IN THE IOWA SUPREME COURT

Supreme Court No. 21-0014

District Court No. LACV188050

DOLLY INVESTMENTS, LLC
Plaintiff-Appellant

vs.

MMG SIOUX CITY, LLC, DALE MAXFIELD and MAXFIELD MANAGEMENT GROUP, LLC,
Defendants-Appellees

APPEAL FROM THE IOWA DISTRICT COURT
FOR WOODBURY COUNTY
THE HONORABLE JEFFREY A. NEARY

APPELLEES' FINAL BRIEF

Philip S. Bubb
Brandon R. Underwood
FREDRIKSON & BYRON, P.A.
111 East Grand Avenue, Suite 301
Des Moines, Iowa 50309
Tel: (515) 242-8900
Fax: (515) 242-8950
Email: pbubb@fredlaw.com
bunderwood@fredlaw.com

ATTORNEYS FOR APPELLEES MMG SIOUX CITY, LLC, DALE MAXFIELD and MAXFIELD MANAGEMENT GROUP, LLC.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. DOLLY FAILED TO RAISE ITS CLAIM OF REPUDIATION BEFORE THE DISTRICT COURT. EVEN IF IT HAD, THE DISTRICT COURT IMPLICITLY REJECTED IT.

State v. Lange, 831 N.W.2d 844 (Iowa Ct. App. 2013).

Int. of Z.H., 947 N.W.2d 784 (Table), 2020 WL 2065949 (Iowa Ct. App. 2020).

Meier v. Senecaut, 641 N.W.2d 532 (Iowa 2002).

Vincent v. Four M Paper Corp., 589 N.W.2d 55 (Iowa 1999).

In re Det. of Matlock, 860 N.W.2d 898 (Iowa 2015).

Iowa R. App. P. 6.907.

Metro. Prop. & Cas. Ins. Co. v. Auto-Owners Mut. Ins. Co., 924 N.W.2d 833 (Iowa 2019).

Pippen v. State, 854 N.W.2d 1 (Iowa 2014).

Hendricks v. Great Plains Supply Co., 609 N.W.2d 486 (Iowa 2000).

Matter of Gauch's Estate, 308 N.W.2d 88 (Iowa 1981).

Restatement (Second) of Contracts § 250.

Pavone v. Kirke, 807 N.W.2d 828 (Iowa 2011).

II. THE PARTIES' LEASE ESTABLISHED A REMEDY FOR A FAILURE TO PAY RENT. THEREFORE, A FAILURE TO PAY RENT CANNOT EXCUSE DOLLY'S FURTHER PERFORMANCE UNDER THE LEASE.

State v. Lange, 831 N.W.2d 844 (Iowa Ct. App. 2013).

Iowa R. App. P. 6.907.

Alta Vista Props., LLC v. Mauer Vision Ctr., PC, 855 N.W.2d 722 (Iowa 2014).

Metro. Prop. & Cas. Ins. Co. v. Auto-Owners Mut. Ins. Co., 924 N.W.2d 833 (Iowa 2019).

Pippen v. State, 854 N.W.2d 1 (Iowa 2014).

Hendricks v. Great Plains Supply Co., 609 N.W.2d 486 (Iowa 2000).

Matter of Gauch's Estate, 308 N.W.2d 88 (Iowa 1981).

Iowa Fuels & Minerals, Inc. v. Iowa State Board of Regents, 471 N.W.2d 859 (Iowa 1991).

Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp., 266 N.W.2d 22, 27 (Iowa 1978).

III. THE DISTRICT COURT CORRECTLY FOUND THAT DOLLY BREACHED THE LEASE WHEN IT RETOOK THE PROPERTY WITHOUT PRIOR NOTICE TO MMG.

State v. Lange, 831 N.W.2d 844 (Iowa Ct. App. 2013).

Vincent v. Four M Paper Corp., 589 N.W.2d 55 (Iowa 1999).

In re Det. of Matlock, 860 N.W.2d 898 (Iowa 2015).

Iowa R. App. P. 6.907.

Alta Vista Props., LLC v. Mauer Vision Ctr., PC, 855 N.W.2d 722 (Iowa 2014).

