IN THE SUPREME COURT OF IOWA
No. 22-0038
Dubuque County No. 01311 LACV109349

WILLIAM L. PITZ and LYNN S. PITZ,
APPELLANTS/CROSS-APPELLEES,

vs.

UNITED STATES CELLULAR OPERATING COMPANY OF DUBUQUE, an Iowa Corporation,
APPELLEE/CROSS-APPELLANT.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR DUBUQUE COUNTY
THE HONORABLE MICHAEL J. SHUBATT, JUDGE

APPELLANTS/CROSS-APPELLEES' WILLIAM L. PITZ and LYNN S. PITZ FINAL BRIEF

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ROUTING STATEMENT

This case involves the application of existing legal principals and is eligible for transfer to the Iowa Court of Appeals pursuant to Iowa R. App. P. 6.1101(1).

STATEMENT OF THE CASE

On November 14, 1988, Robert J. Pitz and Dorothy H. Pitz entered into a Lease Agreement with United States Cellular Operating Company of Dubuque (hereinafter "USCOCD"). (App. 6). Robert and Dorothy Pitz transferred their interest in the lease when they sold their interest in the farm by real estate contract to William and Lynn Pitz in 2002. (App. 21). The initial term of the Lease Agreement was thirty (30) years and also provided USCOCD an option to renew the Lease Agreement for one additional 30 year term. (App. 7). The Lease Agreement provided that in order for USCOCD to exercise its option to renew, USCOCD must give "written notice to Lessor at lease sixty (60) days before the expiration of the initial term of this Lease Agreement"; and pay the full amount of the option term rent "in a lump sum **in advance at the exercise of the option** . . . ." (Sections 3.2 and 4.2, App. 7-8). The wrong entity provided notice of intent to exercise the renewal option and USCOCD did not pay the rent for the

second option term "in advance at the exercise of the option" as required by the Lease Agreement. (App. 31, 36). Moreover, USCOCD failed to tender the option term rent at least 60 days before the expiration of the initial lease term. (App. 40-41). William and Lynn Pitz returned the late tendered rent payment and sued for a declaration that USCOCD failed exercise its lease renewal option. (App. 42-45).

Course of Proceedings and Disposition of Case in District Court

On June 19, 2019, William and Lynn Pitz filed a Petition at Law seeking a declaratory judgment against Defendant USCOCD requesting that the Court declare that USCOCD failed to validly exercise its renewal option and for other relief. (App. 131). On July 15, 2019, USCOCD answered admitting that there was an actual controversy between the parties but praying for judgment in its favor.

On June 26, 2020, USCOCD filed a Motion for Summary Judgment contending that payment of the option term rent was a term of performance and not a condition of acceptance and sought judgment in its favor. Also, on June 26, 2020, William and Lynn Pitz filed a Motion for Summary Judgment seeking a declaration that: (1) USCOCD failed to validly exercise its option to renew by failing to pay the Pitzes the full amount of the option

term rent in advance at the time of the exercise of the option and at least 60 days before the expiration of the initial lease term as required by the Lease Agreement, and (2) that the wrong party issued the notice of intent to renew the lease. On November 10, 2020, the Court entered an order denying both motions for summary judgment. The matter proceeded to a bench trial on August 6, 2021. On October 29, 2021, the Court entered its Findings of Fact, Conclusions of Law, Decision (hereinafter "Decision") dismissing all of the Pitzes' claims. (App. 163).

On November 5, 2021, USCOCD moved to enlarge the Court's Decision. (App. 170). On November 15, 2021, the Pitzes filed their Resistance to USCOCD's Motion to Enlarge. On December 1, 2021, USCOCD filed a Motion for Costs and Attorney Fees. The Pitzes filed their Resistance to Motion for Costs and Attorney fees on December 13, 2021. On December 17, 2021, the Court entered an Order RE: Motion to Enlarge denying USCOCD's Motion to Enlarge. (App. 172). Also on December 17, 2021, the Court entered an Order RE: Motion for Costs and Attorney Fees granting a judgment for costs but denying the USCOCD's claim for attorney fees. (App. 174). On January 5, 2022, William and Lynn Pitz filed a Notice of Appeal from the Decision filed on October 29, 2021. (App. 176). On

January 11, 2022, USCOCD filed its Notice of Cross Appeal. (App. 178).

Statement of the Facts

William "Bill" Pitz grew up on the family farm owned and operated by his parents, Robert and Dorothy Pitz. Bill Pitz started farming for a living in 1980 upon his graduation from high school. (Tr. 20:16-19; App. 189). In 1982, Bill moved onto the farm at 25588 Leuchs Road, Farley, Iowa which was then owned by Robert and Dorothy Pitz and started farming with his father on shares. The farm is 320 acres and is located about two miles southeast of Farley, Dubuque County, Iowa. (Tr. 18:12-17; App. 188; P. Exh. 17, p. 19, App. 71).

Also, in 1982, Bill married Lynn and they raised five children on the farm. (Tr. 17:23-18:1; App. 187-188). The Pitzes purchased the farm from William's parents, Robert and Dorothy Pitz in 2002 on real estate contract.[1] (Tr. 22:21-23:5; App. 22-23). Bill Pitz raises corn, soybeans, custom farrows sows and raises beef heifers, beef cows and raises beef cattle. (Tr.

