instructed on materiality.

A. The Jury Correctly Determined That Pioneer Snacks Had Not Breached The Lease As To Consent.

The Lease provision requiring prior written consent for improvements to the building also prohibited Cloverdale from unreasonably withholding that consent. The jury determined that Pioneer Snacks did not breach the Lease. The jury verdict cannot now be disturbed unless, taking all of the trial evidence in a light most favorable to the prevailing party, no reasonable jury could have found in favor of the prevailing party. High Forest Truck Stop Inc. v. LaCrosse Petroleum Equip. Co., 364 N.W.2d at 812. Cloverdale could not have prevailed at trial unless it showed

that, not only did Pioneer Snacks fail to obtain consent for the improvements, but that Cloverdale would have been reasonable in refusing. Absent such a showing, Cloverdale's claim was a mere tempest in a teapot, and as a matter of law could not justify evicting Pioneer Snacks. Here, the evidence amply supported the jury's conclusion that Pioneer Snacks did not breach the Lease.

1. Cloverdale Failed To Demonstrate That It Would Have Been Reasonable In Refusing Consent.

The Lease terms specifically provided that Cloverdale could not refuse consent for any improvement if such refusal were unreasonable¹. Cloverdale could not, as it argues throughout its appeal, simply "prove that the allegations contained in the Complaint were true" and then, as if by magic, obtain a Writ of Restitution. According to one of the cases relied upon by Cloverdale, MAC-DU Properties v. LaBresh, the terms of the Lease, not just the allegations in the complaint, provide the applicable terms for determining whether or not a default has occurred. 392 N.W.2d 315, 318 (Minn. App. 1986). In MAC-DU Properties, the court held that the landlord was not entitled to restitution based on unpaid rent where another lease term created an additional condition precedent to finding a violation. Id. There, as here, the landlord's ability to "prove" an initial fact did not conclusively prove default. Id. The Court looked further at the landlord's obligations under the lease and concluded that the landlord's allegations, even if true, did not relieve the landlord from adhering to the lease requirements. Accordingly, it is insufficient for Cloverdale to

¹ The actual language of the Lease provides:

ALTERATIONS: 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 be withheld). . [.]

Lease Agreement, ¶ 13 (emphasis added).

simply "prove that the allegations in the Complaint are true" by demonstrating that improvements were completed without written consent; it had also to show that its refusal would have been reasonable.

The trial court instructed the jury on the issue of reasonable consent. (Vol. II, p. 213). Cloverdale has not assigned this instruction as an error on appeal. Where, as here, an issue is not argued in an appellant's brief, it is deemed waived. Melina v. Chaplin, 327 N.W.2d 19, 20 (Minn. 1982). Cloverdale cannot argue that it should not have been required to prove that it would have been reasonable in refusing consent.

2. Pioneer Snacks Presented Ample Evidence That The Improvements Were Reasonable, And That Cloverdale Had Received Advance Notice Of Them.

Pioneer Snacks produced evidence that many of the improvements it made to the Mankato facility were installed in order to comply with the requirements of the USDA. (Vol. II, pp. 25-26; 35-36; 70-72). Arlen Stegenga, an inspector employed by the USDA, testified that without many of the improvements made by Pioneer Snacks, the facility would have had to cease operations. (Vol. II, pp. 37-38; USDA Process Deficiency Reports-Trial Exhibits 15 & 16). Cloverdale did not present evidence that these improvements were unreasonable, and fails to address both Mr. Stegenga's testimony and the USDA requirements in its appeal.

Testimony from witnesses also indicated that Cloverdale representatives had knowledge of the proposed improvements as much as six, and possibly nine months prior to Cloverdale commencing this action. (Vol. I, p. 149; Vol. II, pp. 79 & 116-17; Trial Exhibits 2, 11 & 20). Indeed, Pioneer Snacks introduced evidence that it requested that Cloverdale perform some of the improvements at its expense as required under paragraph 8 of the Lease, and that Cloverdale had refused to perform the work, because it considered the work to be Pioneer's responsibility. (Trial Exhibits 2 & 11). Further, Cloverdale was aware of various changes made to the Mankato plant

at the deposition of Robert George taken in April, 1996, eight months prior to the start of the eviction action. (Vol. I, pp. 104-07). Both James Miller of Cloverdale and counsel for Cloverdale were present at this deposition. (Vol. I, p. 104). Mr. George testified that walls, floors, ceilings and doors in the plant were modified. (Vol. I, p. 106). Taking the evidence in a light most favorable to Pioneer Snacks, a jury could reasonably have concluded either that: 1) Cloverdale did not prove that Pioneer Snacks had failed to obtain consent to undertake certain improvements; or 2) that if Pioneer Snacks had not obtained consent, that such a failure was not a breach. Accordingly, the jury's verdict cannot be disturbed.

