

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

LYDIA DAVIS,)	NO. 63212-4-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	UNPUBLISHED OPINION
DWAYNE E. DES LONGCHAMPS,)	
)	
Appellant.)	FILED: November 16, 2009
)	

Leach, J. — Dwayne Des Longchamps appeals an order granting a writ of restitution and imposing judgment pursuant to a settlement agreement in an unlawful detainer action filed by his landlord, Lydia Davis. Des Longchamps agreed that if he failed to vacate the premises by a specified date, Davis would be entitled to immediate issuance of a writ of restitution and a judgment for rent, costs, and attorney fees upon 24 hours' faxed notice to his counsel. When Des Longchamps failed to vacate timely, Davis's counsel faxed notice to Des Longchamps's counsel that he would apply for relief and thereafter obtained an order for a writ and judgment more than 24 hours later. Contending Davis was also required to specify the precise time and place that she would seek relief,

Des Longchamps argues he was not provided sufficient notice. We disagree. Moreover, even assuming a deficiency in the notice, it is clear that Des Longchamps suffered no prejudice that would justify reversal. We accordingly affirm and award Davis her attorney fees on appeal.

FACTS

In October 2006, Des Longchamps rented a recreational vehicle (RV) space from Davis located behind Davis's residence. The rental included telephone service and use of the laundry room and bathroom inside Davis's house. In June 2008, following disputes over the telephone service and other matters,¹ Davis canceled the phone service and Des Longchamps refused to pay July's rent. When Des Longchamps also refused to pay the August rent, Davis served a three-day notice to pay rent or vacate. After Des Longchamps still failed to pay, Davis instituted an unlawful detainer action. Des Longchamps stopped residing at the premises after September 2008, but items of his personal property, including the RV, remained on the premises.

At a show cause hearing on September 23, a court commissioner set the matter for bench trial before a superior court judge on November 3. The commissioner also ordered Des Longchamps to pay the disputed rent into the registry of the court pending trial. Des Longchamps obtained counsel and filed a

¹ The parties describe these matters in detail in the briefs, but the underlying facts of those disputes are irrelevant to the issues before this court and accordingly are not further discussed in this opinion.

trial brief listing several defenses, including discrimination, deprivation of utility service, retaliation, and bad faith.

On the trial date, November 3, the parties settled the case with a written agreement approved by the trial court. Davis agreed that Des Longchamps would receive the disputed rent previously paid into the court's registry, and Des Longchamps agreed to vacate the premises, including removing his RV and all other personal property, by December 31, 2008, at 11:30 p.m. Section 6 of the agreement provided Davis with a procedure for obtaining relief if Des Longchamps failed to vacate timely:

If defendants fail to comply with all requirements of this stipulation the plaintiffs will be entitled, upon the filing of a declaration certifying that the defendants are not in compliance, and 24 hours faxed notice to counsel [for Des Longchamps] to the immediate issuance of a writ of restitution and a judgment for all unpaid rents, attorney's fees and court costs. Said writ of restitution and judgment may issue in ex parte with 24 hours faxed prior notice to the defendants or the defendant's counsel.

Section 9 of the agreement further provided that time was of the essence.

Des Longchamps did not vacate the premises by December 31. On January 1, 2009, counsel for Davis faxed a notice to Des Longchamps's counsel indicating that Des Longchamps had failed to vacate and stating that Davis would "exercise her rights under the stipulation at the earliest opportunity allowed under its terms."

On January 2, a Friday, counsel for Des Longchamps telephoned Davis's counsel, asking for an extension of time because of extreme weather conditions. He could not say how much of an extension would be necessary. Davis's counsel said he might consider a written request, which counsel said he would provide. During their conversation, Davis's counsel disagreed with Des Longchamps's counsel's position that he was entitled to notice of the specific time and place in where Davis would seek the relief provided in the settlement agreement.

Within a half hour of that phone conversation, Davis's counsel learned that the trial judge would be available Monday morning, January 5. He then telephoned Des Longchamps's counsel to notify him that he would present the orders at that time rather than submit them to the ex parte department of the court by courier. Des Longchamps's counsel did not answer his phone, however, and his service indicated no message could be left. Davis's counsel telephoned Des Longchamps' counsel several times over the following weekend with the same result. On Sunday afternoon, January 4, Davis's counsel sent Des Longchamps's counsel another fax indicating that he would seek relief the next morning in the trial judge's courtroom at 8:30 a.m. Des Longchamps's counsel did not go into his office that day, however, and did not see the second fax. He never served or filed a written request for extension.

On Monday morning, January 5, counsel for Davis presented an order for a writ of restitution and other relief to the trial judge at 8:30 a.m. Hearing of the attorneys' dispute about the nature of the notice required under the agreement, the judge attempted to reach Des Longchamps's counsel by telephone but was only able to leave a message. After waiting past 9:00 a.m., the court signed Davis's counsel's proposed order for a writ of restitution and judgment under the agreement.

Later that day, counsel for Des Longchamps appeared in the same judge's courtroom on another matter and learned of the relief Davis had been granted.

Counsel for Des Longchamps filed a motion to reconsider. In it he argued that Davis had failed to give the notice required under the terms of the settlement agreement and further argued that Des Longchamps should have been excused from performance by the doctrine of force majeure and other equitable theories based on the extreme weather conditions during the previous week. Although the trial judge had recently retired, he heard the motion telephonically, sitting as a judge pro tempore. After obtaining a declaration from Davis's counsel, the court denied reconsideration.

Des Longchamps appeals.

