Not Reported in N.W.2d, 2003 WL 22014576 (Minn.App.)
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Court of Appeals of Minnesota.
Lester SKOGBERG, et. al., Appellants,
v.
Harlen HUISMAN, et al., Respondents.

No. C7-02-2059.
Aug. 19, 2003.

Renville County District Court, File No. C900315.
John E. Mack, Mack & Daby, P.A., New London, MN, for appellants.

Thomas W. Van Hon, Van Hon Law Office, Fairfax, MN, for respondents.

Considered and decided by ANDERSON, Presiding Judge, WILLIS, Judge, and HUDSON, Judge.

UNPUBLISHED OPINION

WILLIS, Judge.

***1** Appellants challenge the district court's finding that respondents' breach of a lease was not material. Because we conclude that the finding is not clearly erroneous, we affirm.

FACTS

Appellant Lester Skogberg owns farmland in Sacred Heart. In November 1997, Skogberg and his wife [FN1] placed this property in trust, retained a life estate in the trust, and gave the remainder interest to their children, who are also appellants in this case. Respondents Harlen Huisman and Pamela Kubesh-Huisman (the Huismans) farmed parts of Skogberg's land under an oral lease, beginning in 1980. On May 9, 1997, Skogberg and the Huismans entered into a written lease, by which they rent 185 acres of Skogberg's land for $16,650 annually. The lease terminates in March 2007. A separate agreement gives the Huismans an option to purchase the land for $260,000, no later than April 30, 2007, as long as the lease is not in default. The lease prohibits any improvements to the land without Skogberg's prior written consent.

FN1. Eleanor Skogberg has since passed away.

In October 1999, Harlen Huisman (Huisman) paid between $4,000 and $5,000 to install seepage tile on five acres of the leased property. The district court found that a seepage tile is

an alternative form of drain to the large open hole intake system. Seepage tile is intended to slowly drain water from wet and boggy areas as opposed to a faster run-off of large sitting pools of water, as can be drained through a large intake drainage system.

Huisman did not obtain Skogberg's written consent prior to installing the tile.

Huisman also farms his father's land adjacent to the property he leases from Skogberg. When the tiling was done on Skogberg's property in 1999, Huisman and another neighbor to the north also did tiling on Huisman's father's and the neighbor's land. These neighboring tiling systems do not connect to the new drainage system on Skogberg's property, but instead empty into tiles that Skogberg installed in 1982 and to which Skogberg gave Huisman's father and other neighbors permission to use.

In April 2000, Skogberg and his children sued the Huismans, alleging that the installation of the seepage tile was a breach of the lease. The district court found that the Huismans did not breach the lease because the new tiling was not an improvement to the property. On appeal, this court reversed, determining that the tiling constituted an improvement and that the Huismans breached the lease because Huisman admitted that he did not obtain Skogberg's written permission before tiling the farmland. *Skogberg v. Huisman*, No. C9-01-1131, 2002 WL 417185, at *2 (Minn.App. Mar. 19, 2002) (*Skogberg I*). We directed the district court on remand "to determine whether the Huismans' breach by tiling without written permission was a material breach of the lease agreement." *Id.* at *4. The district court determined that the Huismans' breach was not material, and Skogberg and his children appeal.

DECISION

The district court found that the Huismans did not materially breach the lease because (1) the tiling improved the value of the property for agricultural use, which was the primary purpose of the lease; and (2) the neighboring properties' tile systems did not connect to Skogberg's new system, therefore the new system did not increase water flow through or flooding on Skogberg's property as appellants allege.

***2** Skogberg and his children contend that the district court clearly erred when it found no material breach because (1) the language of the lease provides that "virtually any breach of [the lease] is a material breach," allowing appellants, under other provisions of the lease, to terminate the lease; (2) the tiling was not a minor breach because of the amount of expenditure made and the extent of land tiled; (3) the tiles materially altered the land's drainage; and (4) "one can[not] do anything one wants to with another's land [just because] it does the land some good." Skogberg and his children argue

that they should be able to terminate the lease, which would also end the Huismans' option to buy the land, because their breach was material.