Metro. Prop. & Cas. Ins. Co. v. Auto-Owners Mut. Ins. Co., 924 N.W.2d 833 (Iowa 2019).

Pippen v. State, 854 N.W.2d 1 (Iowa 2014).

Hendricks v. Great Plains Supply Co., 609 N.W.2d 486 (Iowa 2000).

ROUTING STATEMENT

This case should be routed to the Court of Appeals because it may be decided by applying existing legal principles. *See* Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

On August 23, 2019, Dolly Investments, LLC ("Dolly") filed its petition in the Iowa District Court for Woodbury County against MMG Sioux City, LLC, Dale Maxfield, and Maxfield Management Group, LLC (collectively, "MMG") alleging breach of a commercial lease for property located at 5230 Sergeant Road, Sioux City, Iowa.[1] MMG answered and raised an affirmative defense that Dolly committed a prior, material breach of the lease by wrongfully reentering the property without proper notice and a cure period.[2] MMG further brought a counterclaim for the fixtures, furniture, and equipment that Dolly wrongfully retained when it reentered the property.[3] Both parties' claims were tried in a bench trial before the Honorable Jeffrey A. Neary on September 1, 2020.[4]

On October 14, 2020, Judge Neary entered a Ruling on Petition and Counterclaims finding that MMG had breached the parties' lease and was liable to Dolly in the amount of $290,625.00, representing MMG's rent obligations through the date of trial.[5] The District Court also found Dolly

---

[1] App. pp. 2, 4.

[2] App. pp. 39–42.

[3] *Id.*

[4] Court Reporter Mem. and Certificate.

[5] App. p. 78.

liable for conversion of MMG's furniture, fixtures, and equipment in the amount of $108,828.75.[6] The District Court found MMG liable for Dolly's attorney fees.[7]

On October 28, 2020, MMG filed a motion to reconsider and amend the District Court's ruling under Rule 1.904(2).[8] MMG requested a finding that Dolly's breach of the parties' lease constituted a prior, material breach that excused MMG from subsequent liability under the lease agreement. Dolly resisted the motion, arguing that MMG's breach of the parties' lease agreement was the prior breach.[9]

On December 7, 2020, the District Court granted MMG's motion to reconsider and expressly found that Dolly committed a prior, material breach of the parties' lease that relieved MMG's obligations to pay rent thereafter.[10] The District Court reduced Dolly's judgment against MMG to $9,375.00, representing the amount of unpaid rent at the time of Dolly's breach. The District Court left undisturbed the remainder of its Ruling on Petition and Counterclaims.

---

[6] *Id.*

[7] App. p. 79.

[8] App. pp. 92–97.

[9] App. pp. 98–100.

[10] App. pp. 101–04.

Dolly filed its Notice of Appeal on January 4, 2021.[11]

[11] App. p. 107.

STATEMENT OF THE FACTS

MMG owns and operates Golden Corral restaurants throughout the United States.[12] MMG's owner, Dale Maxfield, is a former Golden Corral executive who worked for Golden Corral from 2006 through 2014 and managed sixty-five restaurant locations.[13] In 2014, MMG became a Golden Corral franchisee and operated five restaurant locations itself.[14] Mr. Maxfield testified that he had been responsible for opening and closing "hundreds" of Golden Corral locations during his career.[15]

In 2016, MMG leased property in Sioux City, Iowa from Dolly's predecessor-in-interest to operate a Golden Corral restaurant.[16] The lease contained a fifteen-year term and contemplated two, five-year extensions.[17] MMG was obligated to pay monthly rent in the amount of $18,750.00, along with property taxes, insurance, and utilities.[18] In December of 2016, Dolly purchased the property and became MMG's landlord.[19]

---

[12] App. p. 212, Trial Tr. at 104:17-22.

[13] *Id.*

[14] App. pp. 212–14, Trial Tr. at 104:24-106:1.

[15] App. p. 214, Trial Tr. at 106:5-24.

[16] App. pp. 291–307, 308–09.

[17] *Id.*

[18] *Id.*

[19] App. pp. 311–13.

