IN THE COURT OF APPEALS OF IOWA

No. 8-150 / 07-0635
Filed May 14, 2008

WOODLANDS CORNER, L.L.C.,
Plaintiff-Appellant,

vs.

ALFRED W. KALLHOFF and BONNIE J. KALLHOFF, d/b/a HEAVENLY HAM,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchinson, Judge.

The plaintiff appeals from the district court order denying its breach of contract claim against the defendants. **AFFIRMED IN PART AND REVERSED IN PART.**

Jason Springer of Springer & Laughlin Law Offices, P.C., Des Moines, for appellant.

Todd Elverson of Elvrson, Vasey & Peterson L.L.P., Des Moines, for appellee.

Heard by Sackett, C.J., and Miller and Baker, JJ.

MILLER, P.J.

Woodlands Corner, L.L.C. (Woodlands Corner) appeals from the district court order denying its breach of contract claim against Alfred and Bonnie Kallhoff and their business, Heavenly Ham. The court also denied the Kallhoffs' counterclaim, but awarded the Kallhoffs $14,596.75 in attorney fees under the contract. Woodlands Corner contends the court erred in denying its claim and in awarding the Kallhoffs their attorney fees. We affirm the district court's denial of Woodland Corner's breach of contract action, but reverse the award of the Kallhoffs' attorney fees.

I. Background Facts and Procedures

Arun and Saatchi Kalra are the owners of Woodlands Corner. They decided they wanted to become involved in commercial real estate in 1999. They originally owned a combined seventy-five percent share in Woodlands Corner, a commercial property they built, but in 2002 they bought the remaining twenty-five percent share from Randy Krohn. They own several other commercial properties as well as a construction business.

In the summer of 2000, Krohn received a call from the Alfred and Bonnie Kallhoff, owners of Heavenly Ham, seeking to lease a space at Woodlands Corner. On July 13, 2000, the Kallhoffs faxed to Woodlands Corner an economic proposal giving a lease commencement date of August 1, 2000, and stating the landlord was to provide the premises in vanilla-box condition.

On August 11, 2000, the Kallhoffs executed a lease with Woodlands Corner. In a section of the lease entitled "LEASE TERM," the lease states:

> The term of this Lease shall be for a period of five (5) years from the "Commencement Date" hereafter provided unless sooner

> terminated. The Commencement Date shall be August 1, 2000. Tenant's obligation to pay rent shall commence on November 1, 2000 or when the business opens, whichever first occurs.

Under a section entitled "RENT," the lease states that the tenants shall pay $3000 per month in rent for months four through twelve. For months thirteen through twenty-four, this amount increases to $3200 per month. Finally, rent for months twenty-five through sixty was set at $3400 per month. The lease then reads, "Nothwithstanding the foregoing, the Tenant shall only be obligated to pay the sum of $2,500 per month for the monthly rental due 11/01/2000, 12/01/2000, and 01/01/2001." Under a section entitled "SURRENDER OF PREMISES," the lease reads:

> The Demised Premises shall be surrendered to the Landlord at the end of the term or option term in a broom-clean condition. The Tenant agrees to place the Demised Premises in the same condition as the Demised Premises were delivered to Tenant by Landlord.

Exhibit C of the lease states:

> Tenant agrees at the request of Landlord or Landlord's Mortgagee, to execute a Memorandum of Lease setting forth the Commencement and Termination dates of the lease, and any other pertinent information as may be requested by Landlord or Landlord's Mortgagee. Tenant agrees to execute such Memorandum by estoppel certification whenever it is requested by Landlord.

The "Memorandum of Lease" contemplated by Exhibit C, also dated August 11, 2000, states in part: "The Lease is dated as of Nov. 1, 2000."

A check in the amount of $5500 was provided to Woodlands Corner by the Kalhoffs on August 16, 2000. The check was either for first and last months' rent or first month's rent and a security deposit.

The rented premises were vacated on August 8, 2005. On that day, Arun Kalra received a check from the Kallhoffs in the amount of $2783.84. The memo line on the check stated "July & August rent and CAM charges" and on the back was written, "Tendered in complete accord and satisfaction." Arun Kalra crossed out the memo notation and initialed it. On the back, he crossed out what the Kalhoffs had written and wrote, "This sum tendered is NOT satisfactory and NOT in accordance with lease term."

When the premises were vacated, there was a tiled floor, plumbing in the dining area, additional electrical wiring installed, an exhaust fan, wallpaper or paint, a fan, and customized windows with wood framing that was not there when the lease began. However, the electrical fixtures were removed, leaving open wiring. Some ceiling tiles had also been pulled out. The entire estimate obtained by the Kalras to return the premises to the condition they believed it was rented in was $50,800.

