

THE MIDDLEBERG RIDDLE
GROUP * NO. 2018-CA-0687
VERSUS * COURT OF APPEAL
201 ST. CHARLES PLACE, * FOURTH CIRCUIT
LLC * STATE OF LOUISIANA
* * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2014-01643, DIVISION "I-14"
Honorable Piper D. Griffin, Judge

* * * * *

Judge Tiffany G. Chase

* * * * *

(Court composed of Judge Edwin A. Lombard, Judge Rosemary Ledet, Judge Tiffany G. Chase)

LEDET, J., DISSENTING WITH REASONS

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AFFIRMED
December 12, 2018

The Middleberg Riddle Group (hereinafter “MRG”), seeks review of the trial court’s May 1, 2018 judgment finding no option to renew its lease with 201 Place St. Charles, LLC (hereinafter “PSC”); and awarding PSC past due rent and operating expenses owed from MRG. After consideration of the record before this Court, and the applicable law, we affirm the judgment of the trial court.

Facts and Procedural History

MRG initially leased the 31st floor at 201 St. Charles Avenue, from PSC, on December 14, 1987 (hereinafter “the Original Lease”). The Original Lease was for a ten year period beginning May 1988 and contained an option to renew the lease for a five year period. The Original Lease was first amended on March 1, 1993. The first amendment, (hereinafter “Renewal 1”), changed the option to renew to a three year period. The second amendment, (hereinafter “Renewal 2”), to the lease occurred on October 5, 1993 and changed the option to renew back to a five year period. The lease was amended for a third time, (hereinafter “Renewal 3”), on February 20, 2003, but does not include language regarding an option to renew.¹ MRG’s lease with PSC was set to expire February 28, 2014.

¹ A fourth amendment to the lease was executed on August 27, 2010 but only dealt with rental payments. The fourth amendment does not contain language regarding an option to renew.

As part of its lease agreement, MRG was required to give PSC a twelve month notice from the expiration of the current lease term, if it were exercising its option to renew. On January 23, 2013, MRG requested the market rental rate from PSC as part of its process in determining whether it wanted to exercise its option to renew. PSC maintained that MRG did not have an option to renew the lease agreement. In March 2012, PSC entered into a rental agreement with General Electric (hereinafter “GE”). GE agreed to rent floors 30-32 at 201 St. Charles Avenue. GE was scheduled to take occupancy in three phases and set to move into the 31st floor in May 2014. On February 7, 2013, PSC sent a proposal to MRG allowing for early termination of MRG’s lease and moving its office to a smaller space. MRG continued to maintain that they possessed an option to renew the lease of the 31st floor. After months of failed negotiations, MRG relocated its office to 909 Poydras Street on December 20, 2013, two months prior to the expiration of its lease agreement. PSC sent default letters to MRG advising that it was delinquent in its rental payments for January and February 2014. MRG offered to set up a payment plan to pay the outstanding rent but PSC refused the offer.

MRG filed a petition for declaratory judgment on February 18, 2014, requesting a determination that PSC breached the lease by renting the 31st floor to GE prior to the expiration of MRG’s lease. On April 8, 2014, PSC answered the petition for declaratory judgment and filed a reconventional demand. PSC sought the rent, and associated fees due from MRG for January and February 2014. After a two day bench trial, the trial court took the matter under advisement and entered judgment in favor of PSC. The trial court found that MRG did not have an option to renew the lease after February 28, 2014 and, as such, PSC did not breach the lease agreement when it entered the lease agreement with GE. The trial court

further found that MRG breached the lease by failing to pay rent for January and February 2014 and was therefore liable to PSC for the outstanding expenses.² The trial court awarded PSC a total of \$70,893.60 (\$18,474.75 in base rent plus \$16,972.05 in operating expenses= \$70,893.60). This appeal followed.

Discussion

Although MRG presents numerous assignments of error, we find the central issue to be two-fold: (1) whether MRG had an option to renew the lease after February 28, 2014 and (2) whether MRG breached its contract by failing to pay rent and is therefore liable to PSC for the rent and operating expenses associated with January and February 2014.