The materiality of a breach is a question of fact. *See* ***Cloverdale Foods of Minn., Inc. v. Pioneer Snacks*, 580 N.W. 2d 46, 49 (Minn.App. 1998)**. We, therefore, do not review the district court's findings de novo, as Skogberg and his children contend, but instead determine whether the findings are clearly erroneous. *See* Minn. R. Civ. P. 52.01. "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn.1999) (quotation omitted). When reviewing the district court's findings of fact, we "view the record in the light most favorable to the judgment of the district court." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn.1999). If there is reasonable evidence to support the district court's findings, we will not reverse the judgment merely because we might view the evidence differently. *Id.*

We concluded in *Skogberg I* that the Huismans breached the lease because tiling was an improvement to the property and because Huisman did not obtain prior written permission to do the tiling. But the breach of a lease must be material to warrant termination or rescission of the lease. ***Cloverdale Foods*, 580 N.W. 2d at 49**. If a material breach has occurred, rescission is appropriate "[w]here the injury * * * is irreparable, or where the damages would be inadequate or difficult or impossible to determine." *Johnny's, Inc. v. Njaka*, 450 N.W.2d 166, 168 (Minn.App.1990). A material breach is "[a] substantial breach of contract, usu[ally] excusing the aggrieved party from further performance and affording it the right to sue for damages." *Black's Law Dictionary* 183 (7th ed.1999); *see also* Restatement (Second) of Contracts § 241 (1981). And a material breach "goes to the root or essence of the contract." 15 Samuel Williston & Richard A. Lord, *A Treatise on the Law of Contracts* § 44:55 (4th ed.2000). Our caselaw has not clearly defined the term "material breach," but other jurisdictions have concluded that it is a breach that is "so fundamental to the contract that the failure to perform that obligation defeats an essential purpose of the contract," *Horton v. Horton*, 487 S.E.2d 200, 204 (Va.1997), and that is "so substantial and fundamental that it defeats the object of the parties in entering into the contract," *Mountain Rest. Corp. v. ParkCenter Mall Assocs.*, 833 P.2d 119, 123 (Idaho Ct.App.1992).

***3** Minnesota appellate courts have concluded that a breach was material when "one of the primary purposes" of a contract was violated. *See Steller v. Thomas*, 232 Minn. 275, 282, 45 N.W.2d 537, 542 (1950) (providing that logger committed material breach when he did not burn his brush piles

while logging because primary purpose of contract was to clear land so that farmer could farm it). And even when express conditions of the contract are violated, the breach is not necessarily material. *See* *Boatwright Constr., Inc. v.. Kemrich Knolls,* 306 Minn. 519, 520-21, 238 N.W.2d 606, 607 (1976) (holding that although seller of tract of land made express contractual agreement to sell lots in tract to buyer and to oil streets within tract by a specific date, seller's failure to oil such streets was not material breach).

The lease at issue provides that the Huismans

shall not make, nor cause any alterations, or improvements to the Leased Premises, nor incur expenses for such purposes, without the prior written consent of [Skogberg].

The lease's remedy provision then defines a breach or "default" as any "default in keeping, or performing any of the other agreements [including the improvement provision] herein contained." The remedy for such a breach is that

[Skogberg] may, at [his] election, terminate this Lease upon written notice to [the Huismans]. Upon termination, [the Huismans] shall surrender possession of and vacate the Leased Premises in such event without process of law * * *.

Because the tiling done by Huisman did not affect the primary purpose of the agreement, the district court's finding that the breach was not material was not clearly erroneous. The primary purpose of the agreement was for the Huismans to lease the land for farming and for Skogberg to receive money for their use of his land. The lease made numerous references to its purpose, for example, by stating that "[t]he Leased Premises shall be used only for agricultural purposes." In addition, Skogberg received all of the rental payments that the Huismans owed him, which was Skogberg's primary purpose in entering into the lease.

So, even though the Huismans breached the lease, its primary purpose was not adversely affected. In fact, the district court found that the seepage tile increased drainage and thereby improved the property's value and made it more useful for agriculture. In addition, the evidence does not support appellants' contention that Skogberg's land may flood more easily with the new tiling. Neighboring properties are not directly connected to Skogberg's 1999 tiling; the neighbors' tiles connect to the 1982 system that Skogberg previously agreed to let neighboring landowners use. Thus, the district court's finding that a material breach did not occur was not clearly erroneous.

Affirmed.

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