B. The Jury Correctly Determined That Pioneer Snacks Had Not Breached The Lease As To Obtaining Building Permits.

Cloverdale claimed in its demand letter, Trial Exhibit 5, and later at trial that the failure of Pioneer Snacks to obtain building permits was a breach of the Lease. Pioneer Snacks demonstrated that the permit issue was not a breach of the Lease, since: 1) the City of Mankato issued a permit after work was completed and imposed no civil penalty; 2) that the completed work did not deviate from applicable building codes; and 3) that Cloverdale had also failed to obtain building permits when it undertook alterations to the Mankato facility. From this evidence, a jury could reasonably conclude that any perceived failure by Pioneer Snacks to obtain a building permit was not a breach of the Lease.

Pioneer Snacks introduced evidence that Cloverdale had not obtained permits to undertake alterations to the Mankato facility, even though they were required by law. (Vol. I, pp. 78-83). Cloverdale nevertheless sought to argue that, even though it failed to obtain permits itself, that it considered Pioneer Snack's failure to have been a breach of the lease. In light of the uncontroverted testimony that the city building inspector considered Pioneer's construction to be within code, and the city's decision not to impose any penalties, it was reasonable for the jury to

decide that Pioneer Snacks' initial failure to obtain a building permit was not a "failure without legal justification to perform all or any substantial part of" what was promised in the Lease. Cloverdale's own failure to obtain building permits is highly persuasive evidence that it did not consider permits to have been of importance. Accordingly, the jury's apparent conclusion that Cloverdale had failed to meet its burden of proving a breach is well supported by the trial evidence, and should remain intact.

III. THE TRIAL COURT CORRECTLY DETERMINED THAT THE RETALIATORY EVICTION STATUTE APPLIED TO THIS CASE.

The trial court correctly applied the retaliatory eviction statute to this case. The plain meaning of the statute indicates that the defense applies to any tenant exercising rights under any lease, contract or law. Minn. Stat. § 566.03, Subd. 2(1). The statute's broad language does not limit its application to residential tenants evicted for reporting housing code violations. According to canons of construction, all of the language of the statute must be given effect. Moreover, the legislative intent favors application of the plain meaning of the statute to commercial leases.

A. The Retaliatory Eviction Statute Applies In All Unlawful Detainer Actions.

The plain meaning of the retaliatory eviction defense indicates that the defense applies to both residential and commercial leases. Nothing in the statute indicates that it is intended to apply to exclusively the residential setting. The relevant language of the statute states:

Subd. 2. 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 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 of the United States; or

(2) The alleged termination was intended in whole or part as a penalty for the defendant's good faith report to a governmental authority of the plaintiff's violation of any health, safety, housing or building codes or ordinances.

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

Minn. Stat. § 566.03 (1993).

Pioneer Snacks defended this action under clause (1) of subdivision 2. At the time this action was brought, and for two years prior, Pioneer Snacks and Cloverdale were involved in a contentious federal court action that involved claims and counterclaims for breach of contract. (Vol. I, pp. 101-01; 120-21; Vol. II, pp. 95-96). Although Cloverdale had been aware of improvements being made at the Mankato facility six months earlier, it brought this unlawful detainer action less than three weeks before the federal trial, and one week prior to a court-ordered settlement conference. (Trial Exhibit 5; Vol. II, pp. 95-96). Cloverdale's apparent purpose in bringing the unlawful detainer was to create additional pressure preceding the settlement conference and also to "retaliate" against Pioneer Snacks for seeking to enforce its contractual rights.²

Pioneer Snacks' attempt to secure its rights under the contract between the two parties and under the laws of Minnesota are those rights specifically covered under clause (1) of the retaliatory

² The Lease Agreement provided that the landlord did not waive its right to declare a default if it failed to declare a default immediately upon the occurrence of the default. See Appellant's Appendix, A.030 - A.031 -- Lease Agreement at ¶ 23. Therefore, Cloverdale could easily have brought this action after the Federal trial ended. Any claim to the contrary by Cloverdale would be disingenuous.

eviction statute. The statute provides that any "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 of the United States." Minn. Stat. § 566.03, Subd. 2 (emphasis added). Pioneer has asserted its contractual and legal rights in order to recover on a breach of contract action. The trial court therefore properly applied the statute to this case.