[1] On November 14, 1988, Robert J. Pitz and Dorothy H. Pitz entered into a Lease Agreement with USCOCD. (App. 6). Robert and Dorothy Pitz transferred their interest in the lease to William and Lynn Pitz when the real estate was sold by real estate contract to William and Lynn Pitz in 2002. (App. 21). The contract was consummated by special warranty deeds in 2009. (App. 25, 28). The real estate contract and deeds were filed in the records of the Dubuque County Recorder contemporaneous to their execution. (App. 21, 25, 28).

20:5-9; App. 189).

On the Pitz farm there is a cell tower on the land leased by USCOCD. The cell tower is approximately 300 feet tall and supported by guy wires. (App. 60). The cell tower is located about 300 feet south of the farm buildings located on the Pitz farm. (Tr. 23:21-24:1; App. 190-191). Photographs and sketches of the cell tower are located in the appraisal report of Thomas Howe. (App. 56-57, 74-75). The lease was negotiated by Robert and Dorothy Pitz in 1988 whereby Robert Pitz agreed to lease the cell tower cite to USCOCD for a thirty year lease term for a single lease payment of $20,000. (Tr. 26:12-13; App. 192; P. Exh. 1; App. 6). The Lease Agreement was drafted by or on behalf of USCOCD. (App. 51). The leased area is legally described in the Memorandum of Lease and is comprised of approximately 6.3 acres, which includes the cell tower cite, access for ingress and egress to the site and a utility easement to the tower cite. (App. 17, 72).

The initial 30 year term of the Lease Agreement ran from November 14, 1988 through November 14, 2018. (App. 7). The Lease Agreement provided USCOCD an option to renew the Lease Agreement for one additional 30 year term. *Id*. The Lease Agreement provided that in order

for USCOCD to exercise its option to renew, it must do two things:

(1) Give "written notice to Lessor at lease sixty (60) days before the expiration of the initial term of this Lease Agreement"; and

(2) "Lessee shall pay to Lessor as full consideration for use of the Leased Premises during the option term, payable in a lump sum **in advance at the exercise of the option** . . . ."

(Sections 3.2 and 4.2; App. 7-8).

Article Thirteen of the Lease Agreement provided limitations and procedures for assignments of USCOCD's rights under the lease and states as follows:

> This Lease Agreement and all rights, powers, and privileges granted hereunder shall not be assignable without the written consent of the Lessor, which consent, however, may not be unreasonably withheld or delayed provided, however, that Lessee may without Lessor's consent assign this Lease Agreement and all rights, powers, privileges and obligations hereunder to the legal entity which is the cellular telephone operating company which from time to time owns the cellular telephone market served by the cell site located at the Premises. Any such assignment shall be effectuated by an instrument in writing duly accepted by assignee whereby such assignee shall assume and agree to be personally bound by the covenants, agreements, terms and provisions of this Lease Agreement, in which event the assignor shall be released of all further obligations hereunder. **Within 60 days from the effective date of such assignment, the assigning party shall cause to be delivered to other party executed copies of the assignment and the acceptance thereof.**

(App. 11)(Emphasis added)

The above paragraph sets forth the procedure for USCOCD to assign its rights under the lease. USCOCD presented no evidence that it assigned its interest under the contract. Moreover, the Pitzes never received a notice of assignment nor did the Pitzes accept a notice of assignment from U.S. Cellular as required by Article Thirteen of the Lease Agreement. (Tr. 30:11-23; App. 193).

On September 1, 2017, Jaideep Dudani sent a letter to Robert and Dorothy Pitz on letterhead bearing the name "U.S. Cellular" and stating that "this letter shall serve as notice that Dubuque Cellular Telephone, L.P. is exercising its option to renew the Lease Agreement dated November 14th, 1988 for the first of one renewal terms (Option 1) of thirty years." (App. 193). The letter did not explain the relationship between Dubuque Cellular Telephone, L.P. and USCOCD, nor did the letter explain how U.S. Cellular or Dubuque Cellular Telephone, L.P. was authorized to act for USCOCD. *Id*.

On September 11, 2018, Mr. Dudani wrote a letter on U.S. Cellular letterhead addressed to William Pitz c/o Robert and Dorothy Pitz claiming that "Dubuque Cellular Telephone, L.P. has renewed the Lease agreement

dated November 14, 1988 as per section 3.2 of the Lease." (App. 36). Mr. Dudani failed to state how Dubuque Cellular Telephone, L.P. acquired any interest in the lease from USCOCD nor did Mr. Dudani provide a copy of any lease assignment to the Pitzes. (App. 36). In the September 11, 2018 letter, Mr. Dudani requested additional information stating: "Once we have these documents, we will be able to disburse the option renewal payment to you." (App. 36).

On October 23, 2018, Attorney Locher emailed Mr. Dudani and quoted the pertinent terms of Section 4.2 of the Lease and asked if the lessor provided the consideration called for in said Section 4.2 "in advance at the exercise of the option?" (Def. Exh. I). On October 28, 2018, Wayne Davis sent a letter on U.S. Cellular letterhead to William and Lynn Pitz enclosing a check in the amount of $31,494.02. (App. 40). The check contained the name "U.S. Cellular" and further contained the name "USCTC of Dubuque" in the left corner of the check. (App. 41). On November 9, 2018, Attorney Todd J. Locher wrote to Mr. Davis rejecting the late tender of the Option Term Rent and informed Mr. Davis that the lease expired because U.S. Cellular failed to tender the Option Term Rent payment in full in advance at the exercise of the option as was required Section 4.2 of the Lease

Agreement. (App. 42). On November 29, 2018, Donald L. Dicke wrote Attorney Locher on U.S. Cellular letterhead disputing that U.S. Cellular failed to validly exercise its option to renew and declared that "my company's position is that the lease has renewed for another term." (App. 46). Finally, an entity named USCC Services, LLC issued an IRS Form 1099-MISC for the tax year 2018 to William and Lynn Pitz for rent in the amount of $41,439.50. (App. 47). The Pitzes responded by filing a Petition at Law in the above captioned matter. (App. 141).