Option to Renew

This Court reviews a trier of fact's factual conclusions regarding a breach of contract claim under a manifest error/clearly wrong standard of review. *Brenner v. Zaleski*, 2014-1323, p. 3 (La.App. 4 Cir. 6/3/15), 174 So.3d 76, 79.

MRG argues that it had an option to renew the lease agreement, with PSC, for the 31st floor. Specifically, that Renewal 3, executed on February 20, 2003, provides it with the option to renew the lease because it incorporates Renewal 2, executed on October 5, 1993. Renewal 2 provides for an option to renew the lease for a five year period, at the current market rate for comparable space in a comparable building in Downtown New Orleans. Renewal 3 provides, in pertinent part:

WHEREAS, by Agreement of Lease, made as of the 14th day of December, 1987 and amended with Amendment #1 dated March 1, 1993 and Amendment #2 dated October 5, 1993, (hereinafter referred to as "said lease"), Landlord leased to Tenant certain premises located

² The trial court's judgment provides that the late fees, applicable interest, court cost and reasonable attorney's fees would be determined at a later date.

at 201 St. Charles Avenue, New Orleans, LA 70170 (hereinafter referred to as “the Building”), consisting of 24,633 rentable square feet on the thirty-first floor (hereinafter referred to as “the Premises”), as more particularly described in said Lease for a Term expiring February 28, 2004.

Although Renewal 3 does not specifically contain language for an option to renew, MRG maintains that because it incorporates Renewal 2 as part of the lease definition, it grants a valid option to renew. According to MRG, failure of PSC to honor this option and lease the 31st floor to GE constituted breach of the lease agreement.

MRG called Michael Riddle (hereinafter “Mr. Riddle”), managing partner for MRG, as a witness in support of its contention that PSC breached the lease agreement. He testified that Renewal 3 is a continuing lease which includes the Original Lease and the two previous amendments. He testified that the option to renew in Renewal 2 was carried forward to Renewal 3 as a result of the continuing lease. Mr. Riddle testified that MRG intended to exercise its option to renew until it found out that PSC leased the premises to GE. He testified that after MRG requested the market rental rate, which it did not receive, it became clear that PSC had no intention of honoring the option to renew. Conversely, PSC argues that MRG did not have an option to renew because Renewal 3 does not specifically provide an option to renew. PSC maintains that the option to renew was intentionally not included in Renewal 3 because it did not believe MRG wanted to continue to occupy the 31st floor. PSC’s position is premised on MRG’s consistent failure to timely pay rent and previous discussions with MRG that it desired to lease a smaller space.

“In interpreting the lease, we begin from the well-settled premise that “contracts have the effect of law for the parties” and the “[i]nterpretation of a

contract is the determination of the common intent of the parties.”” *Lobell v. Rosenberg*, 2015-0247, p. 8 (La. 10/14/15), 186 So.3d 83, 88-89 (quoting *Clovelly Oil Co., LLC v. Midstates Petroleum Co. LLC*, 2012-2055, p. 5 (La. 3/19/13, 112 So.3d 187, 192; quoting *Marin v. Exxon Mobil Corp.*, 2009-2368, p. 35 (La. 10/19/10), 48 So.3d 234, 258 and La. C.C. arts. 1983 and 2045). The intent of the parties to a contract is usually determined from the four corners of the contract, when the intent is clear and explicit, and extrinsic evidence is not admissible to contradict or explain the terms of the contract. *Fleet Intermodal Servs., LLC v. St. Bernard Port, Harbor & Terminal Dist.*, 2010-1485, p. 5 (La.App. 4 Cir. 2/23/11), 60 So.3d 85, 89; See La. C.C. art. 2046. However, if a contractual provision is ambiguous the conduct of the parties before and after formation of the contract, the nature of the contract, equity and usage must be considered. *1100 S. Jefferson Davis Parkway, LLC v. Williams*, 2014-1326, p. 4 (La.App. 4 Cir. 5/20/15), 165 So.3d 1211, 1216; See La. C.C. art. 2053.