1. The Language Of Minn. Stat. § 566.03, Subd. 2 Indicates That The Legislature Intended That The Statute Apply To Commercial Lease Disputes.

The language of the retaliatory eviction statute is clear and unambiguous. It states that "an attempt 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 of the United States" is protected activity. Minn. Stat. § 566.03, subd. 2(1). "When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat. § 645.16; Tuma v. Commissioner of Economic Sec., 386 N.W.2d 702, 706 (Minn. 1986); Ullom v. Independent School District No. 112, 515 N.W.2d 615, 617 (Minn. Ct. App. 1994). Thus, this Court may not construe or "read into" statutory language that is precise and unambiguous. Graber v. Peter Lametti Construction Co., 197 N.W.2d 443, 447 (Minn. 1972); State v. West, 173 N.W.2d 468 (stating that "[i]t is not for the courts to make, amend, or change the statutory law, but only to apply it.>").

Similarly, extrinsic aids to determine legislative intent also cannot be used if the statute is unambiguous. Feick v. State Farm Mut. Auto Ins. Co., 307 N.W.2d 772, 775 (Minn. 1981). As noted in Feick, "judicial construction is unnecessary and improper." Id. This Court need only look to the words of the statute and apply them to the facts of this case. Arguments regarding public policy or legislative intent should not sway this Court because the language of the statute

unequivocally applies to a tenant who exercises a right under any contract, lease or law. Even so, the intent of the legislature favors applying this statute to commercial leases.

a. Appellant's Interpretation Of The Retaliatory Eviction Statute Is Unreasonable And Would Render Parts Of The Statute Meaningless.

The retaliatory eviction statute applies to this case because both clauses of section 566.03, subdivision 2 must be given effect. Each clause concerns different subjects and grants tenants different rights. The first clause is very broad and protects a wide range of tenant activity. The second clause relates only to reports of health, safety, housing or building codes or ordinances. Therefore, Cloverdale's argument that the retaliatory eviction defense should only be applied to residential lease disputes is unsupported because the legislature has plainly provided for the statute's application to situations other than residential lease disputes.³

The legislature intentionally divided the clause regarding a report of a housing code violation from the broader clause that pertains to the exercise of any contractual or legal right. These clauses are separate and distinct, and each must be given effect. Minn. Stat. § 645.17; Feick v. State Farm Mut. Auto Ins. Co., 307 N.W.2d 772, 775 (Minn. 1981). It would be nonsensical to conclude that both clauses of subdivision 2 apply to the same circumstances. Such an interpretation renders clause (1) surplus language a result that is to be avoided. Cohen v. Gould, 225 N.W. 435, 438 (Minn. 1929). Thus, the retaliatory eviction defense can be used in circumstances other than where a tenant reports a housing code violation.

Because the clauses can be applied without conflict, both must be given effect. Country Joe, Inc. v. City of Eagan, 548 N.W.2d 281, 284 (Minn. Ct. App. 1996), *aff'd* 560 N.W.2d 681. It is presumed that the Legislature intends an entire statute to be effective and certain. Minn. Stat.

³ The trial court in Duluth Ready Mix Concrete, Inc. v. City of Duluth, allowed an application of the retaliatory eviction statute to a commercial lease. Nos. C2-94-1094, 94-1095, 1995 WL 1470 (Minn. Ct. App. Jan. 3, 1995).

§ 645.17(2); Beltrami County v. Hennepin County, 119 N.W.2d 25, 29 (Minn. 1963). It is long-standing canon of statutory construction that a statute must be construed so as to avoid rendering part of it meaningless. Cohen v. Gould, 225 N.W. at 438. Where a particular interpretation of a statute would render a sentence surplus language, and would therefore have the effect of amending the statute by striking the sentence, the court reject that interpretation. Id.