From 2016 through spring of 2019, MMG operated its restaurant at the property without incident and paid all of its rent and tax obligations. In early 2019, MMG's restaurant began to struggle financially, and MMG's owner contacted Dolly to request modifying the rent obligation to help MMG continue to operate its restaurant.[20] MMG also sought other Golden Corral franchisees who might be interested in operating the restaurant and subleasing the space from MMG.[21] Dale Maxfield spoke with at least four potential franchisees to identify one willing to assume the lease.[22]

On June 1, 2019, MMG paid only half the rent due for the month of June ($9,375.00) while it continued to negotiate with Dolly and seek subtenants interested in operating the franchise.[23] This was the first and only time MMG had failed to make a required rent payment under its lease. Dolly objected to the partial rent, and MMG responded that it did not have the money on-hand to pay the remaining $9,375.00 it owed.[24]

To minimize operating costs while MMG continued to seek a subtenant for the property, MMG temporarily closed the restaurant, removed all

---

[20] App. p. 215, Trial Tr. at 107:19-23.

[21] App. pp. 215–16, Trial Tr. at 107:19-108:8.

[22] App. p. 221, Trial Tr. at 113:10-25.

[23] App. p. 3.

[24] App. pp. 128–29, Trial Tr. at 20:19-21:9.

perishable food, and hung a sign on the front door indicating that the restaurant was "Closed for Renovation."[25] Dale Maxfield testified that he had opened and closed various Golden Corral restaurants during his career, and that MMG deliberately left all of the kitchen equipment in place to make the space more appealing to potential franchisees.[26] MMG also kept all utilities connected and paid, including the restaurant's monitored security system.[27] MMG continued to seek a subtenant to assume the lease until Dolly reentered the property and changed the locks, making it impossible for MMG to continue marketing the property to potential tenants.[28]

Article 13 of the Parties' lease directly addresses the process Dolly was obligated to follow once MMG failed to pay the full month's rent.[29] It required Dolly to provide MMG with written notice of the breach and thereafter provide MMG with fifteen days to cure it.[30] The lease further defined "written notice" to be achieved only by (1) U.S. Mail, registered or certified; (2) overnight mail, which provides delivery confirmation; or (3) personal

---

[25] App. p. 224, Trial Tr. at 116:15-17.

[26] App. p. 227, Trial Tr. at 119:9-20.

[27] App. p. 226, Trial Tr. at 118:4-7.

[28] App. p. 231, Trial Tr. at 123:1-22.

[29] App. pp. 298–99, Art. 13.

[30] *Id.*

delivery.[31] This required notice and cure period were necessary prerequisites before Dolly was allowed to pursue remedies prescribed by Article 13(a) of the lease, which included Dolly's right to reenter the property and expel MMG.[32]

On June 25, 2019, Dolly's owner, Leon Reingold, traveled to Sioux City and retook possession of the restaurant.[33] Mr. Reingold testified that he arrived onsite to discover that the building was locked, all utilities were still connected and paid, and that all of MMG's restaurant equipment remained inside the building.[34] Mr. Reingold thereafter hired a locksmith to enter the restaurant without providing any notice to MMG (either written or oral) and changed the locks to the building to exclude MMG from reentering.[35] His visit was so abrupt, in fact, that Mr. Reingold triggered the building's monitored surveillance system, and the alarm company contacted Sioux City Police and MMG to report the break-in.[36]

---

[31] App. p. 302, at Art. 23.

[32] App. p. 298, at Art. 13(1).

[33] App. p. 136, Trial Tr. at 28:1-6.

[34] App. p. 123, Trial Tr. at 15:15-29:11.

[35] App. pp. 157–58, Trial Tr. at 49:11-50:2.

[36] App. pp. 222–23, Trial Tr. at 114:9-115:1.

Mr. Reingold admitted at trial that he did not provide the required written notice to MMG before changing the building's locks, and that he refused to allow MMG to reenter the building.[37]

Dolly's decision to change the locks to exclude MMG from the building effectively ended MMG's ability to market the property to potential tenants, its ability to remove its furniture, fixtures, and restaurant equipment remaining in the property, or to continue its efforts to resolve its dispute with Dolly.[38]

Dolly did not send the required, written notice of default to MMG until July 3, 2019 – more than a week after it retook the property and changed its locks.[39] Dolly filed this action on August 23, 2019.[40]

---

[37] App. pp. 161–62, Trial Tr. at 53:20-54:16.

