MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

R.C. Richmond, III
Taft Stettinius & Hollister LLP
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Weston E. Overturf
Hamish S. Cohen
Jeffery Furminger
Mattingly Burke Cohen & Biederman, LLP
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Houseworks, Inc., d/b/a Houseworks,

Appellant,

v.

AT Altus Echelon IN, LLC,

Appellee.

January 28, 2021

Court of Appeals Case No. 20A-PL-676

Appeal from the Marion Superior Court

The Honorable Cynthia J. Ayers, Judge

Trial Court Cause No. 49D04-1703-PL-8442

Pyle, Judge.

Statement of the Case

[1] This case involves a lease dispute between Houseworks, Inc. d/b/a Houseworks ("Houseworks") and AT Altus Echelon IN, LLC ("Altus") regarding damage to a shopping center owned by Altus. After the parties filed cross-motions for summary judgment, the trial court granted Altus' partial motion for summary judgment, finding that Houseworks was responsible for damage and repair of the shopping center. The trial court also denied Houseworks' cross-motion, finding that genuine issues of material fact remain as to whether Altus' refusal to accept Houseworks' repair effort was reasonable. Houseworks appeals, arguing that the trial court erred in granting partial summary judgment in favor of Altus. Specifically, Houseworks argues that: (1) it was not responsible for the damage to shopping center; and (2) it did not repair the shopping center.

[2] We conclude that, based on the designated evidence, Altus met its initial burden of showing the absence of a genuine issue of material fact regarding Houseworks' liability for damage to the shopping center and that genuine issues of material fact remained as to whether Houseworks' repair effort was reasonable. Accordingly, we affirm the trial court's judgment.

[3] We affirm.

Issue

Whether the trial court erred by granting partial summary judgment in favor of Altus.

Facts

[4] In June 2001, Houseworks entered into a lease agreement (the "Premier Lease") with Premier Venture Echelon, LLC ("Premier") for space ("the Leased Premises") in a shopping center owned by Premier. Under the Premier Lease, Houseworks was required to and did install signage ("the Façade Signage") on the exterior of the shopping center. Premier approved of the Façade Signage and method of installation. In order to affix the Façade Signage to the exterior of the shopping center, holes ("the Holes") were placed in the exterior paneling on the front of the shopping center.

[5] In 2011, Altus purchased the shopping center from Premier and became Houseworks' landowner by assuming the Premier Lease. Thereafter, in January 2012, Houseworks and Altus entered into a lease agreement ("the Altus Lease") for the Leased Premises. The term of the Altus Lease was for five years and expired on February 28, 2017. In relevant part, the Altus Lease provided:

> Section 7.06 – Surrender of Premises
>
> Upon termination or earlier expiration of this Lease, Tenant shall surrender the Premises in the same condition as the date Tenant opened for business, reasonable wear and tear and loss due to casualty and condemnation excepted, and shall surrender all keys for the Premises to Landlord. Tenant must remove all its trade

> fixtures and personal property and, if requested[,] any other installation, alterations or improvements made by Tenant and shall repair any damage caused thereby. Tenant shall have the right to terminate the Lease after the 36th month period, provided Tenant gives Landlord Ninety (90) days written notice.

(App. Vol. 2 at 44). Pursuant to the terms of the Altus Lease, Altus agreed to replace the existing Façade Signage and to install additional signage on the roof of the shopping center. No additional holes were placed in the exterior of the shopping center as a result of Altus' replacement of the Façade Signage.

[6] On February 28, 2017, the Altus Lease expired. Although Houseworks had an option to extend the term of the lease, Houseworks did not exercise said option. Houseworks arranged to lease other space but did not vacate the Leased Premises.

[7] The following day, Altus filed suit seeking to evict Houseworks from the Leased Premises ("the Eviction Lawsuit"). On March 8, 2017, Altus and Houseworks entered into a Hold Over Agreement ("the HOA"), which incorporated the Altus Lease and allowed Houseworks to remain in the Leased Premises until April 15, 2017 ("the Vacation Date"). The HOA also provided as follows:

> 7. **Removal of Signage**. As required under the Lease, on or before the Vacation Date, Tenant shall remove all signage and make the necessary repairs to the Shopping Center which repairs shall be subject to Landlord's *reasonable approval*. Tenant shall be responsible for any damage to the Shopping Center and any failure by Tenant to repair any damage resulting from the removal of signage shall be a material default under this Agreement and result in Landlord's immediate filing of the Agreed Judgment executed in connection herewith.