The exhibits identify several entity names, including the following: USCOCD, U.S. Cellular, Dubuque Cellular Telephone, L.P., USCTC of Dubuque and USCC Services, LLC. There is no written evidence of how any of these entities are related to the Lessor, USCOCD or to U.S. Cellular. There is no written evidence of an assignment of the Lease Agreement by USCOCD to any other entity. Neither USCOCD nor any other entity has provided a notice of assignment of the Lease Agreement or a copy of an assignment to the Pitzes. (Tr. 30:11-23; App. 193). The only information in evidence concerning the relationship of the parties is the following testimony by Jaideep Dudani of United States Cellular Corporation:

Q. Do you have any knowledge of the relationship between United

States Cellular Corporation and United States Cellular Operating Company of Dubuque?
A. United States Cellular Corporation is the owner of United States Cellular Operating Company of Dubuque who in town is the Dubuque Cellular, LP.

(Tr. 99:4-10; App. 224).

The Pitzes designated an expert witness, Thomas F. Howe, of Kane Appraisal Services of Dubuque, Iowa to conduct an appraisal of the fair market rental value of the 30 year lease renewal option of the cell tower site at issue. Mr. Howe concluded that the fair market rent value of a 30 year renewal for the cell tower site is $203,692 as of January 20, 2020. (App. 54). Mr. Howe's opinion of the fair market rent value of 30 year option renewal term is $162,252.50 higher and approximately five times higher than the Option Term Rent defined in the Lease Agreement. (App. 8, 54).

Mr. Howe's conclusion of fair market rent value was based upon three leases – two of the leases he reviewed and the third lease he had received verbal communication from another appraiser. (Tr. 73:9-18; App. 211). Mr. Howe testified that it is difficult to find data about fair rental value of a cell tower. (Tr. 71:3-73:8; App. 209-211). Mr. Howe testified that the only public record concerning the lease at issue is contained in a Memorandum of Lease. (Tr. 71:7-23; App. 209; P. Exh. 2; App. 17). The

only term contained in the Memorandum of Lease at issue is the length of the lease and that it has a single 30 year renewal term. (Tr. 71:7-23; App. 209; P. Exh. 2; App. 17). The Memorandum of Lease does not specify the rental rate. *Id*. Mr. Howe testified it is common practice for lessors to keep the rental rate for leases confidential. (Tr. 71:7-72:7; App. 209-210). Mr. Howe has never seen an actual cell tower lease as part of a public record. (Tr. 71:7-72:7; App. 209-210). Also, Mr. Howe testified that appraising the market value of a cell tower lease is rarely done. (Tr. 72:8-73:3; App. 210-211). Mr. Howe states that appraisals are often done for loan purposes – but he has not encountered the situation where a lender to a land owner or cell tower owner ordered an appraisal of the value of a cell tower lease for loan purposes. (Tr. 72:8-73:3; App. 210-211). In summary, due to fact that the terms of cell tower leases are confidential and the opportunity to conduct appraisals of cell tower cites for loan purposes is rare, information concerning the market rent value of a cell tower lease is difficult to discover. (Tr. 71:3-73:8; App. 209-211).

ARGUMENT

I. THE DISTRICT COURT ERRED BY CONCLUDING THAT LATE PAYMENT OF THE OPTION TERM RENT DID NOT VOID THE RENEWAL OPTION.

A. Preservation of Error.

William and Lynn Pitz preserved error by timely filing a Notice of Appeal.

B. Standard of Review.

This case was tried at law and, thus, the scope of review is for correction of errors at law. Iowa R. App. P. 6.907. ("Review in equity cases shall be de novo. In all other cases the appellate courts shall constitute courts for correction of errors at law, and findings of fact in jury-waived cases shall have the effect of a special verdict.").

C. USCOCD Failed to Satisfy a Condition Precedent by Failing to Pay the Option Term Rent Within 60 Days Before the Expiration of the Initial Lease Term.

The District Court stated that the relevant provisions of the lease provide the following:

> ARTICLE THREE. Term of Lease Agreement. 3.2 Option to Renew. Lessee shall have the option to renew this Lease Agreement for one (1) additional term of thirty (30) years, at the rental rate set forth in Article Four and upon all other terms and conditions hereof. Lessee may exercise such option by giving written notice to Lessor at

> least (60) days before the expiration of the initial term of this Lease Agreement.
>
> ARTICLE FOUR. Rent. 4.2 Option Term Rent. Lessee shall pay to Lessor as full consideration for use of the Leased Premises during the option term, payable in a lump sum in advance at the exercise of the option, the amount of Twenty Thousand Dollars ($20,000.00), adjusted upward by the percentage of increase in the Consumer Price Index ("CPI") from the Commencement Date to the first day of the last month of the current lease term.

