NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 1701

ABBOTT PAUL OAK, LLC

VERSUS

JOAQUIN SAMPEDRO, LLC D/B/A MAM MIA MATERNITY BOUTIQUE, JOAQUIN SAMPEDRO, ALEXANDRA TATE AND KRISTEN CHETTA COLLURA

Judgment Rendered: MAY 12 2011

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Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Suit Number 2009-13629

Honorable Richard Swartz, Judge

* * * * * *

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BEFORE: PARRO GUIDRY, AND HUGHES, JJ.

Parro, G. concurs.

GUIDRY, J.

The original tenant and the assignee of a commercial property lease appeal a partial summary judgment rendered in favor of the owner-lessor, finding that they breached the terms of the lease agreements.

FACTS AND PROCEDURAL HISTORY

At issue in this appeal is the lease of unit 4 in a commercial retail building in Mandeville, Louisiana, known as the Elmwood Place Retail Center. On October 8, 2002, Don McMath leased unit 4 to Mama Mia!!! Maternity Boutique, LLC (Mama Mia) and Kristen Chetta[1] for a five-year term commencing on December 1, 2002 (master lease). Ms. Chetta also signed the lease as a guarantor. The lease agreement was subject to an option allowing for the renewal of the lease for two additional five-year terms.

In 2005, prior to the expiration of the first term of the master lease, Grand Magnolia LP acquired ownership of the Elmwood Place Retail Center, and in 2006, Grand Magnolia transferred ownership of the shopping center to Abbott Paul Oak, LLC (Abbott Paul).

Mama Mia and Ms. Chetta maintained the lease on unit 4 for the initial term, and later exercised the option to extend the master lease for a second five-year term. However, shortly after commencing the second term, which began on December 1, 2007, Mama Mia and Ms. Chetta executed an "Assignment and Assumption of Lease and Consent to Assignment" agreement (assignment) on April 1, 2008, wherein it was disclosed that on March 31, 2008, Mama Mia sold all of its assets to Joaquin Sampedro, LLC (JSLLC). Pursuant to that sale, the assignment provided that JSLLC acquire the lease of unit 4 from Mama Mia.[2]

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[1] The record reveals that Ms. Chetta later became Mrs. Collura; however, for the purposes of this opinion, we will refer to her simply as Ms. Chetta.

[2] The record shows that JSLLC continued to operate the business as "Mama Mia!!! Maternity Boutique."

Additionally, Abbott Paul gave its written consent to the transfer of the lease based on certain provisions in the assignment and based on personal guarantees executed by Ms. Chett, and the managers of JSLLC, Joaquin Sampedro and Alexandra Tate, securing the obligations owed under the lease agreements.[3]

The following year, JSLLC desired to sublease unit 4, and by a letter dated April 13, 2009, Ms. Tate informed Abbott Paul that a potential tenant had been found to sublease the premises; however, due to the nature of the potential new tenant's business, Abbott Paul refused to consent to the sublease, as it was believed that the potential tenant would be a direct competitor of another tenant in the Elmwood Place Retail Center.[4] Thereafter, in accordance with prior notice given to Abbott Paul, JSLLC vacated unit 4 and discontinued lease payments. As a consequence of JSLLC's action and after amicable demand, Abbott Paul filed a "Petition for Breach of Contract and to Enforce Personal Guarantees" against JSLLC, Mr. Sampedro, Ms. Tate and Ms. Chetta on June 22, 2009.

JSLLC, Mr. Sampedro, and Ms. Tate answered the petition to assert that the lease agreements automatically terminated due to Abbott Paul's alleged breach in failing to consent to the sublease proposed by JSLLC. Ms. Chetta also answered the petition to deny liability; however, she further filed a cross claim against JSLLC in the event she should be found liable. Abbott Paul later filed a motion for summary judgment, seeking a declaration that JSLLC was in default of the lease agreements and that the three guarantors, Mr. Sampedro, Ms. Tate, and Ms. Chetta, were liable in solido for the balance owed under the lease agreements for the unexpired term.

Following a hearing on Abbott Paul's motion for summary judgment, the trial court took the matter under advisement and later rendered a partial summary

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[3] The master lease and the assignment constitute the "lease agreements."