(App. Vol. 2 at 82) (emphasis added). Additionally, paragraph eleven of the HOA provided that "[p]romptly following the Vacation Date, assuming that Tenant has paid the Lease Indebtedness and has complied with its other obligations under the Lease and this Agreement, the Parties shall file in the [Eviction] Lawsuit a *Stipulation of Dismissal with Prejudice*[.]" (App. Vol. 2 at 83) (emphasis in original).

[8] Houseworks paid the lease indebtedness as required by the HOA and vacated the Leased Premises by the Vacation Date. Houseworks also had the Façade Signage removed. The removal process left the Holes in the exterior paneling of the shopping center. In order to prevent infestation and water damage, Houseworks elected to place tabs over the Holes, which were adhered to the paneling with silicone adhesive and then painted to match the shopping center.

[9] After Houseworks vacated the Leased Premises, Altus refused to dismiss the Eviction Lawsuit, maintaining that Houseworks had failed to comply with the Altus Lease and the HOA by not repairing the damage caused when it removed the Façade Signage. On June 16, 2017, Houseworks filed a Motion to Enforce Settlement Agreement ("the Enforcement Motion") requesting that the trial court order Altus to dismiss the Eviction Lawsuit consistent with paragraph eleven of the HOA. Altus filed an objection to the Enforcement Motion, arguing that Houseworks had failed to comply with its obligations under the Altus Lease and the HOA because the Holes remained in the exterior paneling of the shopping center. The trial court scheduled the matter for a hearing on October 10, 2017 ("the October 2017 hearing").

[10] On September 28, 2017, Houseworks filed a motion requesting that the trial court enter findings of fact and conclusions of law pursuant to Indiana Trial Rule 52(A) for the then upcoming October 2017 hearing. The next day, Altus filed a motion requesting that the trial court clarify that the October 2017 hearing would not be an evidentiary hearing or, in the alternative, to continue the hearing. Specifically, Altus argued that Houseworks' Enforcement Motion sought an entry of judgment that must be determined at a trial. Houseworks filed a response to Altus' clarification motion and argued that the Enforcement Motion sought the dismissal of the underlying lawsuit, which could be determined at the October 2017 hearing. The trial court denied Altus' motion and stated that the October 2017 hearing was "not a trial but rather an evidentiary hearing[.]" (App. Vol. 2 at 101).

[11] At the October 2017 hearing, which was held before a magistrate judge, Houseworks offered fourteen exhibits and testimony from three witness. However, the trial court suspended the hearing because it believed that the parties had "put the Court in a position where the Court's supposed to interpret what reasonable wear and tear is and what reasonable approval is. That's not the enforcement of a settlement agreement." (Tr. Vol. 2 at 50).

[12] The following day, Houseworks filed a motion requesting a status conference with the trial court's elected judge, which was held on January 30, 2018. Thereafter, the trial court found that the October 2017 hearing could continue. On July 31, 2018, the hearing on the Enforcement Motion resumed and was concluded that same day with the magistrate judge.

[13] On October 26, 2018, the trial court entered its findings of fact and conclusion thereon ("the Enforcement Order") denying Houseworks' Enforcement Motion and directing Altus to petition for a hearing on damages. The Enforcement Order found that the terms of the Altus Lease and HOA were unambiguous and that Houseworks was responsible for the Holes in the exterior panels of the shopping center. The next day, Altus filed a motion for a damages hearing, and the trial court scheduled that hearing for January 15, 2019.

[14] On November 12, 2018, Houseworks filed a motion to reconsider or, in the alternative, to certify the Enforcement Order for interlocutory appeal. The motion also requested a hearing before the elected judge, which was granted and scheduled for March 2019. On November 28, 2018, Houseworks filed a motion requesting that all proceedings in the matter be transferred and heard by the elected judge. On December 5, the elected judge granted the motion and cancelled the January 2019 damages hearing.

