IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

DIMITRIOS and MARIA BAHLITZANAKIS,	)	C.A. No. 06C-12-029 JTV
Plaintiffs,	)	
v.	)	
WILLIAM A. ROBINSON, CHU PAO ROBINSON, and MENG ROBINSON,	)	
Defendants.	)	

Submitted: October 14, 2010
Decided: January 31, 2011
REVISED: February 7, 2011

Gregory A. Morris, Esq., Liguori & Morris, Dover, Delaware. Attorney for Plaintiffs Dimitrios and Maria Bahlitzanakis.

Timothy A. Reisinger, Esq., Dover, Delaware. Attorney for Defendants.

Decision After Bench Trial
Plaintiff's Claim as to Defendants - DENIED
Defendant's Counterclaim - DENIED

VAUGHN, President Judge

Bahlitzanakis, et al. v. Robinson, et al.
C.A. No. 06C-12-029 JTV
February 7, 2011

ORDER

After a bench trial and consideration of the parties' post-trial submissions, and the record of the case, it appears that:

1. This case arises from a December 28, 2004 commercial lease agreement for a building located in Dover, Delaware. The Court is being asked to determine the responsibilities of the lessee and lessor, the plaintiffs/Bahlitzanakises and defendants/Robinsons, respectively, for repair or replacement of the roof of the leased building.

2. The building was to be used by the lessees as a restaurant. The lessees, however, closed the restaurant and left the premises during the lease term as a result of what they contend was a structurally dilapidated roof which prevented them from conducting business at the premises.

3. Before the lease was executed, a draft was given by the lessors to the lessees. The lessees retained legal counsel to assist them in negotiating the terms of the lease. During the negotiations, a handwritten change was added to the original draft. Both parties agreed to the handwritten addition, initialed beside it, and signed the lease.

4. The handwritten addition, which is central to this case, was added at the end of paragraph six. Paragraph six as it appeared in the draft given to the lessees by the lessors read as follows:

> 6- MAINTENANCE AND REPAIR
>
> (a) Lessee covenants and agrees at lessee's own expense to keep and maintain the roof and other exterior portions of the demised premises in good and proper repair.

> (b) Lessee covenants and agrees that it will at its own cost and expense, manage, repair and maintain all of the driveways, footways, and parking areas leased to Lessee, including being responsible for, at its cost and expense, keeping the subject property and the easement area south of the subject property clean and free from accumulations of ice and snow, or other natural precipitation.
>
> (c) Lessee covenants and agrees to keep all of the rest of the interior and exterior of the premises, together with all electrical, heating, air conditioning, if any, and other mechanical installations and equipment, existing at the beginning of this Lease or installed by him after the commencement of this lease and used by, or in connection with, the demised premises, in good order and repair at his own expense, and to promptly replace, at his own expense, any glass, doors and windows which may be broken or damaged, and to surrender the demised premises at the expiration of the term in as good condition as when received, ordinary wear and tear excepted.
>
> (d) Except as expressly set forth in this paragraph, Lessor shall be under no liability for repair or maintenance of the leased premises, or any part thereof.

5. Immediately following the last sentence of the subsection (d), the handwritten addition appears, which reads as follows:

> During the first year of this lease, lessee will maintain a service contract with a contractor approved by Lessor. Said service contract cost not to exceed $100.00 per month. During this first year term, Lessor will be responsible for any repair/replacement costs, but not maintenance costs, in

excess of $1,600.00.

6. There is substantial evidence that the roof was, in fact, deteriorated beyond repair. Credible testimony, given by the lessees' experts, indicate that the building's roof was "not structurally sound or safe" and was "deteriorated beyond repair." The lessees retained Alpha Engineering Inc. to assess the damage to the roof. A copy of the structural engineer's report states that the "[s]teel deck is completely deteriorated beyond salvage. [The] existing plywood patch and repair is haphazard and unsafe. In my professional opinion, this roof is not structurally sound or safe. Total deck replacement is [required]. Also, roof equipment is deteriorated beyond repair."[1] I find that the roof was, in fact, deteriorated beyond repair and that its condition rendered the premises uninhabitable for use as a restaurant.

7. While the lessees were still occupying the premises, they asked the landlord to replace the roof. The lessees contend that the handwritten addition imposed an obligation on the lessors to make all repairs to the roof which exceeded $1,600, and that the lessors' failure to do so was a breach of the lease agreement. The lessees' attorney, who assisted them in negotiating the lease, testified that the handwritten changes were made to protect the lessees from having to pay for any major repairs. In explaining the meaning behind the handwritten addition, he testified that "the repair replacement was to be the responsibility of the landlord. This is, again, having to do with the major systems, with the roof, the structure, the plumbing, heating, air-conditioning, the electrical – basically the major systems."[2] In addition,

[1] Pl.'s Closing Arugment, Ex. E.

[2] Trial Tr. at 32.

he testified that the lessors requested a one-year limit on this responsibility, which was reflected in the handwritten changes.