(App. 165).

The District Court erroneously concluded that "[t]he payment of rent was not a condition precedent to the exercise of the option" and that USCOCD "successfully exercised the option, creating a new contract in the form of a renewed lease." (App. 167).

SDG Macerich Properties, L.P. v. Stanek Inc., 648 N.W. 2d 581, 586 (Iowa 2002) addresses the issue at hand. In *SDG Macerich*, the Iowa Supreme Court held that ordinary contract rules govern the validity of option provisions and that "[t]he contract will be strictly construed if its words are clear and unambiguous." *Id*. The Lease Agreement is clear and unambiguous that in order for USCOCD to exercise its renewal option it was required to give the Pitzes notice of its intent to renew in writing on or before September 14, 2018 and "pay to Lessor as full consideration for use

of the Leased Premises during the option term, payable in a lump sum in advance at the exercise of the option." (Sections 3.2 and 4.2, App. 7-8). U.S. Cellular tendered its Option Term Rent payment on October 29, 2018 – six weeks past the 60 day deadline. (App. 40-41). The *SDG Macerich* Court held that: "Any conditions precedent to the option must be fulfilled according to the agreement for the option to become a contract between the parties." 648 N.W. 2d at 586. Payment by USCOCD to the Pitzes of the full amount of the rent "in advance at the exercise of the option" was a condition precedent for the option to become a contract. Since USCOCD failed to fulfill this condition precedent, the option never ripened into a contract.

The Iowa Court of Appeals has recently held that the failure to timely tender an option payment voided the option. *In re Gansen*, 826 N.W.2d 515, 2012 WL 5954584 (Iowa App. November 29, 2012)(Unpublished decision). The document at issue in *Gansen* was a purchase option that gave James Gansen the right to purchase from Frances Gansen real estate for a fixed price. The option agreement called for payments set forth as follows:

Grantee shall pay to Grantor $5,000.00 during the first 15 days of

> January, 2008, and $5,000.00 during the first 15 days of January of each year thereafter through and including the year of Grantor's death (and the commencement of the Option period hereunder). If Grantee timely exercises the Option as provided for herein, ~~$1,000 .00 of each~~ of the aforesaid $5,000.00 payments shall be credited to the purchase price for Grantee's purchase of the Real Estate.

Id. at 4.

The court found that James Gansen tendered the first option payment on October 27, 2008. *Id*. at 7. The *Gansen* Court stated: "We, like the district court, find that James has not fulfilled the conditions of the option." *Id*. at 12. Like the *Gansen* case, USCOCD – by failing to tender the option payment at the time it purportedly exercised its option – failed to fulfill a condition precedent and thereby voided the option. Accordingly, the Lease expired at 11:59 P.M. on November 13, 2018.

D. *Breen* Supports the Conclusion that Payment of the Option Term Rent in Advance was a Condition Precedent For Renewal of Lease.

The District Court relied on *Breen v. Mayne*, 118 N.W. 441, 141 Iowa 399 (1908) (as quoted by *Figge v. Clark*, 174 N.W.2d 432, 424 (Iowa 1957)), in support of its conclusion that the payment of the Option Term Rent called for in Section 4.2 of the Lease Agreement was not a condition precedent. *Breen* involved an option to purchase real estate whereby the

optionee paid a fee for an option to purchase optionor's real estate by a date certain and was conditioned upon the optionor furnishing "an abstract showing perfect title." 141 Iowa at 442. The option further provided that purchase price was due upon the delivery of the deed. *Id*. In *Breen*, the optionee gave timely notice of his intent to exercise the option prior to the expiration of the option period. *Id*. Due to title problems shown in the abstract, optionor was unable to show "perfect title" by the option exercise date. *Id*. Instead of curing the title defect, the optionor instead sold an option to another party. *Id*. The *Breen* court excused the optionee's failure to pay the option price before the expiration of the option due to the optionor's failure to deliver proof of perfect title. *Id.* at 443. The result in *Breen* is distinguishable from this case because the Lease Agreement here required nothing of the Pitzes in exchange for USCOCD's option rent payment. The Lease Agreement did not require the Pitzes to sign a new lease, provide proof of clear title or do anything at all in exchange for USCOCD's option rent payment. To exercise its option, USCOCD needed only to provide written notice to the Pitzes on or before September 14, 2018 and "pay to Lessor as full consideration for use of Leased Premises during the option term, payable in a lump sum in advance at the exercise of the

option." (App. 7-8). USCOCD's timely tender of the Option Term Rent payment was a condition precedent to the valid exercise of its renewal option. Nothing in *Breen* contradicts that conclusion.

Moreover, *Breen* supports the conclusion that payment of the Option Term Rent was necessary for USCOCD to validly exercise its renewal option. The *Breen* Court stated:

> The only fixed rule regarding the manner of the exercise of an option under a contract granting it is to discover from the language of the instrument, construed in the light of competent parol testimony, the intent of the parties with reference thereto. It may be that under the terms of a given option the only proper and binding method of election or acceptance is by the payment or a tender of the purchase price.
>
> * * *
>
> To make any sort of a contract, there must be a meeting of minds upon a given subject. An offer without acceptance is not a contract; and as a rule the acceptance to be binding must be in accord with the terms of the offer, and not in some other manner. In other words, the party making the offer may prescribe the mode of acceptance, and to constitute a binding contract this method must be followed.

