

NOT DESIGNATED FOR PUBLICATION

WORLD VISION QUEST D/B/A VISION PLAZA, CORP. AND VISION PLAZA CORP.	*	NO. 2000-CA-2454
	*	COURT OF APPEAL
VERSUS	*	FOURTH CIRCUIT
TRI-W DEVELOPMENT, INC., JIM WILSON & ASSOCIATES, INC., MALL OF LOUISIANA ASSOCIATES	*	STATE OF LOUISIANA
	*	

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 99-16199, DIVISION "A-5"
Honorable Carolyn Gill-Jefferson, Judge

Judge Miriam G. Waltzer

(Court composed of Chief Judge William H. Byrnes III, Judge Miriam G. Waltzer, Judge Dennis R. Bagneris, Sr.)

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AFFIRMED.

The plaintiff appeals the trial court's grant of the defendant's motion for summary judgment and the denial of plaintiff's motion for partial summary judgment. The issue for review is whether the trial court correctly dismissed plaintiff's claims against the defendant-shopping mall on summary motion finding that the mall did not violate its lease with plaintiff, d/b/a Vision Plaza ("VP") by leasing space within the mall to a "competitor" as the term was defined in the lease. For the following reasons, we conclude that the trial court properly granted the motion for summary judgment and we affirm.

UNDERLYING FACTS AND PROCEDURAL HISTORY

This appeal involves a contract dispute concerning an alleged violation of a non-compete clause in VP's lease by the landlord, Mall of Louisiana Associates (the "mall" or "MLA") in Baton Rouge (appellee). The mall leased a space to LensCrafters, a competitor of VP, with floor area

on one level of the mall under the 1500 square feet specified maximum for a competitor, but then allowed LensCrafters to build their laboratory upstairs between the 1st and 2nd stories (dispute over whether the upstairs is a second story or a mezzanine) in a space a little under 500 square feet, which VP contends violates its lease with the mall.

In April 1996, VP entered into a ten-year lease with Tri-W Development, Inc. for 3,997 square feet of “floor area” in the newly opening Mall of Louisiana in Baton Rouge. A month later, Tri-W advised VP that it had assigned the lease to the defendant, MLA.

Addendum 1 to the lease between VP and MLA provides specific limitations on MLA’s ability to lease to a competitor of VP. The addendum states in pertinent part:

Landlord agrees that if additional space in the Shopping Center, excluding all the space within the Department stores, is leased to a “Competitor,” as hereinafter defined, then in that event, effective as of the date said Competitor opens for business within the Shopping Center, Tenant’s Minimum Rent shall be reduced by one half (1/2). . . . For purposes of this Addendum 1, the term “Competitor” shall mean a retail store whose principal operation is that of an optical store selling eyeglass frames, lenses, prescription and non-prescription eyewear and offering related services. Provided, a retail operation whose principal operation is the sale of sunglasses or non-prescription eyewear, . . . or an optical store selling eyeglass frames, lenses, prescription and non-prescription eyewear which is less than 1,500 square feet of Floor Area shall not be deemed to be a Competitor.

Therefore, in order to lease to a competitor of VP without violating

the lease, the Mall could only lease under 1500 square feet of floor area. For purposes of the 1500 square feet calculation, *not* included was: (1) any area that comprised a mezzanine (2) if that mezzanine was *not* “used for selling purposes.” Thus, the debate in the litigation centered around whether the upstairs space utilized by LensCrafters (less than 500 square feet) was, in fact, a mezzanine and whether the space was used for selling purposes.

In 1997, MLA began negotiations with LensCrafters to lease space in the mall. In May 1998, VP received notification from MLA’s predecessor, Jim Wilson & Associates, that the LensCrafters store, scheduled to open soon in the Mall, was 1465 square feet; therefore, less than 1500 square feet as limited in the lease. Additionally, VP was informed that LensCrafters would have a mezzanine. In response to that communication, VP advised that the Addendum 1 limits the size of any competitor to less than 1500 square feet of floor area and, if a competitor’s space exceeds that limitation, VP’s rent is reduced by one-half. VP also advised in that correspondence that if LensCrafters’ mezzanine was used in a manner that would facilitate LensCrafters conducting its business, *i.e.*, sales, *lab*, or eye examinations, that floor area would be considered by VP as a portion of the total floor area. The letter also pointed out that if the mezzanine was larger than 34 square feet, then it would cause a violation of the VP lease, thus reducing VP’s rent

by one-half. In June, MLA responded that LensCrafter's mezzanine should not be included in the total square feet floor area; thus, there was no violation of VP's lease.

Despite the conflict, the lease between MLA and LensCrafters commenced on 1 July 1998 and the store began operations in the mall a few months later with a ground floor area of 1468 (some pleadings refer to 1465) square feet and a mezzanine (at least, according the Mall) level of 494 square feet used for its laboratory and not for any retail operations, *i.e.*, no customers go up to the upper level.