On November 3, 2005, Woodlands Corner sent by certified mail a letter informing Heavenly Ham it owed $6905.25 payable within fourteen days or it would file suit. On March 27, 2006, Woodlands Corner filed a petition alleging breach of contract against the Kallhoffs. The Kallhoffs answered on April 28, 2006, denying Woodland Corner's claim and alleging that they had been overcharged for property taxes, utilities, and common area maintenance (CAM) cost. They sought an award of their damages, costs, and attorney fees.

At trial, Arun Kalra testified the lease was five years in length with the first three months of the lease, November 1, 2000, through January 2001, having a reduced rent of $2500 before increasing to $3000 for the remainder of the year.

It was his intent that sixty months of rent be received. He believed the lease ended on October 31, 2005. Arun Kalra also believed that the premises were to be returned in "vanilla-box" condition, which means with the bare drywall ready to paint and no tile. He stated the premises were delivered to the Kallhoffs in vanilla-box condition.

Alfred Kallhoff testified that the lease commenced on August 1, 2000. He did not have to pay rent until November 1, 2000. He testified that the purpose of the language about rent starting on November 1 or when the store opened, whichever came first, was because he wanted the store to be opened as quickly as possible as seventy percent of his business would be conducted over Thanksgiving, Christmas, and Easter. He anticipated the lease would terminate on July 31, 2005. When he vacated the premises, he left it in the same condition as other previously-leased commercial properties he looked at appeared; the plumbing and gas outlets capped, the electricity turned off, the trade fixtures removed, the floor and ceiling tile left in place, etc. The extra furnace and hot water heater he had installed were left in place. Kallhoff believed that when he tendered his final rent payment to Woodlands Corner, he was free of his obligation. He factored his deposit money into the amount he paid and made payment for the eight days in August he stayed past the end of the lease.

Randy Krohn testified that the lease was five years long and commenced on August 1, 2000. He agreed that the lease provision for not starting rental payments until November 1, 2000 was a "carrot stick" so Woodlands Corner would finish the property sooner. He testified that rent was not due on the first three months of the lease. He did not believe the property was in "vanilla-box

condition" when it was rendered to the Kallhoffs. Krohn believed that the Kallhoffs left the property in similar condition to how other tenants leave commercial properties at strip malls. He did not believe leaving tile on the floor or paint on the walls would cause monetary damage to the landlord.

Edward Karnes, a contractor and owner of General Construction with over forty years experience in the construction business testified that the estimates provided by Woodlands Corner for the work needed on the property after the Kallhoffs vacated it were "not even close" to what he believed would be a reasonable estimate. He stated the estimate was eight to ten times higher than what he would bid. He also testified he was not familiar with the term "vanilla-box condition."

Susan Clark, a commercial real estate broker and property manager for over twenty years testified. Looking at pictures of how the leased space was left, she stated that it was left in standard condition. She further stated her belief that it typically benefits the landlord for the tenant improvements to remain in the leased space. She testified to her belief that based on the lease terms, the lease commenced on August 1, 2000. She further stated her opinion that the estimates for demolition were not reasonable. She testified that the "Memorandum of Lease," in which the November 1, 2000 date is given as the commencement date, was not the lease but rather a document to confirm the information in the lease.

Following the bench trial, the district court entered its ruling on March 6, 2007. It denied Woodlands Corner's breach of lease claim, finding the lease terminated on July 31, 2005. It further declined to award Woodlands Corner any

damages for its claim the Kallhoffs damaged the lease property. It denied the Kallhoffs' counterclaim, noting they conceded they had been unable to prove an amount of damage for excessive CAM charges, but awarded them attorney fees in the amount of $14,596.75.

III. Standard of Review

We review the judgment of a district court following a bench trial in a law action for correction of errors at law. *Chrysler Fin. Co. v. Bergstrom*, 703 N.W.2d 415, 418 (Iowa 2005). The district court's fact findings have the force of a special verdict and are binding on us if supported by substantial evidence. *Id.* Evidence is substantial if a reasonable person would accept it as adequate to reach a conclusion. *Id.* Evidence is not insubstantial merely because we may draw different conclusions from it. *Id.* The ultimate question is whether the evidence supports the finding actually made, not whether the evidence would support a different finding. *Id.* In determining whether substantial evidence exists, we view the evidence in the light most favorable to the district court's judgment. *Id.* If the district court's findings are ambiguous, they will be construed to uphold, not defeat, the judgment. *Id.* at 418-19.

