OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION FOUR

OLD NAVY, LLC,	)	No. ED111214
	)	
Appellant,	)	Appeal from the Circuit Court of
	)	St. Louis County
vs.	)	
	)	Honorable Brian H. May
SOUTH LAKEVIEW PLAZA I, LLC,	)	
	)	
Respondent.	)	Filed: July 18, 2023

Old Navy, LLC ("Appellant") appeals the judgment of the Circuit Court of St. Louis County denying its motion for partial summary judgment and granting summary judgment for South Lakeview Plaza I, LLC ("Respondent"). Appellant raises four points on appeal. In Point I, Appellant argues the trial court erred in granting Respondent's motion for summary judgment because the uncontroverted facts demonstrate Appellant's leased property was separately assessed for real estate tax purposes within the meaning of the lease. In Point II, Appellant argues the trial court erred in granting Respondent's motion for summary judgment based on waiver because this issue was not properly raised by Respondent and is not supported by the record. In Point III, Appellant argues the trial court erred in denying Appellant's motion for partial summary judgment because Respondent applied the wrong formula and overcharged Appellant for property taxes under the lease. In Point IV, Appellant alternatively argues the trial court erred in denying Appellant's motion for partial summary judgment because Respondent breached the lease by failing to use its best efforts to separately assess the leased property for real estate tax purposes.

REVERSED AND REMANDED IN PART AND AFFIRMED IN PART.

DIVISION IV HOLDS: Because Appellant stipulated the new tax parcel was created for the purposes of obtaining financing, we deny Point I. Because Appellant's awareness of Respondent's billing practices presents a genuine issue of material fact, we grant Point II. Because our holdings addressing Respondent's motions for summary judgment preclude summary judgment for Appellant, we decline to address Points III and IV, which concern Appellant's motions for summary judgment.

Opinion by: Philip M. Hess, J.
Kelly C. Broniec, C.J. and James M. Dowd, J. concur.

Attorney for Appellant: Douglas D. Silvius and Kate E. McKinney

Attorney for Respondent: Brian E. McGovern and William C. Jarvis

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.