[4] The potential new tenant proposed to operate a women's ready-to-wear clothing store.

judgment in favor of Abbott Paul, finding that JSLLC violated the terms of the lease agreements. Accordingly, the trial court found JSLLC, Mr. Sampedro, Ms. Tate, and Ms. Chetta (hereinafter, referred to jointly as "lessees") liable in solido for the damages incurred by Abbott Paul as a result of said default; however, the trial court denied the motion for summary judgment as it pertained to granting an actual award of damages. The trial court found genuine issues of material fact remained regarding the amount of damages owed, based on the assertion that Abbott Paul had leased the property to a new tenant after JSLLC vacated the premises. The instant appeal followed.

ASSIGNMENTS OF ERROR

On appeal, the lessees jointly assert the following assignments of error:

1. The Trial Court erred as a matter of law when it granted the Motion for Summary Judgment finding that JSLLC breached the lease with [Abbott Paul].

2. The Trial Court erred as a matter of law by not considering [La. C.C. art. 2713] mandating that the lease provisions prohibiting subleasing should be strictly construed against the lessor, [Abbott Paul].

3. The Trial Court erred as a matter of law in not relying on the more specific statute, [La. C.C. art. 2713] in determining the common intent of the parties in interpreting the lease contract which is the subject matter of this litigation.

4. The Trial Court erred as a matter of law in not construing the contract against the party who drafted and/or provided it, [Abbott Paul], in determining the common intent of the parties.

5. The Trial Court erred as a matter of law in relying on [La. C.C. art. 2353], equity, usage, and the conduct of the parties before and after the formation of the contract and not on [La. C.C. art. 2713] and [La. C.C. art. 2056].

6. The Trial Court erred as a matter of law by finding that Article VI of the Lease Agreement [master lease], which was executed in the standard form of [Abbott Paul], was in doubt and/or ambiguous and not interpreting it in favor of JSLLC and against, [Abbott Paul].

7. The trial court erred as a matter of law in granting the Motion for Summary Judgment when there is a genuine issue of material fact whether JSLLC's consent was vitiated because [Abbott Paul] did not inform it of Re'Elle's power to prohibit JSLLC from subleasing its retail space and [Abbott Paul's] actions were arbitrary in denying the sublease request.

APPELLATE JURISDICTION

This matter comes before us pursuant to a partial summary judgment granted in favor of Abbot Paul that was designated as a final judgment by the trial court for purposes of appeal. See La. C.C.P. art. 1915(B). The trial court gave no express reasons for its determination that no just reason for delay existed, other than stating that "such designation serves judicial economy and is in the interest of justice for the parties in this litigation." Since we cannot determine the merits of this appeal unless our jurisdiction is properly invoked by a valid final judgment, see La. C.C.P. art. 2083, we must make a *de novo* determination of whether the designation is proper. See R.J. Messinger, Inc. v. Rosenblum, 04-1664, pp. 13-14 (La. 3/2/05), 894 So.2d 1113, 1122.

Some of the factors we are advised to consider in our *de novo* determination of whether the judgment is properly designated as a final judgment include: (1) the relationship between the adjudicated and the unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; and (4) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like. R.J. Messinger, Inc., 04-1664 at 14, 894 So. 2d at 1122.

Based on our consideration of all the relevant factors, we find the trial court's designation of the judgment as final is proper, as this matter strictly

involves the interpretation of contractual language. Thus, we find jurisdiction lies to consider the appeal.

STANDARD OF REVIEW

As discussed by this court in Boh Bros. Construction Co., L.L.C. v. State ex rel. Department of Transportation and Development, 08-1793, pp. 3-5 (La. App. 1st Cir. 3/27/09), 9 So. 3d 982, 984-85, writ denied, 09-0856 (La. 6/5/09), 9 So. 3d 870the following rules govern our review of this contractual dispute:

> In determining whether summary judgment is appropriate, appellate courts conduct a *de novo* review of the evidence, employing the same criteria that govern the trial court's determination of whether summary judgment is appropriate. Henderson v. Kingpin Development Co., 2001-2115, p. 4 (La. App. 1 Cir. 8/6/03), 859 So.2d 122, 126. Summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that mover is entitled to judgment as a matter of law. La. [C.C.P.] art. 966(B).
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> When parties are bound by a valid contract and material facts are not in conflict, the contract's application to the case is a matter of law and summary judgment would be appropriate. Ginger Mae Financial Services, L.L.C. v. Ameribank, FSB, 2002-2492, p. 4 (La. App. 1 Cir. 9/26/03), 857 So.2d 546, 548, writ denied, 2003-2983 (La. 1/16/04), 864 So.2d 634. A determination of the existence or absence of an ambiguity in a contract entails a question of law. An appellate review that is not founded upon any factual findings made at the trial court level, but rather, is based upon an independent review and analysis of the contract within the four corners of the document, is not subject to the manifest error rule of law. In such cases, appellate review is simply whether the trial court was legally correct. Claitor v. Delahoussaye, 2002-1632, p. 11 (La. App. 1 Cir. 5/28/03), 858 So.2d 469, 478, writ denied, 2003-1820 (La. 10/17/03), 855 So.2d 764.
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> Generally, legal agreements have the effect of law upon the parties, and, as they bind themselves, they shall be held to a full performance of the obligations flowing therefrom. Belle Pass Terminal, Inc. v. Jolin, Inc., 92-1544, 92–1545, p. 16 (La. App. 1 Cir. 3/11/94), 634 So.2d 466, 479, writ denied, 94-0906 (La. 6/17/94), 638 So.2d 1094. In other words, a contract between the parties is the law between them, and the courts are obligated to give legal effect to such contracts according to the true intent of the parties. La. [C.C.] art. 2045; Sanders v. Ashland Oil, Inc., 96-1751, p. 7 (La. App. 1 Cir. 6/20/97), 696 So.2d 1031, 1036, writ denied, 97-1911 (La.10/31/97), 703 So.2d 29. This intent is to be determined by the words of the contract when they are clear, explicit, and lead to no absurd consequences. La. [C.C.] art. 2046; Woodrow Wilson Const. Co., Inc. v. MMR–Radon Constructors, Inc., 93-2346, p. 3 (La. App. 1 Cir.

4/8/94), 635 So.2d 758, 759, writ denied, 94-1206 (La. 7/1/94), 639 So.2d 1167.

When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. La. [C.C.] art. 2046; Belle Pass Terminal, Inc., 92-1544 at 17, 634 So.2d at 479. The rules of interpretation establish that, when a clause in a contract is clear and unambiguous, the letter of that clause should not be disregarded under the pretext of pursuing its spirit. La. [C.C.] art. 2046, comment (b); Cashio v. Shoriak, 481 So.2d 1013, 1015 (La. 1986); Belle Pass Terminal, Inc., 92-1544 at 17, 634 So.2d at 479.

To determine the meaning of words used in a contract, a court should give them their "generally prevailing meaning." La. [C.C.] art. 2047. If a word is susceptible of different meanings, it "must be interpreted as having the meaning that best conforms to the object of the contract." La. [C.C.] art. 2048. "A provision susceptible of different meanings must be interpreted with a meaning that renders it effective and not with one that renders it ineffective." La. [C.C.] art. 2049. Furthermore, every "provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole." La. [C.C.] art. 2050. Moreover, in the interpretation of contracts, the specific controls the general. Smith v. Burton, 2004-2675, p. 6 (La. App. 1 Cir. 12/22/05), 928 So.2d 74, 79.

DISCUSSION

In their first six assignments of error, the lessees basically contend that the trial court erred in applying general provisions of contractual interpretation, instead of the more specific provisions regarding subleases, to interpret the subject lease agreements. We find no merit in this contention.

Article 2713,[5] found in the Title IX, "Lease," of Book III of the Civil Code, provides:

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[5] Articles 2669 to 2744 of Title IX, "Of Lease," of Book III of the Civil Code were revised by Acts 2004, No. 821, §1, effective January 1, 2005, to consist of Articles 2668 through 2729. Thus, when the master lease was executed in 2002, the applicable Civil Code article regarding sublease was found in Article 2725, which provided:

> The lessee has the right to underlease, or even to cede his lease to another person, unless this power has been expressly interdicted.
>
> The interdiction may be for the whole, or for a part; and this clause is always construed strictly.

However, as a party's obligations under a contract are fixed at the time the contract is entered into, the existing Article 2713 applies to the obligations assumed by JSLLC under the lease agreements pursuant to the assignment executed in 2008. See Green Clinic, L.L.C. v. Finely, 45,140, pp. 8-11 (La. App. 2d Cir. 1/27/10), 30 So. 3d 1094, 1099-1100; see also Dombrowski v. New Orleans Saints, 05-0762, pp. 8-10 (La. App. 1st Cir. 8/2/06), 943 So. 2d 403, 409-411.

> The lessee has the right to sublease the leased thing or to assign or encumber his rights in the lease, unless expressly prohibited by the contract of lease. A provision that prohibits one of these rights is deemed to prohibit the others, unless a contrary intent is expressed. In all other respects, a provision that prohibits subleasing, assigning, or encumbering is to be strictly construed against the lessor.