IV. Analysis

A. Breach of Contract. Woodlands Corner contends the district court erred in concluding it failed to prove the breach of contract claim. It argues the lease commenced on November 1, 2000, and expired October 31, 2005, rendering the Kallhoffs liable for the final three months of rent payments. It also argues that if this court finds the lease ended July 31, 2005, that it should find

Woodlands Corner was underpaid for rent. Finally, it claims the August 8, 2005 check can only be an accord and satisfaction as to the CAM charges.

Because leases are contracts as well as conveyances of property, ordinary contract principles apply. *Walsh v. Nelson*, 622 N.W.2d 499, 503 (Iowa 2001). Where the dispute centers on the meaning of certain lease terms, we engage in the process of interpretation, rather than construction. *Id.* (citing *Fausel v. JRJ Enters., Inc.,* 603 N.W.2d 612, 618 (Iowa 1999) (holding interpretation is a process of determining meaning of contract terms while construction is a process of determining legal effect of such terms)).

Our goal in interpreting a lease is to ascertain the meaning and intention of the parties. *Petty v. Faith Bible Christian Outreach Center, Inc.*, 584 N.W.2d 303, 306 (Iowa 1998). Unless the contract is ambiguous, the court determines the parties' intent from the language of the contract. *Id.* Consequently, where the intent of the parties is expressed in clear and unambiguous language, we enforce the contract as written. *Id.*

The primary goal of contract interpretation is to determine the parties' intentions at the time they executed the contract. *Walsh*, 622 N.W.2d at 503. The court must determine whether a disputed term is ambiguous. *Id.* A term is not ambiguous merely because the parties disagree about its meaning. *Id.* A term is ambiguous if, after all pertinent rules of interpretation have been considered, a genuine uncertainty exists concerning which of two reasonable interpretations is proper. *Id.* If an ambiguity is identified, the court must then choose among possible meanings. *Id.* Although other evidence may aid the

process of interpretation, the words of the contract remain the key to determining whether the lease terms are ambiguous. *Id.*

Woodlands Corner argues the five-year lease term did not begin until the Kallhoffs' rent obligation began in November 2000. The district court rejected this argument, as do we. The plain language of the lease itself states that the lease commences on August 1, 2000. Although Woodlands Corner is arguing that the lease provides for sixty months of lease payments, the lease unambiguously states that "[t]enant's obligation to pay rent shall commence on November 1, 2000 or when the business opens, whichever first occurs." It then sets forth a payment schedule for the remainder of the fourth through twelfth months and the remaining forty-eight months.

Woodlands Corner points to the language in the separate "Memorandum of Lease," which states the lease is dated as of November 1, 2000. However, this document is not part of the lease agreement itself. The district court found the Kallhoffs' explanation that no rent might be due until November 2000, as an incentive to finish the space to be the more credible version of events. The evidence supports the conclusion that the lease agreement commenced August 1, 2005.

Woodlands Corner argues that if this court finds the lease expired in August 2005 then it has been underpaid for rent. It argues that under the Kallhoffs' theory, it should have received $3200 per month in rent for the months of August through October 2001, instead of the $3000 actually received. Pursuant to the lease, the tenants' obligation to pay rent began on November 1, 2000. Under Article III: RENT, the lease states months four through twelve

would require a rental payment of $3000 per month. It then states "notwithstanding the foregoing," for the months of November 2000 through January 2001 the rent due would be $2500 per month. Woodlands Corner asserts months four through twelve refer to months four through twelve of the lease.

Woodlands Corner is correct on this point. If month thirteen did not occur until November 1, 2001, month sixty would be October 2005. The lease period commenced in August 2000 and ran through July 2005. The Kalhoffs should have increased their rental payment from $3000 to $3200 per month in August 2001, not November 2001. However, on the back of the August 8, 2005 check, the Kallhoffs wrote "Tendered in complete accord and satisfaction." Woodlands Corner cashed this check on approximately August 30, 2005, but crossed this language out and wrote, "This sum is NOT satisfactory and NOT in accordance with lease terms." The district court found Woodlands Corner was not entitled to any back rent because the act of accepting the check constituted an accord and satisfaction.

The defendant bears the burden to prove an accord and satisfaction by a preponderance of the evidence. *RPM Industries v. Linen Center*, 386 N.W.2d 523, 524 (Iowa 1986). Acceptance of money offered in satisfaction of a "genuinely disputed" claim amounts to an accord and satisfaction. *Id.* Woodlands Corner claims there is no evidence of a dispute about the rent, and therefore the check could not have been an accord and satisfaction of a debt relating to rent. However, there was clearly a dispute as to the amount of money the Kallhoffs owed for rent as Woodlands Corner maintained it was still owed for

the months of August through October 2005. This is evidenced by Kalra's crossing out the terms "July and August" on the front of the check. At the very least, Woodlands Corner believed it was owed more rent for the month of August and disputed the check was in satisfaction of that amount. We affirm the district court on this issue.