Accepting Appellant's argument that the retaliatory eviction statute only apply to residential leases would obliterate clause (1). If the legislature wanted only to protect tenants who have reported housing code violations from eviction, then inclusion of clause (1) would be pointless, a result that is contrary to the intent of the Legislature, since it is presumed that the Legislature intends an entire statute to be effective. The trial court properly applied the retaliatory eviction statute to this commercial lease dispute.

b. Cloverdale's Reliance On Norton Is Misplaced.

The Minnesota Supreme Court, in University Community Properties, Inc. v. Norton, held that a tenant's "withholding rent under Minn. Stat. § 566.03 is restricted to situations where the landlord has increased the rent or decreased the services as a penalty for the tenant's act of reporting a violation of any health, safety, housing, or building code or ordinance." 246 N.W.2d 858, 862 (Minn. 1976) (emphasis added). Norton involved two unlawful detainer actions where the tenants withheld rent, a situation covered by Minn. Stat. § 566.03, Subd. 3. Subdivision 3 provides that:

In any proceeding for the restitution of premises upon the ground of nonpayment of rent, it shall be a defense thereto if the tenant establishes by a preponderance of the evidence that the plaintiff increased the tenant's rent or decreased the services as a penalty in whole or part for any lawful act of the tenant described in subdivision 2 ...

Minn. Stat. § 566.03, Subd. 3 (emphasis added).

Cloverdale cites Norton for the proposition that the Minnesota Supreme Court has “urged the restriction of the application of defenses under Minn. Stat. § 566.03 to situations where the tenant has reported a violation of a housing or safety codes.” Appellant’s Brief, at 11. This is an incorrect reading of the holding in Norton. The Norton case did not implicate the retaliatory eviction provisions under subdivision 2, but rather focused exclusively on subdivision 3. Id. at 862. Subdivision 2 of the statute gives tenants a defense to an eviction action where either the tenant has allegedly breached the lease or failed to pay rent and is the subdivision implicated in the case at hand. Subdivision 3 deals with defenses for non-payment of rent. Therefore, the distinction between the two subdivisions is clear. Cloverdale’s contention that the Minnesota Supreme Court has restricted the scope of the subdivision 2 is incorrect, and should be disregarded.

2. Even If The Legislative Intent Is Examined, The Intent And Purpose Of The Retaliatory Eviction Statute Requires That The Defense Be Applied In This Case.

While legislative intent need not be examined if statutory language is unambiguous, here it illustrates that Minn. Stat. § 566.03, Subd. 2 is applicable to this case. There is little legislative commentary on the enactment of Minn. Stat. § 566.03, subd. 2⁴; however, the legislative intent and judicial interpretation that can be determined supports the applicability the defense to a commercial lease dispute.

The limited legislative history that is available with regard to this statute indicates that the legislature intended the retaliatory eviction defense to protect a broad range of rights. Senator Nicholas Coleman, an author of Minn. Stat. § 566.03, subd. 2., during a Senate Judicial Committee hearing held on April 12, 1971, stated:

⁴ The retaliatory eviction statute was first enacted in 1971. At that time, legislative hearings were not regularly taped. Thus, it is difficult to ascertain the complete purpose of the statute.

If at some later date, the tenant should claim that he is being thrown out for trying to secure some particular right, and it is beyond 90 days, then the language in line 14 says that there has to be a preponderance of evidence that the plaintiff increased the tenant's rent or decreased the services as a penalty for any lawful act of the tenant or so on.

Hearing on S.F. 503 Before the Senate Judiciary Comm. (April 12, 1971). Thus, one of the authors of the statute specifically noted that actions other than reporting of a housing code violation is protected under the statute. Further, during this committee discussion on the retaliatory eviction statute, none of the senators made any mention that the defense should only be available to residential tenants. Id.

Appellant attempts to show what the legislature "reasoned" when it enacted the retaliatory eviction statute by quoting a law review comment that does not cite to any legislative history or comment. Appellants Brief, at 10 (citing Landlord-Tenant: Proving Motive in Retaliatory Eviction - Minnesota's Solution, 61 Minn. L. Rev. 523 (1977)). This law review comment fails to consider all of the provisions of the statute; rather, it focuses on how clause (2) of subdivision 2 allows tenants to utilize the retaliatory eviction statute where housing or safety code violations have been reported. The comment does not address the other broad range of rights that are protected under the statute. See Landlord-Tenant: Proving Motive in Retaliatory Eviction - Minnesota's Solution, 61 Minn. L. Rev. 523 (1977).