[38] App. p. 231, Trial Tr. at 123:1-22.

[39] App. p. 162, Trial Tr. at 54:7-16; App. 314–15.

[40] App. pp. 1–7.

ARGUMENT

I. Dolly Failed to Raise its Claim of Repudiation Before the District Court. Even if it had, the District Court Implicitly Rejected it.

A. Issue Preservation.

Dolly failed to preserve error on its repudiation claim. First, it did not preserve error by filing its appeal notice. "'While this is a common statement in briefs, it is erroneous, for the notice of appeal has nothing to do with error preservation.'" *State v. Lange*, 831 N.W.2d 844, 846 (Iowa Ct. App. 2013) (citation omitted); *see also Int. of Z.H.*, 947 N.W.2d 784 (Table), 2020 WL 2065949, at *1 n.2 (Iowa Ct. App. 2020).

Nor did Dolly plead or argue in the District Court that MMG repudiated the parties' lease. Dolly failed to raise this argument in its pretrial filings, did not mention the concept of "repudiation" or that term at trial, and did not argue that MMG had repudiated the parties' lease in response to MMG's reconsideration motion.

Instead, in resisting MMG's reconsideration motion and throughout trial, Dolly contended exclusively that MMG "[was] the first [to] materially breach the contract when [it] failed to make timely rent payments."[41] Because Dolly deprived the District Court of the first chance to "consider" its

[41] App. pp. 98–99, ¶ 4.

repudiation claim and "pass upon it," *Meier v. Senecaut*, 641 N.W.2d 532, 541 (Iowa 2002), this Court should not consider this argument for the first time on appeal, *see Vincent v. Four M Paper Corp.*, 589 N.W.2d 55, 64 (Iowa 1999) ("We will not address an argument which the district court did not have an opportunity to consider."); *In re Det. of Matlock*, 860 N.W.2d 898, 910 (Iowa 2015) ("'[I]t is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider.'" (citation omitted)).

B. Standard of Review.

This Court reviews the District Court's ruling granting MMG's reconsideration motion for correction of errors at law. *See* Iowa R. App. P. 6.907. Under that standard, the District Court's fact findings are binding if supported by substantial evidence. *See Metro. Prop. & Cas. Ins. Co. v. Auto-Owners Mut. Ins. Co.*, 924 N.W.2d 833, 839 (Iowa 2019) ("The district court's factual findings have the effect of a special verdict and are binding on us if supported by substantial evidence."). This Court views the evidence "in the light most favorable to upholding the trial court's judgment." *Pippen v. State*, 854 N.W.2d 1, 8 (Iowa 2014). It must also "construe the district court's findings broadly and liberally," and it may not "weigh[] the evidence or the credibility of the witnesses." *Hendricks v. Great Plains Supply Co.*, 609

N.W.2d 486, 490 (Iowa 2000). In the end, "when a trial court finds the facts against the party having the burden of persuasion, [this Court] reverse[s] on the facts only if that party proved [its] case as a matter of law." *Matter of Gauch's Estate*, 308 N.W.2d 88, 91 (Iowa 1981).

C. Argument.

Dolly never raised its repudiation claim below, and therefore the District Court did not expressly address it. The District Court's order, however, contains several findings of fact and conclusions of law flatly inconsistent with Dolly's claim.

During discovery, at trial, and in post-trial briefing, Dolly asserted that the lease permitted it to retake the property without written notice or providing a cure period if Dolly perceived an "emergency."[42] Dolly attempted to justify this claimed "emergency" by citing all of the testimony that it has now repackaged as a repudiation claim. The District Court recited that testimony and concluded,

> None of these factors individually, nor collectively, create an emergency that would justify an entry without prior notice to MMG. None of these factors individually or collectively justify the changing of the building locks and limiting MMG's access to the property prior

[42] App. p. 58.

to the notice of the right to cure being sent to MMG pursuant to the lease terms.[43]

Following this conclusion, the District Court found that Dolly "admitted at trial" that it had breached the lease by failing to provide the required written notice and cure period required under the lease before it retook the property. That conclusion implicitly rejects Dolly's newfound claim of repudiation.