Breen v. Mayne, 141 Iowa 399, 118 N.W. 441, 443 (1908).

Here, USCOCD specified the mode of acceptance – written notice and paying the Option Term Rent "in advance at the exercise of the option . . . ." and within 60 days from the expiration of the initial lease term. (App. 7-8). As stated in *Breen*, "to constitute a binding contract, this method must be

followed." *Id*.

E. The Parties Made Time of the Essence by Setting a Deadline for the Option Term Rent Payment and Strict Compliance with Such Deadline is Required.

SDG Macerich Court stated the following:

> The rules regarding renewal-option provisions in lease agreements are quite clear. A cardinal rule of contract construction is that 'time is of the essence.'

648 N.W2d at 586.

The *SDG Macerich* Court held that a lease renewal provision that required notice to be given by the tenant "not less than twelve (12) months prior to the termination of the initial Lease Term or extended Term" was a specific agreement as to the time for performance. *Id*. The Court concluded that since the parties agreed to a cutoff date – that made time of the essence. *Id*. The Court further concluded since the tenant failed to tender notice of renewal prior to the cutoff date, the lease expired. *Id*. *(citing*, *Ujdur v. Thompson*, 878 P.2d 180, 183 (Idaho App. 1994)).

In *Ujdur*, the Court stated as follows:

> It is well settled that where no time for performance is established in the agreement, the law implies that performance must occur within a reasonable time. However, a different rule applies to the parties' contract where time is deemed, expressly or implicitly, to be 'of the essence.' **Thus, where the parties make time of the essence in**

> **setting a deadline for payment, strict compliance with such deadline is required.**

Id. (Emphasis added).

In the case at hand, the parties set a deadline for payment of the Option Term Rent – in advance at the exercise of the option. (App. 8). The parties also established a deadline for exercising the option – "60 days before the expiration of the initial term of this Lease Agreement." (App. 7). As in *SDG Macerich* and *Ujdur*, time is of the essence with respect to the making of the Option Term Rent payment and "strict compliance with such deadline is required." 878 P.2d 180, 183. In *Ujdur*, the court held that a tender of payment after the cutoff date "may not be considered in determining whether there was substantial performance." *Id*. Likewise, the District Court may not consider the USCOCD's late tender of the Option Term Rent in determining whether USCOCD substantially complied with the terms of the Lease Agreement. "Thus, there can be no 'substantial performance' where the part unperformed touches the fundamental purpose of the contract and defeats the object of the parties entering into the contract." *Id*. In this case, payment of the Option Term Rent is a fundamental purpose of the contract and failure to make that payment defeats the object of the parties

entering the contract. As in *Ujdur*, the Pitzes were under no obligation to accept the late tendered Option Term Rent payment. USCOCD's failure to tender the Option Term Rent payment constituted a material breach of the Lease Agreement. The Pitzes refused to accept U.S. Cellular/USCTC of Dubuque's late tender of payment. (App. 42-45). The effect of these events is that the Lease Agreement expired on November 13, 2018 at 11:59 P.M.

F. Application of Iowa Supreme Court Precedent and Interpretive Rules Require Effect to Be Given to the Contract Language Requiring the Option Rent Payment to Be Made at the Time of Exercise of the Option.

The Iowa Supreme Court has stated:

> The cardinal rule of contract interpretation is the determination of the intent of the parties at the time they entered into the contract. We strive to give effect to all the language of a contract, which is the most important evidence of the contracting parties' intentions. Because an agreement is to be interpreted as a whole, it is assumed 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.

C & J Vantage Leasing Co. v. Wolfe, 795 N.W.2d 65, 77 (Iowa 2011)(citations omitted).

The above quoted language requires that effect be given to both the notice provisions in Section 3.2 and the Option Term Rent provisions contained in Section 4.2. The Iowa Supreme Court has further stated following rules

regarding ambiguity in contracts:

> It is the cardinal principle of contract construction that the parties' intent controls; and except in cases of ambiguity, this is determined by what the contract itself says. When a contract is not ambiguous, it will be enforced as written, but when there are ambiguities in a contract, they are strictly construed against the drafter. Ambiguity exists when, after application of pertinent rules of interpretation to the face of the instrument, a genuine uncertainty exists concerning which of two reasonable constructions is proper. The test for ambiguity is an objective one: "Is the language fairly susceptible to two interpretations?"

Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents, 471 N.W.2d 859, 862–63 (Iowa 1991)(citations omitted).

The Pitzes contend that the Lease Agreement is unambiguous. However, if this Court were to conclude the Lease Agreement is ambiguous, any ambiguity must be construed against USCOCD, the drafter. (App. 51).

In its motion for summary judgment, USCOCD argued: "The lease here does not clearly and expressly require U.S. Cellular to tender payment to exercise its option." (USCOCD's Memorandum in Support of Motion for Summary Judgment, p. 7). In order to reach this interpretation, USCOCD must ignore the following language contained in the Lease Agreement:

> 4.2 Option Term Rent. Lessee shall pay to Lessor as full consideration for use of the Leased Premises during the option term, payable in a lump sum **in advance at the exercise of the option**, the amount of Twenty Thousand Dollars ($20,000.00), adjusted upward

> by the percentage of increase in the Consumer Price Index ("CPI") from the Commencement Date to the first day of the last month of the current lease term.
>
> * * *
>
> If the amount of the CPI increase is not known at the time the option is exercised, Lessee shall pay Lessor Twenty Thousand Dollars ($20,000.00) at the time of exercise and the balance of the option term rent within thirty (30) days of Lessor's notice of calculation.

