

**IN THE COURT OF APPEALS OF IOWA**

No. 7-759 / 07-0160  
Filed November 15, 2007

**SUSAN L. HORTON, RAY'S UPTOWN  
DRUG COMPANY, an Iowa Corporation,  
and CENTRAL IOWA COMPOUNDING,  
INC., an Iowa Corporation,**  
Plaintiffs-Appellees,

**vs.**

**UPTOWN PARTNERS, L.P.,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Polk County, Martha Mertz, Judge.

Uptown Partners appeals the district court's ruling denying it recovery of attorney fees pursuant to the parties' lease agreement. **AFFIRMED.**

Michael Sellers, West Des Moines, for appellant.

William Serangeli of Smith, Schneider, Stiles & Serangeli, P.C., Des Moines, for appellee.

Considered by Vogel, P.J., and Mahan and Zimmer, JJ.

**MAHAN, J.**

Uptown Partners, L.P. (Partners) appeals the district court's ruling denying recovery of attorney fees pursuant to the parties' lease agreement. Partners claims plaintiffs' lawsuit made claims for breach of the parties' lease agreement and the lease provides for recovery of attorney fees. Plaintiffs claim the lease requires a finding of a breach of the agreement to award attorney fees. We affirm.

**I. Background Facts and Proceedings**

Susan Horton was the owner and operator of Ray's Uptown Drug Company (Ray's Uptown) and Central Iowa Compounding, Inc. (CIC) in Des Moines. She operated both companies out of a leased space located in the Uptown Shopping Center, which eventually came to be owned by Partners. Horton and Partners entered into a lease effective January 1, 1997, through December 31, 2001. In paragraph twenty-four the lease states:

24. ATTORNEY'S FEES. If, because of any breach or default by Lessee in Lessee's obligations hereunder, it shall become necessary for Lessor, in Lessor's sole judgment, to employ an attorney to enforce or defend any of the Lessor's rights or remedies hereunder, Lessee agrees to pay reasonable attorney's fees incurred by Lessor in such connection. The same obligation shall apply to Lessor for Lessee's attorney fees for Lessor's breach or default.

In July 2000 after Partners leased a space in the shopping center to Drug Town, a major competitor of Ray's Uptown, Horton sold Ray's Uptown to Drug Town, abandoned the premises, and ceased paying rent. Partners found a replacement tenant and did not sue Horton for abandonment of the lease or "any breach or default by lessee in lessee's obligations." Three years later, in July

2003, Horton filed suit against Partners claiming the lease of the shopping center space to Drug Town (1) violated the implied covenant of good faith and fair dealing, and (2) constituted tortious interference with prospective business advantage. Partners counterclaimed for breach of the lease based on Horton's abandonment of the premises.

Following discovery, Partners sought and the district court granted summary judgment on the tortious interference claim, but denied summary judgment on the implied covenant of good faith and fair dealing claim. The case was tried to a jury, which returned a verdict in favor of the plaintiffs in the amount of \$77,487.99 for damages incurred in relocating the business. Regarding Partners' counterclaim, the jury found Horton did not breach the lease agreement.

Partners appealed the money judgment in favor of Horton on the implied covenant claim, but did not appeal the unfavorable verdict on its counterclaim against Horton for breach of the lease. On appeal to the court of appeals, we found the district court erred in not granting Partners' motion for summary judgment with regard to the implied covenant of good faith and fair dealing claim. *Horton v. Uptown Partners, L.P.*, No. 05-0982 (Iowa Ct. App. May 10, 2006). That decision did not address the counterclaim verdict because it was not appealed.

On remand, Partners filed a request for attorney fees pursuant to the lease agreement. The district court denied the request, but assessed the costs of litigation two-thirds to Horton and one-third to Partners in accordance with Iowa Code section 625.3 (2005). Partners appeals.

## II. Standard of Review

We review the district court's judgment on an award of legal fees for correction of errors at law. Iowa R. App. P. 6.4. The district court's findings of fact are binding upon us if supported by substantial evidence. Iowa R. App. P. 6.14(6)(a). Evidence is substantial when a reasonable mind would accept it as adequate to reach the same findings. *Hendricks v. Great Plains Supply Co.*, 609 N.W.2d 486, 490 (Iowa 2000).

## III. Merits

Partners argues it was entitled to an award of attorney fees under paragraph twenty-four of the lease upon issuance of the court of appeals decision. Uptown claims it was forced to defend plaintiffs' lawsuit and is therefore entitled to attorney fees. The plaintiffs, on the other hand, claim there is no basis for an award of attorney fees under the ambiguous terms of paragraph twenty-four because the district court jury made an express finding that Horton did not breach the lease and that finding was never appealed.

The district court ruled in part:

In Defendant's case, the court finds that Uptown Partners cannot recover attorney fees because it failed to prove a breach or default by Plaintiffs as required by the terms of the lease. While the Defendant alleged in its counterclaim that Plaintiffs breached the lease, the jury decided that issue against Defendant. Based on the jury's verdict, the trial court dismissed Defendant's counterclaim. The appellate court did not reverse, or even address, the counterclaim verdict. As a result, the jury's determination and the court's subsequent dismissal of Defendant's counterclaim became a final judgment, which this court is without authority to change. See *Gail v. Western Convenience Stores*, 434 N.W.2d 862, 863 (Iowa 1989).

Uptown argues on appeal that paragraph twenty-four of the lease *clearly* covers an award of attorney fees for retention of counsel to defend any *claim* of breach. We, like the district court, disagree. Paragraph twenty-four clearly states in part “because of any breach.” No breach was established in this case. In addition, any ambiguity in paragraph twenty-four must be construed against Uptown as the drafter of the lease. *Alliant Energy–Interstate Power & Light Co. v. Duckett*, 732 N.W.2d 869, 877-78 (Iowa 2007).

We conclude that Uptown’s additional arguments under paragraphs fourteen and twenty-three of the lease, even though not preserved, are without merit. We affirm the decision of the district court.

**AFFIRMED.**