The lease agreements at issue (the master lease and the assignment) both contain several express provisions regarding assignments and subleases. The pertinent provision in the master lease, however, is the following:

> Article VI. Assignments and Subleases
>
> (1) Assignments and Sublease by the Tenant. The Tenant may not assign or in any manner transfer this lease or any interest herein, permit any such assignment or transfer to occur by operation of law or otherwise, or sublet the Leased Premises or any part or parts thereof, without the prior written consent of the Landlord, which **may not be withheld for any reason** or without reason. No assignee, sublessee or any person or entity at any time owning the Tenant's interest in this lease or subleasing any of the Leased Premises may assign any of his interest in this lease or sublease any of the Lease Premises, except as permitted in this article. [Emphasis added.]

The ambiguity of the foregoing provision only becomes clarified in light of the other provisions contained in the same article of the master lease. Those other provisions state:

> (2) Request of Tenant. If the Tenant requests permission to assign this lease or to sublet any portion of the Leased Premises, the Tenant shall submit to the Landlord the proposed assignment or sublease, together with any additional information the Tenant may have with respect to the proposed assignee or sublessee. The Landlord shall have 30 days from submission of the foregoing information by the Tenant within which to grant **or not grant its approval** to the proposed assignment or sublease. **If the Landlord does not grant its consent** within this 30-day period, then **the Landlord shall be deemed to have denied its consent** to the proposed assignment or sublease. If the Landlord grants the approval, then the Tenant may conclude the assignment or sublease agreement, provided that the Tenant shall remain fully responsible for all of the obligations of the Tenant hereunder (including but not limited to the obligation to pay Rent) to the end of the term hereunder, including any extensions or options for renewal.
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> (3) Direct Lease. **If the Landlord does not approve the assignment or sublease,** then the Landlord shall have the option either (a) to make a direct lease with the proposed assignee or sublessee and, in that case, the term of this lease shall end on the date

> immediately preceding the proposed date of occupation and commencement of rental payments under the direct lease with the assignee or sublessee or (b) to require that this lease remain in full force and effect and to deny the Tenant the right to conclude the proposed assignment or sublease. In the event of an assignment or sublease by the Tenant, whether or not approved by the Landlord hereunder, any increases in rentals to be paid by the proposed assignee or sublessee over and above the Rent due hereunder shall be due and payable by the Tenant to the Landlord. [Emphasis added.]

Despite the glaring ambiguity created by the language of section (1) of Article VI as compared with sections (2) and (3), the lessees contend that the rule of strict construction pronounced in La. C.C. art. 2713 requires the court to interpret the language in section (1) in accordance with the explicit meaning of the words used. We disagree.

As our brethren in the Second Circuit observed, when considering the proper manner in which to interpret a document that established a building restriction, which by law also must be strictly construed, the court held:

> Apart from the rule of strict interpretation, documents establishing building restrictions are subject to the general rules of the Louisiana Civil Code governing the interpretation of juridical acts. According to these general rules, interpretation of a contract is the determination of the common intent of the parties. When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. Even if the words are fairly explicit, it is our duty to refrain from considering them in such a manner as to lead to absurd consequences.

Whitaker Construction Co., Inc. v. Larkin Development Corporation, 34,297, p. 3 (La. App. 2d Cir. 12/6/00), 775 So. 2d 571, 574, writ denied, 01-0068 (La. 3/16/01), 787 So. 2d 312 (citations omitted). And further, as noted by the supreme court in Cashio v. Shoriak, 481 So. 2d 1013, 1015 (La. 1986), when a literal interpretation will produce absurd consequences, the court may consider all pertinent facts and circumstances, including the parties' own conclusion of the instrument's meaning, rather than adhere to a forced meaning of the terms used.

Thus, we find no error in the trial court's use of the general rules of contractual interpretation found in the Civil Code to determine whether the lease

agreements should be interpreted to allow Abbott Paul to withhold its consent to the proposed sublease of the premises. The rule of strict construction pronounced in La. C.C. art. 2713 does not exclude the application of the general rules of contract interpretation found in the Civil Code. Rather, considering that if such a literal interpretation were to apply in the current case, it would result in the absurd consequence of holding that the potential sublessee had greater rights than those held by JSLLC under the lease agreements. By interpreting the ambiguous language of the master lease to literally mean that Abbott Paul had to consent to the sublease JSLLC proposed would result in a declaration that the potential sublessee could engage in a business activity, which according to the assignment, JSLLC was strictly prohibited from engaging in by virtue of the terms of the assignment to JSLLC.[6] It is a basic precept of law that a sublessee cannot have greater rights than the sublessor obtained in its acquisition of rights. See Soma Enterprises, Inc. v. State, Department of Transportation and Development, 584 So. 2d 1243, 1246 (La. App. 2d Cir.), writ denied, 589 So. 2d 1055 (La. 1991).