[15] On February 19, 2019, Altus moved for partial summary judgment as to Houseworks' liability for the Holes under the Altus Lease and the HOA. On March 19, 2019, Houseworks filed a cross-motion for summary judgment, arguing that it was not obligated to repair the Holes because they were not considered damage under the terms of Altus Lease that required repair. Specifically, Houseworks argued that the Altus Lease and the HOA only required it to repair any damage caused by the removal of the Façade Signage, and that it was entitled to judgment as a matter of law because the Holes in the panels were caused by the installation and not removal of the Façade Signage.

[16] The trial court held a hearing on the parties' cross motions for summary judgment in August 2019. On October 10, 2019, the trial court issued an order ("the October 2019 order") finding that the Enforcement Order constituted a judgment on the merits and was a final and appealable order. The October 2019 order also found that the parties' summary judgment motions were moot.

[17] On October 29, 2019, Houseworks filed a motion requesting that the trial court reconsider its October 2019 order. The trial court granted Houseworks' motion in part on November 25, 2019 ("the November 2019 order") and found that the Enforcement Order was not final and appealable. However, the November 2019 order maintained that the parties' summary judgment motions remained moot.

[18] On December 13, 2019, Houseworks filed a combined motion to reconsider and motion to correct errors relating to the trial court's November 2019 order. On January 27, 2020 ("the January 2020 order"), the trial court issued an order granting Houseworks' second motion to reconsider but denying the motion to correct errors. The January 2020 order vacated the October 2019 and November 2019 orders. Further, the January 2020 order stated that the trial court would consider that parties' respective motions for summary judgment.

[19] On March 3, 2020, the trial court issued an order on the parties' cross-motions for summary judgment ("the March 2020 summary judgment order"). The trial court granted Altus' partial summary judgment motion and denied Houseworks' cross-motion. Specifically, the order stated as follows:

> Therefore, Altus'[] Motion for Partial Summary Judgment is, hereby, granted. There is no just reason for delay and Plaintiff Altus AT Altus Echelon IN, LLC is entitled to judgment on the issue of whether Houseworks' was responsible for damage repair of the building.
>
> Further, Houseworks['] Motion for Summary Judgment is, hereby, denied, because genuine issues remain for trial on the effect of the words, in the Holdover Agreement, of a requirement for "reasonable approval" of the repairs by the landlord and whether their silicone and tape fix of holes in the building was sufficient to meet contract criteria.

(App. Vol. 2 at 26). The trial court then scheduled a one-day bench trial on reasonableness of Altus' withholding of approval. On March 12, 2020, Houseworks filed a motion requesting that the trial court make the summary judgment order final and appealable, which the trial court granted. Houseworks now appeals the March 2020 summary judgment order.

Decision

[20] Houseworks argues that the trial court erred in granting partial summary judgment in favor of Altus. We review a grant or denial of a motion for partial summary judgment the same as in the trial court. *Ballard v. Lewis*, 8 N.E.3d 190, 193 (Ind. 2014). "[S]ummary judgment is appropriate only where the evidence shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Id*. (citations omitted). A fact is 'material' for summary judgment purposes if it helps to prove or disprove an essential element of the plaintiff's cause of action; a factual issue is 'genuine' if the trier of fact is required to resolve an opposing party's

different version of the underlying facts. *Ind. Farmers Mut. Ins. Group v. Blaskie*, 727 N.E.2d 13, 15 (Ind. 2000). The facts and reasonable inferences are construed in favor of the non-moving party. *City of Beech Grove v. Beloat*, 50 N.E.3d 135, 137 (Ind. 2016). The party appealing the grant of summary judgment has the burden of persuading this Court that the trial court's ruling was improper. *First Farmers Bank & Trust Co. v. Whorley*, 891 N.E.2d 604, 607 (Ind. Ct. App. 2008), *trans. denied*. Where the challenge to summary judgment raises questions of law, we review them de novo. *Rogers v. Martin*, 63 N.E.3d 316, 320 (Ind. 2016).

[21] Further, the trial court entered findings of fact and conclusions thereon in its March 2020 summary judgment order. While such findings and conclusions are not required in a summary judgment and do not alter our standard of review, they are helpful on appeal for us to understand the reasoning of the trial court. *See Knighten v. E. Chicago Hous. Auth.*, 45 N.E.3d 788, 791 (Ind. 2015).