To constitute a repudiation under Iowa law, MMG's "language must be sufficiently positive to be reasonably interpreted to mean that [it] will not or cannot perform." *Restatement (Second) of Contracts* § 250 (adopted by *Pavone v. Kirke*, 807 N.W.2d 828, 833 (Iowa 2011)). "Mere expression of doubt as to his willingness or ability to perform is not enough to constitute a repudiation…" *Id.*

Dolly does not point to any one particular act or communication constituting MMG's alleged repudiation and cannot identify the date of that alleged repudiation. Instead, Dolly alleges that MMG's actions "when taken together, were sufficiently positive to show that MMG could not or would not perform under the lease agreement."[44]

---

[43] App. pp. 74–75.

[44] Appellant's Proof Brief, pg. 19.

But the District Court, by implication, found that MMG's communications to Dolly did not constitute a repudiation of the lease. MMG never communicated to Dolly that it considered the lease to be terminated. MMG never communicated to Dolly that it would never be able to pay rent, or that it was unwilling or unable to pay the rent within the required cure period. MMG simply communicated that it was unable to pay the full month's rent on June 1, 2019, and that MMG was seeking options to allow it to perform its obligations under the lease.[45]

Following its partial payment of rent in June 2019, MMG continued to identify and approach Golden Corral franchisees who could sublease the space and assume MMG's obligations under its lease.[46] The parties' lease expressly allowed MMG to secure such a subtenant even without Dolly's consent.[47] MMG also continued to pay for all utilities to remain active for the building, including its monitored security system, and MMG left all restaurant equipment in the building to make it more appealing to potential subtenants.[48] Moreover, the District Court held that Dolly's wrongful reentry and exclusion

[45] App. p. 218, Trial Tr. at 110:6-19.

[46] App. p. 231, Trial Tr. at 123:1-4.

[47] App. pp. 267–68, Trial Tr. at 159:23-160:12; App. pp. 308–09.

[48] App. p. 269, Trial Tr. at 161:8-20; App. p. 226, Trial Tr. at 118:4-7.

of MMG from the building "deprived MMG of its opportunity to cure its late rent payment – or engage in a discussion with Dolly about a mutually agreeable solution to their dispute – within the 15-period required by the Lease."[49] This evidence is wholly inconsistent with Dolly's new claim that MMG considered the lease terminated.

This testimony constitutes substantial evidence supporting the District Court's implicit finding that MMG did not repudiate the lease. And the District Court's implicit finding is clear because the District Court found that Dolly subsequently breached the lease when it wrongfully reentered the property.

II. The Parties' Lease Established a Remedy for a Failure to Pay Rent. Therefore, a Failure to Pay Rent Cannot Excuse Dolly's Further Performance Under the Lease.

A. Issue Preservation.

Dolly did not preserve error by filing its notice of appeal. *See Lange*, 831 N.W.2d at 846. Dolly did however preserve error to challenge the District Court's ruling granting MMG's reconsideration motion on the basis of prior-material breach by resisting that motion.

[49] App. pp. 75–76.

B. Standard of Review.

This Court reviews the District Court's ruling granting MMG's reconsideration motion for correction of errors at law. *See* Iowa R. App. P. 6.907. Contract interpretation is a legal question where, as here, it does not turn on extrinsic evidence. *See Alta Vista Props., LLC v. Mauer Vision Ctr., PC*, 855 N.W.2d 722, 726 (Iowa 2014). The District Court's fact findings are binding if supported by substantial evidence. *See Metro. Prop. & Cas. Ins.*, 924 N.W.2d at 839 (Iowa 2019). This Court views the evidence "in the light most favorable to upholding the trial court's judgment." *Pippen*, 854 N.W.2d at 8. It must also "construe the district court's findings broadly and liberally," and it may not "weigh[] the evidence or the credibility of the witnesses." *Hendricks*, 609 N.W.2d at 490. In the end, "when a trial court finds the facts against the party having the burden of persuasion, [this Court] reverse[s] on the facts only if that party proved [its] case as a matter of law." *Gauch's Estate*, 308 N.W.2d at 91.