8. The lessors contend that they did not have a duty to repair the roof. They point to paragraph 6(a) which provides that the lessees were responsible for maintaining the roof and keeping it in good repair. They contend that the handwritten addition to paragraph 6(d) was intended to impose responsibility upon them for repair or replacement of the air conditioner, if it broke within the first year. The lessors allege that the lessees did not have the opportunity to inspect the air conditioner when the lease was executed. The handwritten language, according to the lessors, created a service contract, and service contracts do not cover major systems like a roof. They further contend that if the handwritten language was intended to create an obligation upon the lessors to replace the roof, some handwritten notation would also have been added to paragraph 6(a). The service contract referred to in the handwritten addition was never submitted to the lessors for approval, as required by the lease. In fact, the service contract was not submitted to the lessors until the parties' relationship had become hostile and they were in litigation. They also point to a paragraph of the lease which provides that the rental unit was leased in "as is" condition.

9. A lease is a contractual agreement between parties,[3] and when interpreting a lease's intent the court should do so as a prudent person – in a fair and customary manner.[4] A contract must be interpreted as a whole in order to give effect

[3] *Brandywine S'n B, Inc. v. Friedland*, 1986 WL 4274, *2 (Del. Super. Nov. 5, 1986); (citing *Rogers v. Great Atlantic and Pacific Tea Co.*, 167 A.2d 712 (Conn. Supr. Ct. 1961)).

[4] *Brandywine*, 1986 WL at *2.

to the parties true intent.[5] When the contract is clear, the parties intent is determined by "giving the language its ordinary and usual meaning."[6] A contract is ambiguous only in the rare circumstances that a specific provision is susceptible to different interpretations, or has two or more different meanings.[7]

10. In determining the intentions of the contracting parties, "[c]ourts must construe the agreement as a whole, giving effect to every term of the instrument and, if possible, reconciling all of its provisions."[8] Accordingly, one paragraph in a contract will not be read in isolation, in fact a court must read the paragraph within context of the entire instrument.[9] If "two provisions of a lease appear inharmonious, effect should nevertheless be given to both if, by according to them a reasonable interpretation, each is reconcilable with the other."[10]

13. I believe that the handwritten language which is in dispute is ambiguous. It is arguably susceptible to the broad, open-ended reading advanced by the lessees and supported by the testimony of the attorney. And the fact that it is a handwritten

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[5] *Northwestern Nat'l Ins. v. Esmark, Inc.*, 672 A.2d 41, 43 (Del. 1996).

[6] *Johnson v. Talley Ho, Inc.*, 303 A.2d 677, 679 (Del. Super. 1973).

[7] *ABB Flakt, Inc. v. Nat'l Union Fire Ins. Co.*, 731 A.2d 811, 816 (Del. 1999). (Finding that the parol evidence rule is applicable when interpreting a commercial lease); *See also Concord Mall, LLC v. Best Buys Stores, L.P.*, 2004 WL 1588248 (Del. Super. 2004); *Stoltz Realty Co. v. Paul*, 1995 WL 654152 (Del. Super. 1995).

[8] *DCV Holdings, Inc. v. ConAgra, Inc.*, 889 A.2d 954, 961 (Del. 2005); *Council of The Dorsett Condo Apts. v. Gordon*, 801 A.2d 1, 7 (Del. 2002).

[9] *Hudson v. D & V Mason Contractors, Inc.*, 252 A.2d 166 (1969).

[10] *Schwartzman v. Weiner*, 319 A.2d 48, 51 (Del. Super. 1974); (citing *Katz v. Williams*, 211 A.2d 723, 726 (Md. 1965)).

addition is supportive of an argument that it would control over conflicting pre-printed language. Despite the plausibility of these arguments, I find myself persuaded by the lessors' argument that the second handwritten sentence is interrelated with the first handwritten sentence, both of which refer to the first year of the lease. I find that the more convincing interpretation of the second sentence is that the lessors' obligation to repair or replace, an expense in excess of $1,600, applied to those items which were covered by the service contract. The lessors specifically refer to the air conditioning. While I do not agree that the lessors' obligation under the second sentence was limited to the air conditioning, I do agree that it was limited to items which were covered by the service contract. The service contract which was ultimately produced covers "all equipment, fixtures and the property currently known as LaBabola Pizzeria & Restaurant." I find that it does not cover the roof, and as mentioned above, the lessees never submitted a service contract to the lessors for their approval. This interpretation is more consistent with all of the other provisions of the lease than the interpretation advanced by the lessees. I, therefore, conclude that the lessors were not obligated under the lease to replace the roof at their expense. The plaintiffs' claim against the defendant will, therefore, be denied.

14. I also find that the lessees were under no obligation to replace the roof. The lessees obligation to maintain the roof in good and proper repair does not obligate the lessees to perform the extensive replacement which was needed at the time the lessees took possession of the premises. Accordingly, I conclude that neither party was required under the lease to replace the roof.

15. I also find that since the premises were uninhabitable for the purpose for

which they were rented, the lessees were entitled to cancel the lease. Therefore, the defendants' counterclaim against the plaintiffs for rent will be denied. I find that this also entitled the lessees to cancel a contract to purchase equipment from the lessor, equipment which I infer was left at the premises when the lessees vacated. Therefore, the lessors' counterclaim in this Court for damages relating to the equipment will be denied. This finding, however, does not disturb a judgment entered in Justice of the Peace Court, which is and has been final.

16. I find that neither the plaintiffs nor the defendants committed any fraud.

17. For the foregoing reasons, the plaintiffs' claim against the defendants' is ***denied***. The defendants' counterclaim against the plaintiffs is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File