Furthermore, we find the lessees' arguments regarding the application of La. C.C. art. 2056 to be equally unsustainable. Article 2056 provides, in pertinent part, that "[i]n case of doubt that **cannot be otherwise resolved**, a provision in a contract must be interpreted against the party who furnished its text." (Emphasis added.) While the record shows that Abbott Paul did not furnish the objectionable text at issue in this action, even if it had, the statute plainly provides that interpreting the contract against the party who furnished the text should only occur when the doubt created by the ambiguous provision cannot be otherwise resolved. The articles preceding Article 2056, particularly Articles 2048 through 2055,

[6] Paragraph number 2 of the assignment and assumption of lease, titled "Use," expressly provides that JSLLC "acknowledges and agrees that the only permitted use of the leased premises pursuant to the Lease is the operation of a retail clothing store specializing in maternity and baby clothing."

provide several principles by which to resolve a doubtful provision in a contract, and we observe that the trial court properly considered these same principles in resolving the doubtful provision in the master lease.

First, the trial court interpreted the doubtful provision in light of other provisions in the master lease as suggested in La. C.C. art. 2050, and then the court went on to interpret the doubtful provision in light of the nature, usage, and conduct of the parties pursuant to La. C.C. art. 2053. In so doing, the trial court found:

> Thus when the disputed provision is interpreted in light of these specific provisions and the lease contract in its entirety, along with the assignment, the Court finds that Article VI section 1 was intended to mean that the landlord could withhold consent for a valid reason.
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> In addition, [La. C.C. art. 2053] provides that "A doubtful provision must be interpreted in light of the nature of the contract, equity, usages, the conduct of the parties before and after the formation of the contract and of other contracts of a like nature between the same parties." The [lessees] followed the procedure for obtaining the landlord's consent set forth in Article VI, section 2 of the lease when [Mama Mia] sought to sublease to JSLLC. .... This conduct of the parties indicates their common understanding that the consent of the landlord was required.

Considering this reasoning expressed by the trial court, we find it was legally correct in its interpretation of the doubtful provision found in the master lease.

As for the lessees' final assignment of error asserting that a genuine issue of material fact existed that precluded the granting of summary judgment in this matter, we likewise find no merit in their argument. A fact is material when its existence or nonexistence may be essential to plaintiff's cause of action under the applicable theory of recovery. Facts are material if they potentially insure or preclude recovery, affect a litigant's ultimate success, or determine the outcome of the legal dispute. Smith v. Our Lady of the Lake Hospital, Inc., 93-2512, p. 27 (La. 7/5/94), 639 So. 2d 730, 751. Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to the case. Charlet v. Legislature of

the State of Louisiana, 97-0212, p. 7 (La. App. 1st Cir. 6/29/98), 713 So. 2d 1199, 1203, writs denied, 98-2023, 98-2026 (La. 11/13/98), 730 So. 2d 934. In this case, the applicable substantive law between the parties is found in their agreements, that is, the master lease and the assignment. See Belle Pass Terminal, Inc., 92-1544 at 16, 634 So. 2d at 479 ("legal agreements have the effect of law upon the parties, and, as they bind themselves, they shall be held to a full performance of the obligations flowing therefrom.").

As observed by the trial court, the parties expressly agreed in paragraph number 2 of the assignment that the leased premises would only be used "for the operation of a retail clothing store specializing in maternity and baby clothing"; thus, this restriction on the use of the premises made it of no moment that the terms of another tenant's lease precluded Abbott Paul from consenting to a sublease for the operation of a women's clothing store, as such use was already precluded under the express terms of the parties' own agreement in the assignment. Moreover, the other tenant's lease was recorded in 2005, and therefore was a matter of public record.

CONCLUSION

For the foregoing reasons, we find the trial court was legally correct in interpreting the lease agreements at issue to find that Abbott Paul had authority to withhold its consent to the sublease proposed by JSLLC, and in doing so, it did not breach the governing lease agreements. We therefore affirm the partial summary judgment finding the lessees liable *in solido* for breaching the lease agreements. All costs of this appeal are assessed equally to JSLLC, Joaquin Sampedro, Alexandra Tate, and Kristen Chetta.

AFFIRMED AND REMANDED.