Judicial interpretation of section 566.03 also illustrates that the statute applies to commercial tenants who exercise any rights pursuant to a contract or protected by law. The court in Parkin v. Fitzgerald noted the broadness of the retaliatory eviction statute:

There are at least three important aspects of the allowed statutory defense: First, it encompasses a wide range of tenant activity, provided such activity

is undertaken in good faith for the purpose of enforcing contractual or statutory rights. Second it does not require an extraordinary burden of proof, but only the usual civil burden of proof—proof by a fair preponderance of the evidence. Third, recognizing the difficulties of proof of matters of motive and purpose, it aids the tenant with a presumption of retaliation which the landlord must rebut if the notice to quit was served within 90 days of the tenant's protected activity.

240 N.W.2d 829, 831-32 (Minn. 1976) (emphasis added). Most important to this case is the Parkin court's discussion on the broad and comprehensive rights of tenants that are protected. The statute "encompasses a wide range of tenant activity, provided such activity is undertaken in good faith for the purpose of enforcing contractual or statutory rights." Id. Pioneer Snacks' actions, to protect its rights under their contract and utilize the laws and rules of Minnesota, are exactly the types of activity that are protected under section 566.03. The legislature and the courts have indicated through the breadth of the statute and the broadness of the rights protected under it that the statute should be applied in varied circumstances. Therefore, the trial court did not err in concluding that the statute applied in this case.

B. Pioneer Snacks Presented Evidence That Supported A Finding of Retaliatory Eviction.

Cloverdale argues on appeal that even if the retaliatory eviction statute could be applied to this case, that Pioneer presented no evidence of retaliation, and that the district court improperly instructed the jury on the retaliatory eviction defense. The record supports neither contention.

Pioneer Snacks presented evidence that Cloverdale Foods brought this action on the eve of trial in the federal court action, and just days before a settlement conference before a federal magistrate. (Vol. I, pp. 102-03; Vol. II, pp. 95-96). The jury also heard that the parties had been involved in bitter litigation since 1994. (Id.; Vol. I, pp. 101-04; 120-21). These undisputed facts,

when coupled with the petty nature of the "defaults" claimed by Cloverdale, were more than sufficient evidence that the eviction action was retaliatory. Incredibly, Cloverdale ignores all of this evidence by making the sweeping statement that Pioneer Snacks presented no evidence that supported a finding of retaliation. (Appellant's Brief at 14, 15 & 17). The record suggests otherwise.

Cloverdale's claim that the court improperly instructed the jury as to the applicable burden of proof on retaliatory eviction is similarly unfounded. The court's instruction conveyed the essential meaning of the retaliatory eviction statute, and did not misstate the law. (A.213-A.214); Minn. Stat. § 566.03, Subd. 2. Accordingly, the jury's conclusion, that Cloverdale's attempt to evict Pioneer Snacks was retaliatory, should not be disturbed.

1. Pioneer Presented Evidence Amply Demonstrating Retaliatory Motive.

The jury heard testimony that this action was brought just as the parties were preparing to try a breach of contract matter that had been in litigation for three years, and just before the parties were to appear at a settlement conference before Magistrate Mason. (Vol. I, pp. 102-02; Vol. II, 95-96). The jury also learned that Larry Huether, Cloverdale's plant manager, had been notified of many of the improvements to the building months before the trial. (Vol. I, p. 149; Vol. II, pp. 79 & 116-17); Trial Exhibit 20). Indeed, it is undisputed that Pioneer Snacks requested in writing six months before Cloverdale sent its default letter, Trial Exhibit 5, that many improvements be made the building, and that Cloverdale refused to honor that request, stating that it was Pioneer's responsibility to undertake work. (Trial exhibits 2 & 11). Nevertheless, the work referred to in Pioneer's written request was a significant portion of the improvements for which Cloverdale claimed default. (Trial Exhibit 5).