C. Argument.

Dolly further contends that MMG first breached the lease when it made only a partial payment of rent in June 2019 and, therefore, MMG's alleged breach excused Dolly's further obligations under the lease. The District Court expressly rejected this strained interpretation of the lease because it is contrary

to the lease's clear language and would render meaningless the required, written notice and cure period provided by Article 13.

In so holding, the District Court relied upon the clear language of the lease, which specifies the required process Dolly must follow in response to MMG's failure to pay full rent in June 2019:

> In the event of a breach by Tenant in the payment of any sum due and payable to Landlord hereunder, if the breach is not cured within fifteen (15) days after Tenant's receipt of written notice thereof from Landlord… then, such breach shall constitute a "default" under this Lease and, at Landlord's option, and without limiting Landlord in the exercise of any other rights or remedies which Landlord may have at law or in equity by reason of such default, Landlord may:…

The District Court correctly found that Article 13 of the lease provides the only method "for Dolly to reenter the premises during the Lease term and exclude MMG by changing the locks."[50] The District Court found that Dolly's rights under Article 13 had as an expressed condition precedent the required, written notice and cure period. Therefore, MMG's failure to pay the full month's rent in June 2019 "would result in a default under the lease provided if it was not cured after MMG's receipt of a 15-day Notice to Cure pursuant to Article 13.1."[51]

> In other words, MMG's failure to pay all of the rent due in June 2019 was not itself a material breach but rather a material failure that could

---

[50] App. p. 298, at Art. 13(1).

[51] App. p. 73.

> then potentially become a material breach but only after Dolly Investments complied with the notice to cure provisions of the lease agreement and the failure was not cured.[52]

The District Court then held that "MMG's failure to pay the full month's rent for June 2019 did not excuse Dolly Investment's obligations under the lease agreement to comply with the notice to cure provisions."[53] The District Court held that its reading of the lease "encourages compliance with contract terms, supports the parties' intentions as expressed in the contract, and is consistent with the expectations that all terms of a contract are meaningful and are relied upon by the contracting parties."[54]

Even if Article 13 were ambiguous, which it is not, the District Court interpreted it in a way that gives meaning to each provision. When reading any contract, Iowa law assumes "in the first instance that no part of it is superfluous; an interpretation which gives a reasonable, lawful, and effective meaning to all terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect." *Iowa Fuels & Minerals, Inc. v. Iowa State Board of Regents*, 471 N.W.2d 859, 863 (Iowa 1991) (*quoting Fashion*

---

[52] App. p. 103.

[53] *Id.*

[54] *Id.*

Fabrics of Iowa, Inc. v. Retail Investors Corp., 266 N.W.2d 22, 27 (Iowa 1978)).

Under Dolly's theory, this expressed condition precedent is rendered meaningless. Dolly argues that any failure of payment by MMG would automatically and necessarily excuse Dolly from any further obligation to MMG. There is no scenario in which Dolly would be required to provide MMG with a written notice of default or provide a 15-day cure period, because the initial breach "in the payment of any sum due" would automatically excuse Dolly's further performance. Dolly offers no argument that the condition precedent would ever govern the parties' obligations under the lease and, necessarily, the notice requirement and cure period are wholly superfluous.

The District Court's ruling was based on substantial evidence and consistent with Iowa law. Its rejection of Dolly's argument should be affirmed.

III. The District Court Correctly Found that Dolly Breached the Lease When it Retook the Property Without Prior Notice to MMG.

A. Issue Preservation.

Dolly did not preserve error to argue that it did not first materially breach the parties' contract. First, it did not preserve error by filing its notice of appeal. *See Lange*, 831 N.W.2d at 846. Nor in challenging MMG's reconsideration motion did Dolly claim that it did not breach the parties'

contract. To the contrary, it expressly abandoned that argument, advising the District Court that "[MMG's] material breach prevents the Court from having to determine whether [Dolly's] breach was material or not."[55] Indeed, Dolly warned the court below that even considering whether it first materially breached the parties' contract "would be contrary to Iowa law."[56] Dolly should not be allowed to turn about-face on appeal. *See Vincent*, 589 N.W.2d at 64; *Det. of Matlock*, 860 N.W.2d at 910.