B. Vanilla-Box Condition. Woodlands Corner next contends the district court erred in failing to award it $50,800 for the demolition costs estimated to return the premises to the "vanilla-box" condition in which it was rented to the Kallhoffs according to the terms of the lease. In rejecting its claim, the district court found there was no provision in the lease requiring the premises to be returned to vanilla-box condition. It found there was no dispute the premises were broom-clean, as required in the lease.

The lease states that the premise is to be surrendered in "broom-clean" condition. Immediately afterward, it says that the premises should be returned in the same condition as they were delivered. Woodlands Corner claims that because the premises were in "vanilla-box" condition when rented, the Kallhoffs are responsible for the cost of returning the premises to this condition.

The testimony presented at trial by both a commercial real estate broker/property manager (Clark) and a contractor (Karnes) supports that the common practice in the commercial lease industry is that tenant improvements to leased property are left in place when the property is vacated. Karnes was not familiar with the term "vanilla-box" condition, despite having worked in the industry for forty years. Clark looked at pictures of the condition the premises were left in and testified that in her opinion the condition in which the property

appeared to have been left was standard. She did voice some concerns about missing ceiling tile, which the district court addressed in its ruling. The Kallhoffs claim that either the missing tiles were above trade fixture appliances and therefore were never installed or were removed by unknown persons after they vacated the premises. The district court found the "defendants' testimony to be more credible" and concluded Woodlands Corner had no valid claim for any missing tiles.

Following the rules of contract interpretation, we must determine if the contract terms are ambiguous. The contract clearly uses the term "broom-clean" and not "vanilla-box." However, it also states the premises are to be returned as they were found. If an ambiguity is found, it must be construed against the drafter of the lease. *Fashion Fabrics of Iowa v. Retail Investor's Corp.*, 266 N.W.2d 22, 26 (Iowa 1978). The evidence supports the finding that the premises were returned in broom-clean condition. Although Clark raised the issue of the missing ceiling tiles, the district court found the Kallhoffs' explanation for this to be credible. We affirm the district court's refusal to award Woodlands Corner any damages on this issue.

C. Attorney Fees. Finally, Woodlands Corner contends the district court erred in awarding the Kallhoffs their attorney fees.

The lease provides that an award of attorney fees is available to either party seeking to enforce the terms of the lease. The court found Woodlands Corner was not entitled to attorney fees because it did not prevail on any of its claims. However, the court found the Kallhoffs "are entitled to their attorney fees, not just for the litigation but for their previous efforts to enforce the terms of the

lease by seeking documentation to support plaintiff's claimed CAM charges." Woodlands Corner claims the accord and satisfaction tendered by the Kallhoffs should extinguish their right to attorney fees.

The lease states:

> In the event that Tenant shall be required to engage legal counsel for the enforcement of any of the terms of this lease, whether such employment shall require institution of suit or other legal services required to secure compliance on the part of the Landlord, Landlord shall be responsible for and shall promptly pay to Tenant the reasonable value of said attorney fees together was any and all expenses incurred by Tenant as a result of Landlord's default.

Woodlands Corner initiated an action for breach of contract. The Kallhoffs counterclaimed, seeking recovery of damages for being overcharged for property taxes, utilities, and CAM charges. We believe that the lease provision quoted above implicitly contemplates the assertion of a meritorious position in order to be entitled to an award of attorney fees. *Cf. In re Marriage of* Sullins, 715 N.W.2d 242, 255 (Iowa 2006) (disagreeing with a court of appeals decision to award appellate attorney fees to a party where "most of [the opposing party's] arguments on appeal were meritorious"); *Ontjes v. Mac Nider*, 234 Iowa 208, 216, 12 N.W.2d 284, 289 (1943) ("If the action is successful, the plaintiffs may recover for, or have taxed, their attorney's fees; if unsuccessful, they may not.") Neither Woodlands Corner nor the Kallhoffs prevailed on their respective claims. Accordingly, no attorney fees should be awarded. We reverse the portion of the district court's ruling awarding the Kallhoffs attorney fees.

The Kallhoffs seek an award of appellate attorney fees. They ask that this court remand the issue for determination by the district court. *See Bankers Trust v. Woltz*, 326 N.W.2d 274, 278 (Iowa 1982). Each party has prevailed on an

issue or issues presented on appeal, and each has been unsuccessful on an issue or issues. We decline to award appellate attorney fees.

Costs of the appeal are taxed three-fourths to Woodlands Corner and one-fourth to the Kallhoffs.

AFFIRMED IN PART AND REVERSED IN PART.