Retaliatory motive was not only demonstrated by the unusually convenient timing of the eviction action. The rather flimsy factual basis for Cloverdale's claims also provided evidence of

retaliatory motive. Cloverdale could not have refused consent had refusal been unreasonable, and yet it argued that it was entitled to refuse USDA required improvements. (A.033). Cloverdale had notice of many of the improvements well in advance, and yet later cried foul for lack of notice. (Vol. I, pp. 104-07; 149; Vol. II, pp. 79 & 116-17; Trial Exhibits 2, 11 & 20). And Cloverdale claimed that failure to obtain permits was a default, when it had also failed to obtain permits for improvements to the plant. (Vol. I, pp. 78-83). A jury was certainly entitled to consider all of this evidence in deciding whether Cloverdale had an ulterior motive in bringing this action, and whether that motive was retaliatory. That Cloverdale would characterize all of this uncontroverted evidence as not supporting an inference of retaliatory motive is unfathomable. Based upon the evidence, the jury's verdict is soundly supported, and must stand.

2. The District Court Correctly Instructed The Jury On Retaliatory Eviction.

The District Court's instruction on the retaliatory eviction statute clearly and correctly stated the legal standard and burden of proof as prescribed by the statute. Under the retaliatory eviction statute, a landlord cannot bring an eviction case where it is:

[I]ntended 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. . .

Minn. Stat. § 566.03 Subd. 2 (1). The court instructed the jury that:

A Tenant cannot be evicted for a retaliatory purpose. A retaliatory purpose is one in which the Landlord penalizes the Tenant for protective [sic] activity by the Tenant. Protective [sic] activity includes a good faith attempt to secure or enforce rights under a lease or contract.

Transcript Vol. II, p. 213. There is nothing in this instruction that misstates the law. That the instruction does not recite the statute verbatim is of no consequence, as long it conveyed a "clear, fair, and correct understanding of the law." State Farm Ins. Co. v. Short, 449 N.W.2d

111, 114 (Minn. 1990). Indeed, even an instruction that is contrary to established law is not considered prejudicial if it is substantially correct in its charge to the jury. Pine Valley Meats v. Canal Capital Corp., 566 N.W.2d 357 (Minn. 1997). Here, the question isn't even close: the jury instruction followed the statute and conveyed its meaning correctly to the jury.

The District Court also conveyed the correct burden of proof the jury when it instructed the jury on the burden-shifting provision of Minn. Stat. § 566.03 Sub. 2, which states:

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

The district court instructed the jury that:

The law presumes that an eviction is retaliatory if a Landlord's first notice to the Tenant is within 90 days of the Tenants asserting its rights under a contract or local, state, or federal law. If you find that Pioneer asserted its rights in any way against Cloverdale within 90 days of Cloverdale's notice letter dated January 9, 1997, then you must presume that Cloverdale acted in retaliation. Cloverdale may rebut this presumption.

Transcript, Vol. II, pp. 213-214. Again, nothing in this instruction misstates the law. The language of the instruction is faithful to the statute. No prejudice accrued to Cloverdale as a result of this instruction. State Farm Ins. Co. v. Short, 449 N.W.2d at 114.

Cloverdale argues that the evidence did not establish that Pioneer "asserted its rights in any way" and that consequently, the verdict on retaliation is unsupported. The evidence was nevertheless sufficient for the jury to have found retaliatory motive even had it found that Pioneer had not "asserted its rights in any way" in the 90 days prior to the notice. Had the jury determined that the burden of proof remained with Pioneer, it could still have reasonably found retaliatory motive. Accordingly, Cloverdale is not entitled to reversal.

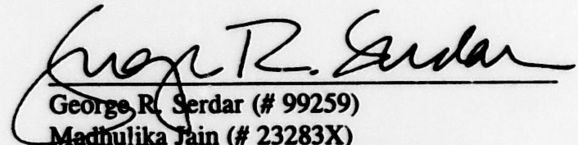
Cloverdale cannot demonstrate that the jury's determination was in error. The evidence at trial revealed Cloverdale's ulterior motives and glaring inconsistencies, and the jury took note. Cloverdale's appeal is without merit. Much of the proof developed by Pioneer Snacks remains uncontroverted and thoroughly justifies the jury's determination that Cloverdale's claim was groundless and asserted for no legitimate purpose. This Court should not dignify Cloverdale's continuing campaign to advance its retaliatory aim.

CONCLUSION

For the foregoing reasons, Pioneer Snacks respectfully requests that the judgment of the district court be affirmed.

Dated: January 21, 1998

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