B. Standard of Review

This Court reviews the District Court's ruling granting MMG's reconsideration motion for correction of errors at law. *See* Iowa R. App. P. 6.907. Contract interpretation is a legal question. *See Alta Vista Props.*, 855 N.W.2d at 726. The District Court's fact findings are binding if supported by substantial evidence. *See Metro. Prop. & Cas. Ins.*, 924 N.W.2d at 839 (Iowa 2019). This Court views the evidence "in the light most favorable to upholding the trial court's judgment." *Pippen*, 854 N.W.2d at 8. It must also "construe the district court's findings broadly and liberally," and it may not "weigh[] the evidence or the credibility of the witnesses." *Hendricks*, 609 N.W.2d at 490.

---

[55] App. p. 99, ¶ 5.

[56] *Id.*

C. Argument.

Dolly weakly claims that it did not breach the lease when it retook the property without the required prior, written notice of default and without providing MMG fifteen days to cure its breach. Even if the Court were to consider this argument, the Court should find that substantial evidence supports the District Court's express rejection of this claim.

First, the District Court held that Dolly conceded at trial that it breached the parties' lease when it entered the property and changed the locks without providing the required notice and cure period.[57] Leon Reingold testified at trial that Dolly did not provide written notice of default or the required cure period before he reentered the property and changed the locks.[58] Based on that testimony, the District Court held "Dolly admitted at trial that when it reentered the property and took possession of the leased premises on June 25, 2019, it did so contrary to the parties' lease terms because if failed to provide 15 days' notice of default to MMG prior to reentry and obtaining possession of the premises."[59]

---

[57] App. p. 75.

[58] App. pp. 161–62, Trial Tr. at 53:20-54:16.

[59] App. p. 75.

Second, Dolly claims that the lease permitted Dolly to retake the property without notice if Dolly perceived an "emergency." That is patently incorrect. Dolly relies upon language from Section 25.15 of the lease, which provides a right of inspection to the landlord, rather than a right to circumvent the written notice of breach and the fifteen-day cure period.[60] It reads:

> Landlord reserves the right to enter upon the Premises at any time during regular business hours, upon giving at least twenty-four (24) hours prior notice to Tenant (except in the event of an emergency) to inspect the same or for the purpose of exhibiting the same to prospective purchasers or mortgagees…[61]

There is nothing ambiguous about this provision's language. It allows Dolly to enter the premises to perform an inspection or to market the building. The District Court correctly held, "This paragraph does not form the basis for Dolly to lock and secure the premises to the exclusion of MMG…. When Dolly took the additional steps to change the locks, thereby precluding access to the property by MMG, it acted clearly beyond that which was allowed by the terms of paragraph 25.25."[62]

Third, Dolly asserts that it did not actually exclude MMG from accessing the property when Dolly changed the locks to the building. That

---

[60] Appellant's Proof Brief, pg. 35.

[61] App. p. 304, at Art. 25.15.

[62] App. p. 74.

runs expressly contrary to the trial testimony of Leon Reingold, Dolly's owner, who was asked: "You took possession of the premises by changing the locks to the exclusion of the Maxfields on June 25th, of 2019; is that right?" Mr. Reingold responded, "Yes."[63]

Dolly admitted at trial that MMG was not able to access the building once Dolly changed the locks. Dolly also conceded that it refused MMG's written request to enter the building to retrieve MMG's personal property.[64] When Dolly entered the building on June 25, 2019, it found the building securely locked, with a monitored security system maintaining watch over the restaurant.[65] The only reason to change one set of locks for another is to exclude those holding keys to the prior locks. The District Court heard testimony from Leon Reingold regarding his decision to change the building's locks, and it concluded that Dolly wrongfully excluded MMG from the building without the required written notice and cure period.

[63] App. p. 160, Trial Tr. at 52:16-19.

[64] App. pp. 179–80, Trial Tr. at 71:10-72:11; App. p. 329.

[65] App. p. 226, Trial Tr. at 118:4-7.