It is undisputed that the option to renew is not listed in Renewal 3. However, the existence of the option to renew is where the ambiguity lies. Both parties maintain that the lease is clear regarding the option to renew. Mr. Riddle testified that there was no lack of clarity regarding Renewal 3 containing an option to renew; contending that the option to renew continued by the definition of the lease in Renewal 3. To the contrary, Bennett Davis, leasing director for PSC who assisted in negotiating Renewal 3, testified that MRG had exercised the option to renew, provided for in Renewal 2, when it executed Renewal 3 in 2003; therefore, there was no option to renew. Additionally, Mr. Davis further testified regarding a conversation he had with Ira Middleberg wherein he advised that MRG should

exercise its option to renew if one existed. The record does not reflect that MRG ever sent correspondence attempting to exercise the option to renew.

An option to renew a lease agreement is not to be presumed. *Int'l Properties Inc. v. Drury*, 1996-0798, p. 7 (La.App. 5 Cir. 1/15/97), 688 So.2d 83, 85; *Constantin Land Tr. v. Pitre Indus., L.L.C.*, 2016-0993 (La.App. 1 Cir. 7/10/17) 225 So.3d 1089, *reh'g denied* (8/29/17), *writ denied*, 2017-1644 (La. 11/28/17), 230 So.3d 224. The option to renew the lease must be explicit. In its reasons for judgment, the trial court noted that section 14.01 of the Original Lease, provides that the lease cannot be modified unless done in writing by the landlord and the tenant. Both parties participated in the draft and negotiation of Renewal 3. If MRG intended for Renewal 3 to contain an option to renew, it could have ensured that the option to renew was listed prior to execution of the agreement as it had done in previous lease amendments. The four corners of Renewal 3 provide that there was no option to renew the lease listed in the agreement. MRG presented evidence at the trial on its declaratory action and the trial court ultimately made a finding based on the evidence presented. As such, we find the trial court was not manifestly erroneous in finding that MRG did not possess an option to renew and therefore, PSC did not breach its lease agreement with MRG. We now turn to whether MRG breached the lease by failing to pay rent for the final two months of its lease term.

Past Due Rent and Operating Expenses

MRG argues that because it did not breach its lease agreement with PSC, it is not liable for expenses associated with the last two months of its lease. Damages that can be calculated with relative certainty are considered special damages. *Williams v. Mathieu*, 2013-1373, p. 7 (La.App. 4 Cir. 10/29/14), 155 So.3d 54, 60. The award of rent and operating expenses to PSC constitutes an award of special

damages. The trial court is given great deference on review in determining the appropriate amount of special damages awarded. *Waters v. Oliver*, 2016-1262, p. 21 (La.App. 4 Cir. 6/22/17), 223 So.3d 37, 51. Thus, this Court “must review the entire record to determine whether the trial court’s finding was clearly wrong or manifestly erroneous.” *Id.* (quoting *Menard v. Lafayette Ins. Co.*, 2009-1869, pp. 14-15 (La. 3/16/10), 31 So.3d 996, 1007).

Based upon our finding that MRG did not possess an option to renew, we find no error in the trial court’s ruling that MRG was in breach of its lease when it failed to pay the rent for January and February 2014. As MRG’s lease term had not yet expired, it was still responsible for its rental payments and monthly fee obligations under the lease. The trial court found that MRG was responsible for paying the past due base rent of \$18,474.75 per month, as well as the operating expenses of \$16,972.05 per month. We find no error in the trial court’s calculation. A review of the record demonstrates that MRG is liable for the amount awarded by the trial court. The damages awarded are outlined in Renewal 3 and are the expenses for which MRG were held responsible as part of its lease agreement with PSC. Finding that PSC was not in breach of contract, the trial court was not manifestly erroneous in determining that MRG was liable for the past due rent and associated operating costs.

Conclusion

For the foregoing reasons, we find the trial court was not manifestly erroneous in its ruling. We find Renewal 3 did not provide MRG with an option to renew the lease. We further find that the trial court did not err in finding MRG breached its lease agreement when it failed to pay the rent and operating expenses,

per its lease agreement, for January and February 2014. Accordingly, the judgment of the trial court is affirmed.

AFFIRMED