(App. 8). (Emphasis added).

The interpretive rules set forth in *Wolfe* requires the Court to consider all of the language in the contract – thus the above quoted language from the Lease Agreement cannot be ignored.

Lyon v. Willie, 288 N.W.2d 884 (Iowa 1980) provides the following interpretive rules concerning the option contracts:

> The applicable rule for determining what must be done to exercise an option is the same as the general rule governing interpretation of contracts. The intent of the parties controls:
>
> > The only fixed rule regarding the manner of the exercise of an option under a contract granting it, **is to discover from the language of the instrument, construed in the light of competent parol testimony, the intent of the parties with reference thereto**.
> >
> > * * *
> >
> > To make any sort of a contract, there must be a meeting of the minds upon a given subject. **An offer without acceptance is not a contract, and as a rule the acceptance to be binding must be in accord with the terms of the offer, and not in some other manner. In other words, the party making the offer may prescribe the mode of acceptance, and to**

constitute a binding contract this method must be followed.

Id. at 888. (emphasis added).

The District Court attempted to distinguish *Lyon* by noting that the Option Rent Payment in the instant case was not in the same conjunctive clause as was the payment term in *Lyon*. *Lyon* does not stand for the proposition that the notice and payment must be in the same conjunctive clause. Instead, *Lyon* states:

> When an option requires tender of payment, it is not exercised unless payment is tendered before the option expires.

Id. at 888.

There is no dispute regarding the following facts:

1. Section 3.2 of the Lease Agreement provides that: "Lessee may exercise such option by giving written notice to Lessor at least sixty (60) days before the expiration of the initial term of this Lease Agreement." (App. 7).

2. Section 4.2 of the Lease Agreement provides that the: "Lessee shall pay to the Lessor as full consideration for use of the Leased Premises during the option term, payable in a lump sum in advance at the exercise of the option, the amount of Twenty Thousand Dollars ($20,000.00) . . . . (App. 8).

3. USCOCD did not tender the Option Term Rent payment to the Pitzes until October 29, 2018 – after the Pitzes' counsel inquired about the payment – and after USCOCD gave notice of its intent to exercise the renewal option and well beyond 60 days prior to expiration of the initial lease term. (App. 40-41).

As stated in *Wolfe* and *Lyon* and as indicated by the clear language of the Lease Agreement that USCOCD drafted – USCOCD did not exercise its renewal option due to its failure to tender the Option Term Rent "in advance at the exercise of the option" and prior to 60 days before the expiration of the initial lease term.

G. Illinois Precedent Relied Upon by the District Court Is Inapplicable.

The District Court relied on an Illinois case, *Welsh v. Jakstas*, 82, N.E.2d 53, 55 (Ill. 1948), in concluding that the making of the Option Term Rent payment was not a condition precedent for USCOCD to validly exercise its renewal option. The *Welsh* case involved a three year lease that contained an option to purchase. *Id*. at 291. The option in the *Welsh* case granted the Lessee the option to purchase the real estate if exercised during the first 18 months of the lease and also provided the following:

> Upon the exercise of the option to purchase by Lessees, Lessees shall immediately pay to Lessor Twelve Thousand Dollars ($12,000.00) in cash, less such credits as are due Lessees by reason of rent paid, and the balance of said purchase price shall be paid at the rate of Twenty-Five Hundred Dollars ($2,500.00) per year, including interest on the total sum remaining from time to time unpaid at the rate of four per cent (4%) per annum, but it is agreed and understood that Lessees shall have the privilege of paying not to exceed Six Thousand Dollars ($6,000.00) in any one year, including interest.

> It is further understood and agreed that upon the exercise of said option of purchase that Lessor and Lessees, or their assignees, shall enter into a separate real estate contract containing the foregoing provisions, said contract also to provide that Lessees shall receive a deed to said premises when $20,000 has been paid and shall give a mortgage back to Lessor for the balance, which mortgage shall be payable at the rate of Twenty-five Hundred Dollars ($2,500.00) or more a year, including interest of four per cent (4%) per annum.' * * *

82 N.E.2d at 55-56.

According to the above language, exercise of the option required a payment that needed to be calculated based on payments already made. The Lease Agreement at issue here required no such calculation. Further the option agreement in *Welsh* required that a separate real estate contract be drafted memorializing the terms of the option. The Lease Agreement at issue in this case required no such further agreement. Moreover, in *Welsh*, the lessee provided notice of its intent to exercise the option and the parties communicated directly and through counsel for several months until negotiations broke down. *Id*. at 59. At no time during those several months of communication in *Welsh* did the lessor demand the option payment be made. *Id*. The *Welsh* court held that the provision providing for immediate payment of the option payment was waived by the lessor's conduct. *Id*. at 298-299. In the instant case, there were no negotiations between the Pitzes

and USCOCD concerning the exercise of USCOCD's renewal option. Instead, the Pitzes immediately rejected USCOCD's late tender of the option payment. (App. 42-45). Accordingly, *Welsh* is inapplicable.