In May 2000, VP moved for partial summary judgment against the Mall on the issue of the breach of the lease and lease-related damages. In June 2000, the Mall moved for summary judgment asserting that it did not breach the lease.

After plentiful briefing, the trial heard arguments on 21 July 2000 and found: (1) that LensCrafters upper floor area is a mezzanine; and (2) that, as a lab, the upper level is not used for selling purposes. The trial court granted the Mall's motion for summary judgment and denied VP's motion for partial summary judgment.

In oral reasons for judgment, the trial judge explained:

As I see it from the memos and the law that's been provided to me, it seems to me I don't think that the building or the life safety code has a place here because we're looking at two legal documents that have

been drafted and these documents refer to the issue of what is the mezzanine and as I see it there's case law that says that we have to look at the most reasonable, logical construction of what the words mean.

The logical usage of what it means and therefore when I look at mezzanine as defined here, it is an area above, between two floors and that's what we have here. And I'll find it as a matter that this area above LensCrafters' ground floor is a mezzanine. Now, we go to the issue of whether or not this space was actually used for selling purposes and I think if I were to take what Vision Plaza says, I agree with counsel for LensCrafters that anything could be for selling purposes.

This is a lab that is strictly used for making of the lenses, it's not selling, no customers go up there and I don't see this as being an area for selling purposes

ANALYSIS

Counsel on both sides (but particularly VP's counsel) argued hypertechnical points regarding the definitions of "mezzanine" and "selling purposes." Concerning the issue of the mezzanine, VP asserted that the Mall knew before finalizing the lease with LensCrafters that the space under consideration for the mezzanine could not be a mezzanine. According to LensCrafters' architect, Mr. Killingsworth, with whom both counsel met during a document production in response to a subpoena, the architect told the parties that, based on the 1991 building code regulations, the upper level space could not be considered a mezzanine due to the amount of space required for the laboratory (and he had discussed this fact with LensCrafters

during the lease negotiations). The code requires that a mezzanine be less than one-third of the main space. By the Mall's own admission, the mezzanine is 494 square feet and the first floor is 1465 square feet. The Life Safety Code, used by the Fire Marshall, also requires that the upper space be considered a second story, because of its size, and not a mezzanine. The so-called mezzanine exceeds one-third size of the first floor and is, therefore, not a mezzanine.

The Mall argued, however, that the term "mezzanine" is not defined by the VP lease and, therefore, pursuant to Louisiana Civil Code article 2047, the term must be given its generally prevailing meaning. Based on several different dictionaries, a "mezzanine" is generally understood to be "a small, additional story between two main stories of a building." The LensCrafters' store is on the ground level of the Mall of Louisiana and the second floor of the mall is directly above the LensCrafters' store. The second, upper level of LensCrafters is in between the mall's first and second stories, and is a small space used for the laboratory. The height of the ceiling in the lab is several feet lower than the retail area of the store on the ground floor. Thus, the Mall contends that the lab occupies a mezzanine.

The second issue in dispute is whether the lab is used for selling purposes. VP distinguishes between a "selling area" and an area "used for

selling purposes,” asserting that the latter means anything having to do with the business of the competitor. Further, VP argues that the term was provided by MLA in the boilerplate form lease and, therefore, if ambiguous, must be construed against MLA. As further support for its position, VP points out that MLA knew it was treading into risky territory as evidenced by the inclusion of an indemnity addendum (Addendum 3) in the LensCrafters lease in which LensCrafters agreed to indemnify MLA for any damages resulting from “any violation or alleged violation claimed by World Vision Quest, Inc. of the terms of the Vision Plaza Lease and arising from the execution of this Lease”

MLA, in contrast, asserts that because the phrase “selling purposes” is also not defined in the lease, the generally prevailing meaning must be used. Selling is usually referred to exchanging goods for money. Here, the mezzanine area is not used as an area to accept money from customers in exchange for goods. Additionally, customers do not have free access to the lab, and it is not used for display or to promote the sale of goods. The sole function of the mezzanine is as a laboratory to make the lenses and eyeglasses. Therefore, the mezzanine is not used for selling purposes, as that word is generally understood.

Technical definitions and building codes aside, the trial court used a

common sense approach, which seems appropriate because the terms were not defined in the lease. As the trial judge explained from the bench, she ruled on the motions by considering the most reasonable, logical meanings of the terms used in the lease documents. The physical space in which the lab is located, being situated between the two main floors of the mall and being small in size, seems to constitute the generally understood definition of a mezzanine. Additionally, although VP's sweeping definition of "selling purposes" would include the production of eyewear for the optical store, the general meaning of the term, "used for selling purposes" connotes a retail function, in which the laboratory does not engage.

This writer agrees with the trial court and, therefore, would recommend that this court affirm the trial court's judgment in favor of the Mall.

AFFIRMED.