ANALYSIS

Settlement agreements are contracts; thus, the legal principles generally applicable to contracts govern their construction.² We determine the construction and legal effect of a contract as a matter of law where there are no disputed facts.³ We review questions of law de novo.⁴

The fundamental dispute between the parties is whether the settlement agreement required that Davis provide 24 hours' notice by fax of the exact date, time, and place at which she would seek relief in the event that Des Longchamps failed to timely vacate the premises. We agree with Davis that an objective reading of the agreement evidences no such requirement.

Under "the objective manifestation theory of contracts," Washington courts "determine the parties' intent by focusing on the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the parties."⁵ We give contractual language its "ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent" and "do not interpret what was intended to be written but what was written."⁶

Here, it is clear from the entire agreement that the parties intended that all

² Stottlemire v. Reed, 35 Wn. App. 169, 171, 665 P.2d 1383 (1983).

³ Yeats v. Estate of Yeats, 90 Wn.2d 201, 204, 580 P.2d 617 (1978).

⁴ Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 880, 73 P.3d 369 (2003).

⁵ Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 503, 115 P.3d 262 (2005).

⁶ Hearst Commc'ns, 154 Wn. 2d at 504.

outstanding matters related to the litigation be resolved by the end of the 2008 calendar year. The parties could have included the requirement Des Longchamps now seeks to read into the agreement for some sort of limited evidentiary hearing if they had desired, but instead, consistent with the time-is-of-the-essence provision and the apparent overall aim of finality, provided Davis the option of “immediate” relief specified in section 6.

Acknowledging that the agreement’s language contains no express requirement that Davis provide notice of the date, time, and place where she would seek an order for a writ and judgment, Des Longchamps argues that such information was implicitly required because the parties must have meant to provide his counsel some undefined, limited opportunity to appear in court to oppose the relief Davis sought. But the only example of such a potential argument that he provides is his counsel’s unilateral personal belief that he should be allowed to argue that the inclement weather that occurred at the end of 2008 provided an equitable excuse for timely compliance. No language in the agreement suggests the parties intended any opportunity for any argument when they signed the settlement agreement.

Des Longchamps also attaches significance to evidence that the language of section 6 was negotiated as reflected by the handwritten interlineations added to the typed language. But the most that can be said of

this evidence is that it appears that counsel had the opportunity to insert additional notice or hearing requirements in the agreement had they wished and did not do so.⁷

Because we reject Des Longchamps's proposed construction of the contractual language as a matter of law, we also reject his claim that his due process or other rights were violated by the trial court's action. Des Longchamps received the notice that he negotiated for in the settlement agreement. He has provided no authority supporting a conclusion he was entitled to anything more.

Moreover, we conclude that even if the notice provided in this case was technically deficient under the terms of the agreement in any respect, it is clear that Des Longchamps was not prejudiced.

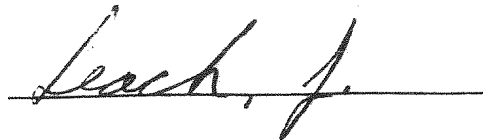
Des Longchamps argues that, had his counsel been present on the morning of January 5, he could have made potentially persuasive arguments

⁷ Des Longchamps attaches particular significance to the use of the word "in" in the phrase "Said writ of restitution and judgment may issue in ex parte with 24 hours faxed notice. . . ." He contends this signifies that the agreement contemplated a notice of a place, since the King County Superior Court ex parte department is a particular set of courtrooms. But he does not and could not argue that the order required Davis to seek relief only in the ex parte department. Moreover, as reflected in the record, under King County Superior Court Local Rules (KCLCR) effective on January 1, 2009, motions may be heard in the King County Superior Court ex parte department by mail without oral argument, and the Clerk's office must verify in advance any matters that are sought to be heard in person. See KCLCR 40.1(b). Such a procedure clearly provides no opportunity for appearance and oral argument.

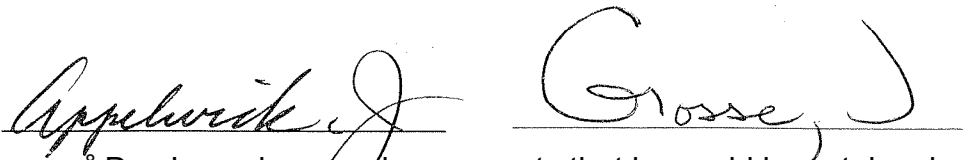
based on force majeure or other equitable doctrines such as impracticability or impossibility of performance. But his counsel raised just such claims in his motion to reconsider. After allowing oral argument on the motion to reconsider, the judge, who had approved the agreement when it was entered, who signed the January 5 orders proposed by Davis and who met later that same day with Des Longchamps's counsel, ultimately found his contentions unpersuasive.⁸

Davis requests fees on appeal. A contract providing for an award of attorney fees at trial also supports such an award on appeal. Davis is the prevailing party in this appeal. Subject to her compliance with RAP 18.1, we award Davis her attorney fees on appeal in an amount to be determined by a commissioner of this court.

Affirmed.

A handwritten signature in cursive script, appearing to read "Leach, J.", written over a horizontal line.

WE CONCUR:

Two handwritten signatures in cursive script, one reading "Appelwick, J." and the other "Grosse, J.", each written over a horizontal line.

⁸ Des Longchamps also suggests that he could have taken issue with the attorney fees request Davis filed on January 5 as to certain individual items requested by counsel. But he could have made any such arguments at the time of the motion to reconsider and did not do so. Moreover, although it does not appear that Des Longchamps intends to separately challenge the trial court's fees award here, given that he has assigned no error to the award, we have nonetheless reviewed the award and conclude the trial court did not abuse its discretion in determining the proper amount.

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