H. Policy Reasons Favor Strict Construction of Renewal Options.

As discussed above, ordinary contract rules govern the validity of option provisions and that "[t]he contract will be strictly construed if its words are clear and unambiguous." *SDG Macerich Properties, L.P. v. Stanek Inc.*, 648 N.W. 2d 581, 586 (Iowa 2002). Renewal options are akin to use restrictions on real estate – especially the 30 year renewal option at issue here. Codified in Iowa law is a stale use statute that prevents the enforcement of use restrictions contained in any deed or contract after 21 years unless a verified claim preserving the restriction is filed within that time frame. Iowa Code § 614.24. Iowa courts have held that Iowa Code § 614.24 should be liberally construed to further the purpose of its enactment. *See e.g.*, *Campiano v. Kuntz*, 226 N.W.2d 245, 248 (Iowa 1975). Iowa law disfavors lengthy restrictions on the use of property.

When the lease at issue was negotiated in 1988, Iowa was just emerging from a farm crisis. Thus, the conditions were ripe for a large

corporation to negotiate lopsided terms with farm owners, as was the case here. As is shown by Mr. Howe's appraisal – the Option Term Rent called for in the Lease Agreement is twenty percent of fair market rent value today. In order for USCOCD to successfully exercise its 30 year renewal option, USCOCD should be required to comply with all of the terms of the contract it drafted – and that is to give both timely notice of its intent to renew and pay the Option Term Rent at the time of the notice but before 60 days from the expiration of the initial lease term. USCOCD failed to timely pay the Option Term Rent, thus, the lease expired on November 13, 2018 at 11:59 P.M.

II. THE DISTRICT COURT ERRED BY CONCLUDING THAT U.S. CELLULAR'S PURPORTED NOTICE OF EXERCISE OF ITS RENEWAL OPTION WAS NOT DEFECTIVE BECAUSE IT WAS EXERCISED BY THE WRONG PARTY.

A. Preservation of Error.

William and Lynn Pitz preserved error by timely filing a Notice of Appeal.

B. Standard of Review.

This case was tried at law and, thus, the scope of review is for correction of errors at law. Iowa R. App. P. 6.907. ("Review in equity

cases shall be de novo. In all other cases the appellate courts shall constitute courts for correction of errors at law, and findings of fact in jury-waived cases shall have the effect of a special verdict.").

C. Argument.

Mr. Dudani's letter dated September 1, 2017 stated:

> This letter shall serve as notice that Dubuque Cellular Telephone, L.P. is exercising its option to renew the Lease Agreement dated November 14th, 2018 for the first of one renewal terms (Option 1) of thirty years. The term will commence on November 14th, 2018 and expire on November 13th, 2048.

(App. 31).

U.S. Cellular did not notify the Pitzes that United States Cellular Operating Company of Dubuque, an Iowa Corporation, assigned the lease to Dubuque Cellular Telephone, L.P. or otherwise explain why Dubuque Cellular Telephone, L.P. was exercising an option reserved in the lease to United States Cellular Operating Company of Dubuque, an Iowa Corporation. (App. 31). Article Thirteen of the Lease Agreement addresses the lessee's rights to assign the Lease Agreement. Article Thirteen states the following:

> This Lease Agreement and all rights, powers, and privileges granted hereunder shall not be assignable without the written consent of the Lessor, which consent, however, may not be unreasonably withheld or delayed provided, however, that Lessee may without Lessor's consent assign this Lease Agreement and all rights, powers, privileges

> and obligations hereunder to the legal entity which is the cellular telephone operating company which from time to time owns the cellular telephone market served by the cell site located at the Premises. Any such assignment shall be effectuated by an instrument in writing duly accepted by assignee whereby such assignee shall assume and agree to be personally bound by the covenants, agreements, terms and provisions of this Lease Agreement, in which event the assignor shall be released of all further obligations hereunder. Within 60 days from the effective date of such assignment, the assigning party shall cause to be delivered to other party executed copies of the assignment and the acceptance thereof.

(App. 11).

The above quoted paragraph sets forth the specific requirements for any assignment by USCOCD to be effectuated: (1) a written assignment and (2) notice to the Pitzes. Neither occurred. (App. 193). Since USCOCD failed to assign its interest in the lease, any exercise of an option by an entity other than USCOCD is ineffectual.

The September 1, 2017 letter by U.S. Cellular whereby U.S. Cellular purportedly exercised its renewal option was defective because it was from "Dubuque Cellular Telephone L.P." and not "United States Cellular Operating Company of Dubuque" – the party to the Lease. (App. 31). Thus, USCOCD's lease expired on November 13, 2018 at 11:59 p.m. The District Court disregarded the clear terms of Article Thirteen when it concluded that Dubuque Cellular Telephone L.P. was allowed to exercise a

renewal option reserved for USCOCD. The District Court's disregard of requirements of Article Thirteen is in contravention of *SDG Macerich Properties,* which held that ordinary contract rules govern the validity of option provisions and that "[t]he contract will be strictly construed if its words are clear and unambiguous." 648 N.W. 2d at 586. The notice of renewal was defective because it was tendered by an entity that was not a party to the Lease Agreement.

III. THE PITZES ARE ENTITLED TO FAIR MARKET RENT FOR THE HOLDOVER PERIOD.

A. Preservation of Error.

William and Lynn Pitz preserved error by timely filing a Notice of Appeal.

B. Standard of Review.

This case was tried at law and, thus, the scope of review is for correction of errors at law. Iowa R. App. P. 6.907. ("Review in equity cases shall be de novo. In all other cases the appellate courts shall constitute courts for correction of errors at law, and findings of fact in jury-waived cases shall have the effect of a special verdict.")