[22] Moreover, "'[t]he fact that the parties have filed cross-motions for summary judgment does not alter our standard for review . . . .'" *Id*. (quoting *Reed v. Reid*, 980 N.E.2d 277, 285 (Ind. 2012)). "Instead, under most circumstances[,] we consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law." *Knighten*, 45 N.E.3d at 788 (internal quotations and citation omitted). Here, however, Houseworks does not appeal the trial court's denial of its own motion for summary judgment. Rather, Houseworks' challenge focuses on the trial court's grant of partial summary

judgment in favor of Altus. Therefore, our review is limited to this motion only. *See Id*.

[23] On appeal, both parties argue that the other's interpretations of the Altus Lease and the HOA are incorrect. According to Houseworks, the Altus Lease and the HOA only required it to repair any damage caused by the removal of the Façade Signage, and here, the damage was caused by the installation of the signage. Thus, Houseworks argues that it is not liable for the damage caused to the shopping and that it did not attempt to repair the damage. In response, Altus argues that the Altus Lease and the HOA are unambiguous, and that Houseworks is responsible for the damage in the shopping center, which was subject to repair by Housework.

[24] A lease is interpreted in the same way as is any other contract. *Chesterfield Management, Inc. v. Cook*, 655 N.E.2d 98, 102 (Ind. Ct. App. 1995), *reh'g denied*, *trans. denied*. The construction of a written contract is generally a question of law. *The Winterton, LLC v. Winterton Investors, LLC*, 900 N.E.2d 754, 759 (Ind. Ct. App. 2009), *trans. denied*. When interpreting a contract, we attempt to determine the intent of the parties at the time the contract was made. *Id*. When the language of the contract is unambiguous, the parties' intent is determined from the four corners of the document. *Id*. "The unambiguous language of a contract is conclusive upon the parties to the contract as well as upon the court." *Id*. A contract is ambiguous when a reasonable person could find its terms susceptible to more than one interpretation. *Id*. If a contract is ambiguous, the court may consider extrinsic evidence, and the construction of

the contract becomes a matter for the trier of fact. *Id*. The terms of a contract are not ambiguous merely because a controversy exists between the parties concerning the proper interpretation of the terms. *Sunburst Chem., LLC v. Acorn Distributors, Inc.*, 922 N.E.2d 652, 653 (Ind. Ct. App. 2010).

[25] Here, the trial court found Altus had met its burden of demonstrating there were no genuine issues of material fact regarding Houseworks' responsibility for the damage in the paneling of the shopping center. In making its ruling, the trial court relied on the Altus Lease and the HOA, both of which were designated as evidence by Altus. The Altus Lease provided that Houseworks "must remove all its trade fixtures and personal property and, if requested any other installation, alterations or improvements made by Tenant and shall repair any damage caused thereby." (App. Vol. 2 at 44). Additionally, the HOA provided in relevant part that Houseworks "shall remove all signage and make the necessary repairs to the Shopping Center . . . ." (App. Vol. 2 at 82).

[26] After reviewing both the Altus Lease and the HOA, we conclude that the language therein clearly and unambiguously explains Houseworks' responsibility for damage. When Houseworks had the Façade Signage removed, the process left the Holes in the external paneling of the shopping center. Thus, we conclude that Altus met its initial burden of showing that there was no genuine issue of material fact as to whether Houseworks was responsible for the damage to the shopping center.

[27] Having determined that Houseworks was responsible for the damage it caused, we now turn briefly to Houseworks' assertion that its act of injecting the Holes with silicone and covering them with tabs did not constitute a repair that was subject to Altus' reasonable approval. Here, the HOA states that Houseworks' "repairs to the Shopping Center . . . shall be subject to [Altus'] reasonable approval." (App. Vol. 2 at 82). Houseworks attempted to repair the Holes by injecting them with silicone and then covering them with tabs. However, the reasonable approval language is ambiguous and susceptible to different interpretations. As such, the trial court correctly determined that genuine issues of material fact remain that must be determined by the finder of fact. Therefore, we affirm the trial court's grant of Altus' motion for partial summary judgment and denial of Houseworks' motion for summary judgment.

[28] Affirmed.

Kirsch, J., and Tavitas, J., concur.