

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRI-LIN HOLDINGS, LLC AND  
FRANCIS LIN,  
Appellants/Cross-Respondents,  
vs.  
FLAWLACE, LLC, A NEVADA  
LIMITED LIABILITY COMPANY,  
Respondent/Cross-Appellant,  
and  
DENISE TARVER,  
Respondent,

No. 61209

**FILED**

**MAR 18 2014**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malone  
DEPUTY CLERK

*ORDER AFFIRMING IN PART, VACATING IN PART,  
REVERSING IN PART, AND REMANDING*

This is an appeal and cross-appeal from a district court judgment in a contract action in the short trial program. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

Respondent/cross-appellant Flawlance, LLC leased unfinished commercial real estate in June 2009 from appellant/cross-respondent Francis Lin in order to operate a beauty salon. Respondent Denise Tarver, Flawlance's principal, executed a personal guaranty of the lease. A Certificate of Occupancy from the City of Las Vegas was needed before business operations could commence, which required that the premises have suitable fire protection. Although the lease did not allocate responsibility for the fire protection system to either party, an exhibit to the lease placed the responsibility for obtaining the certificate of occupancy on the tenant. Nevertheless, Lin voluntarily undertook to provide fire protection. The building inspector refused to approve the intended fire protection system, and Tarver could not complete the build-out until a new system was approved and installed. After extensive delays in completing the new system, Tarver abandoned the premises,

approximately around July 2010. The fire protection system was completed between July and October 2010. Lin leased the premises to a new tenant in October 2010. Having been unable to use the premises for the salon after investing in improvements, Tarver and Flawlace, LLC filed suit for rescission of the lease agreement and restitution. Lin counterclaimed for breach of contract to recover unpaid rent.

Following a short trial, the judge found that Lin was unjustly enriched by retaining Flawlace's deposit and certain rents and by improvements made to the premises—benefits valued at \$34,509.26. The short trial judge also found, however, that Flawlace breached the lease by failing to pay rent for three months and awarded Lin \$3,550 in resultant damages. Finding that the terms of the lease did not require Lin to install a fire protection system, the short trial judge entered judgment in favor of Lin on Flawlace's breach of contract claim. The district court subsequently entered judgment based on the short trial decision. Lin appealed, challenging the unjust enrichment award, and Flawlace cross-appealed, challenging the district court's decisions on rescission and breach of contract damages to Lin.

### *Lin's Appeal*

Lin appeals the award of damages for unjust enrichment on the grounds that an exculpatory clause in the lease precluded liability and that the elements for unjust enrichment were not met.

Unjust enrichment occurs when a person obtains a benefit in circumstances where it would be inequitable to retain the benefit. *Certified Fire Prot., Inc. v. Precision Constr., Inc.*, 128 Nev. \_\_\_, \_\_\_, 283 P.3d 250, 257 (2012). The district court's decision whether to grant or deny an equitable remedy is reviewed for abuse of discretion. *Am. Sterling Bank v. Johnny Mgmt. LV, Inc.*, 126 Nev. \_\_\_, \_\_\_, 245 P.3d 535, 538

(2010). Here, Tarver paid the first month's rent and expenses, security deposit, and pro-rated September 2009 rent that Lin abated when his contractors caused Tarver delay. Prior to the delay, Tarver was able to access and make use of the premises for the purpose envisioned in the lease: installing the improvements needed to prepare the premises for business operations. The lease provided that the landlord would retain ownership of all improvements after the conclusion of the lease. As the improvements, rent, and expenses constitute benefits that Lin received that were provided for under the valid lease agreement, Lin did not inequitably receive those benefits and has not been unjustly enriched. The lease provided that Flawlace could potentially recover the security deposit, and accordingly, further proceedings are required to determine Flawlace's entitlement to recover the security deposit. Thus, the short trial judge abused its discretion in awarding damages for unjust enrichment, and the portion of the district court's order confirming the unjust enrichment award must be reversed and remanded to determine only whether Lin unjustly retained the security deposit.

#### *Flawlace's Cross-Appeal*

On cross-appeal, Flawlace argues that Lin materially breached the lease by failing to timely install the fire protection system and that she was therefore entitled to rescission. Legal rescission may be ordered where a party materially breaches a contract. *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 353 n.6, 934 P.2d 257, 262 n.6 (1997).

Exhibit A to the lease required Flawlace to obtain the certificate of occupancy. Consequently, Flawlace bore the responsibility of obtaining a fire protection system. The lease required Lin to provide an HVAC system, but no other improvements. Flawlace has not shown any provision of the lease that Lin violated. Therefore, because Lin's

voluntary undertaking to install fire protection did not materially breach the lease, the district court did not misinterpret the lease in determining that the lease did not require Lin to provide fire protection when it ruled in Lin's favor on Flawlace's breach of contract claim. *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 486, 117 P.3d 219, 223 (2005) (providing that the construction of contractual terms is a question of law that is subject to independent appellate review); *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 278, 21 P.3d 16, 20 (2001) (providing that contracts are interpreted from their written provisions and enforced as written).

Flawlace also argues that a mutual mistake existed in the shared misunderstanding at the time of contracting that the initially attempted fire envelope would be sufficient and that rescission is appropriate on the basis of that mistake. *Tarrant v. Monson*, 96 Nev. 844, 845, 619 P.2d 1210, 1211 (1980) (recognizing equitable rescission as a remedy for mutual mistake). Here, mutual mistake was not present because the parties did not share a mistaken belief about a material fact, but rather misappraised a risk in the lease. *See id.* (reversing a district court's rescission of an agreement where the parties bargained with uncertainty of an identifiable risk and not mistaken belief). As the lease did not identify any particular method of fire protection or any specific time frame within which it had to be completed, the district court did not abuse its discretion in rejecting mutual mistake as a basis for equitable rescission. *Am. Sterling Bank*, 126 Nev. at \_\_\_, 245 P.3d at 538.

Flawlace also challenges the district court's \$3,550 damages award for breach of the lease agreement for unpaid rent. It argues that substantial evidence did not support the claim for breach of contract because Lin allegedly only raised evidence of damages in his closing statements. This assertion disregards Lin's earlier testimony that

Flawlace/Tarver abandoned the property in July 2010 and did not pay rent for three months. Flawlace did not dispute this allegation. Lin's testimony provides evidence supporting the short trial judge's finding that Tarver breached the contract, and we perceive no error in the district court's determination that damages for breach of contract were warranted. *Sheehan & Sheehan*, 121 Nev. at 486, 117 P.3d at 223 (providing that the district court's determination that a contract was or was not breached shall be affirmed unless clearly erroneous). While damages for breach were appropriate, we observe that the award of \$3,550 suggests a calculation error, as three months' rent payments of \$1,138 would equal \$3,414. Accordingly, we affirm the breach of contract decision but vacate the amount of damages and remand for determination of the amount of damages awarded for that breach, affirm the decision to deny rescission, and reverse the unjust enrichment portion of the judgment, which we remand for proceedings consistent with this order. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Cherry, J.  
Cherry

cc: Hon. Joanna Kishner, District Judge  
Nathaniel J. Reed, Settlement Judge  
Lin & Associates  
Parker, Nelson & Associates  
Eighth District Court Clerk