CONCLUSION

For the reasons stated, this Court should affirm the District Court's judgment for MMG and tax fees and costs to Dolly. *See* Iowa R. App. P. 6.1207.

Respectfully submitted, July 20, 2021.

/s/ Philip S. Bubb
Philip S. Bubb
Brandon R. Underwood
FREDRIKSON & BYRON, P.A.
111 East Grand Avenue, Suite 301
Des Moines, Iowa 50309
Tel: (515) 242-8900
Fax: (515) 242-8950
Email: pbubb@fredlaw.com
bunderwood@fredlaw.com

ATTORNEYS FOR APPELLEES MMG SIOUX CITY, LLC, DALE MAXFIELD and MAXFIELD MANAGEMENT GROUP, LLC.

REQUEST FOR ORAL ARGUMENT

Appellees request oral argument in this appeal.

CERTIFICATE OF COST

The undersigned certifies that the cost for printing and duplicating necessary copies of this Appellee's Final Brief was $0.00.

Respectfully submitted, July 20, 2021.

/s/ Philip S. Bubb

Philip S. Bubb
Brandon R. Underwood
FREDRIKSON & BYRON, P.A.
111 East Grand Avenue, Suite 301
Des Moines, Iowa 50309
Tel: (515) 242-8900
Fax: (515) 242-8950
Email: pbubb@fredlaw.com
bunderwood@fredlaw.com

ATTORNEYS FOR APPELLEES MMG SIOUX CITY, LLC, DALE MAXFIELD and MAXFIELD MANAGEMENT GROUP, LLC.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(*d*) and 6.903(1)(*g*)(1) or (2) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word version 2010 in Times New Roman, 14-point font and contains 4,444 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*g*)(1).

Respectfully submitted, July 20, 2021.

/s/ Philip S. Bubb

Philip S. Bubb
Brandon R. Underwood
FREDRIKSON & BYRON, P.A.
111 East Grand Avenue, Suite 301
Des Moines, Iowa 50309
Tel: (515) 242-8900
Fax: (515) 242-8950
Email: pbubb@fredlaw.com
bunderwood@fredlaw.com

ATTORNEYS FOR APPELLEES MMG SIOUX CITY, LLC, DALE MAXFIELD and MAXFIELD MANAGEMENT GROUP, LLC.

CERTIFICATE OF SERVICE AND FILING

I hereby certify that on July 20, 2021, a copy of this Final Brief of Appellee was served upon the following persons through the electronic filing of the same with the Iowa Judicial Branch Appellant Courts' EDMS system:

Jacob B. Natwick
Zack A. Martin
Heidman Law Firm, PLLC
1128 Historic Fourth Street
P.O. Box 3086
Sioux City, Iowa 51102
Ph: (712) 255-8838
Fax: (712) 258-6714
Email: Jacob.natwick@heidmanlaw.com
Zack.natwick@heidmanlaw.com

ATTORNEYS FOR APPELLANT DOLLY INVESTMENTS, LLC.

/s/ Philip S. Bubb
Philip S. Bubb
Brandon R. Underwood
FREDRIKSON & BYRON, P.A.
111 East Grand Avenue, Suite 301
Des Moines, Iowa 50309
Tel: (515) 242-8900
Fax: (515) 242-8950
Email: pbubb@fredlaw.com
bunderwood@fredlaw.com

ATTORNEYS FOR APPELLEES MMG SIOUX CITY, LLC, DALE MAXFIELD and MAXFIELD MANAGEMENT GROUP, LLC.

I further certify that on July 20, 2021, I filed this document with the Clerk of the Supreme Court, 1111 Court Avenue, Des Moines, IA 50319, by electronically filing it through EDMS.

/s/ Philip S. Bubb

Philip S. Bubb
Brandon R. Underwood
FREDRIKSON & BYRON, P.A.
111 East Grand Avenue, Suite 301
Des Moines, Iowa 50309
Tel: (515) 242-8900
Fax: (515) 242-8950
Email: pbubb@fredlaw.com
bunderwood@fredlaw.com

ATTORNEYS FOR APPELLEES MMG SIOUX CITY, LLC, DALE MAXFIELD and MAXFIELD MANAGEMENT GROUP, LLC.