C. Argument.

USCOCD has held over beyond the initial lease term and continues to operate a tower and equipment on the Pitz farm. The Lease Agreement does not provide for remedies for the Lessor holding over beyond the term of the tenancy. However, the Pitzes are entitled to fair rental rate from the period of the termination of the lease to the date in which the equipment and tower are removed. According to the expert opinion of Thomas F. Howe, certified general real property appraiser, the fair rental value for the leased premises is $440 per month or $5,280 annually. (App. 81). The Pitzes are entitled to fair market rent from the date of lease termination, November 14, 2018, through and including the date of the removal of all of the Lessor's tower and equipment.

IV. DECLARATION RELATING TO ERRONEOUSLY ISSUED 2018 1099-MISC FORM.

A. Preservation of Error.

William and Lynn Pitz preserved error by timely filing a Notice of Appeal.

B. Standard of Review.

This case was tried at law and, thus, the scope of review is for

correction of errors at law. Iowa R. App. P. 6.907. ("Review in equity cases shall be de novo. In all other cases the appellate courts shall constitute courts for correction of errors at law, and findings of fact in jury-waived cases shall have the effect of a special verdict.")

C. Argument.

USCC Services, LLC issued a 1099-MISC Form indicating that William and Lynn Pitz were paid $41,439.50 in rent in 2018. (App. 47). For the reasons set forth herein, USCOCD did not validly exercise its renewal option and the Pitzes returned the rent check unnegotiated. Accordingly, the Pitzes respectfully request the Court issue a declaration that USCC Services, LLC issue a corrected 1099-MISC for 2018 indicating that $0 rent was paid and received by the Pitzes.

V. WILLIAM AND LYNN PITZ ARE ENTITLED TO REASONABLE ATTORNEY FEES.

A. Preservation of Error.

William and Lynn Pitz preserved error by timely filing a Notice of Appeal.

B. Standard of Review.

This case was tried at law and, thus, the scope of review is for

correction of errors at law. Iowa R. App. P. 6.907. ("Review in equity cases shall be de novo. In all other cases the appellate courts shall constitute courts for correction of errors at law, and findings of fact in jury-waived cases shall have the effect of a special verdict.")

C. Argument.

Article Nine of the Lease Agreement provides as follows:

> Lessee shall indemnify and hold harmless Lessor herein from any and all costs, claims; damages and suits arising out of or resulting from or in connection with Lessee's or Lessee's employees', agents', invitees', sub-lessees' or assignees' occupancy, possession, use or management of the Leased Premises and License areas of the Real Estate or any portion thereof or the exercise or enjoyment of their rights and breach of their obligations under this Lease Agreement, including reasonable attorneys' fees.

(App. 10).

On November 9, 2018, counsel for William and Lynn Pitz wrote Wayne Davis of U.S. Cellular informing him that his company failed to exercise the renewal option citing its failure to timely tender the Option Term Rent payment. (App. 42-45). Donald Dicke of U.S. Cellular responded by claiming that it validly exercised its option. (App. 46). USCOCD's wrongful claim that it exercised its renewal term caused William and Lynn Pitz to file the above captioned suit to protect their rights. The above

quoted language from Article Nine of the Lease entitles William and Lynn Pitz to receive an award of their reasonable attorney fees required to prosecute this case. The Pitzes pleaded a claim for attorney fees in their Petition at Law against USCOCD. (App. 134). Since William and Lynn Pitz are still incurring attorney fees in this matter, the determination of the amount of reasonable attorney fees should be resolved in post-appeal proceedings.

CONCLUSION

WHEREFORE the Appellants/Cross-Appellees, William L. Pitz and Lynn S. Pitz, pray that this Court remand this case to the District Court to enter judgment against United States Cellular Operating Company of Dubuque to declare or award the following:

A. Declare that United States Cellular Operating Company of Dubuque has failed to validly exercise its option to renew by failing to pay Appellants the full amount of the option term rent in advance at the time of the exercise of the option;

B. Declare that United States Cellular Operating Company of Dubuque failed to provide notice of its intent to exercise its option because said option to renew was made by Dubuque

Cellular Telephone, L.P. instead of the proper party, United States Cellular Operating Company of Dubuque;

C. Declare that the Lease expired at the end of the first lease term which ended November 13, 2018 and that United States Cellular Operating Company of Dubuque be ordered to remove the tower and any structures and to pay fair market rent for the period of November 13, 2018 to the date that the tower and all related equipment is removed;

D. Declare that United States Cellular Operating Company of Dubuque must issue a corrected 1099-MISC form indicating that the Pitzes did not receive any rent from United States Cellular Operating Company of Dubuque in 2018;

E. Award Appellants reasonable attorney fees in an amount to be determined in post judgment proceedings; and

F. Award court costs, pre and post judgment interest and any other relief the Court deems just and proper.

REQUEST FOR NON ORAL SUBMISSION

Appellants/Cross-Appellees, William L. Pitz and Lynn S. Pitz, hereby request that this matter be submitted for review without oral argument.

WILLIAM L. PITZ and LYNN S. PITZ,
Appellants/Cross-Appellees

By: /s/ Todd J. Locher

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Date

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2022, I electronically filed the foregoing with the Clerk of the Supreme Court by using EDMS which will send a notice of the electronic filing to the following:

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