

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SIGN OF THE BEEFCARVER, INC.,

Plaintiff-Appellant,

v

LITTLE DADDY'S #12, L.L.C.,

Defendant/Cross-Plaintiff-Appellee.

and

JTR II, L.L.C.,

Defendant/Cross-Defendant.

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UNPUBLISHED

May 20, 2004

No. 247814

Oakland Circuit Court

LC No. 2002-038822-CK

Before: Saad, P.J., and Sawyer and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals from an order of the circuit court dismissing plaintiff's breach of contract claim. We affirm.

This dispute arises from the rental of commercial real estate located in Taylor pursuant to a lease entered into by plaintiff, as the landlord, and defendant JTR as the tenant, in 1997. Under the terms and conditions of the lease, the tenant was responsible for the payment of all taxes and other assessments. In 1999, defendant JTR assigned its interest in the lease to defendant Little Daddy's. In October 2000, plaintiff received notice that the 1997 property taxes had not been paid. The amount due, including penalties and interest, was approximately \$30,000. Plaintiff contacted both defendants requesting them to pay the taxes, but neither did. Eventually, to prevent foreclosure by the Wayne County Treasurer, plaintiff paid the taxes and then commenced this suit to seek recovery of the amounts paid.

Plaintiff and defendant Little Daddy's filed cross motions for summary disposition. The trial court granted summary disposition to plaintiff as to defendant JTR, but granted summary disposition to defendant Little Daddy's as to plaintiff.

Plaintiff argues that, absent an agreement to the contrary the original tenant's liabilities under the lease follows the assignment. Plaintiff further argues that there was no agreement to

the contrary in this case. We will accept, without deciding, that plaintiff is accurate on the first point, that Little Daddy's would be liable for JTR's debts under the lease in the absence of an agreement to the contrary. But we agree with the trial court that there is no genuine issue of material fact that the assignment limits Little Daddy's obligations to those arising after the assignment.

The assignment between JTR and Little Daddy's provided in part as follows:

1. Assignor hereby conveys, transfers, assigns and sets over to Assignee all of Assignor's right, title, interest, benefits, liabilities and obligations as of the date hereof in and to the Lease, provided, however, that Assignor shall remain liable to Landlord for all of its liabilities and obligations under the Lease.

2. Assignee hereby accepts such assignment and agrees to assume and to pay, discharge and perform all of Assignor's obligations and liabilities arising or required to be performed or paid from and after the date hereof that arise out of or relate to the Lease when due or when required to be performed.

3. Assignor hereby represents and warrants to Assignee and Landlord that there are no defaults in existence under the Lease. Assignor acknowledges that Landlord's consent to the assignment of the Lease to Assignee is conditioned upon there being no defaults under the Lease at the time of such assignment.

Furthermore, plaintiff signed a consent to the assignment:

The undersigned, being the Landlord under that certain Lease (as defined in this Assignment) with Assignor . . . hereby consents to the assignment of the Lease by Assignor to Assignee provided that Assignor remains liable for all of its obligations under the Lease (Landlord's consent shall not be construed as a release of Assignor from any of its liabilities or obligations under the Lease).

We agree with the trial court that the terms of the assignment make it clear that the parties, including plaintiff, intended that Little Daddy's would be liable for the liabilities and obligations that arose on and after the date of the assignment, not those that arose before. Plaintiff points to the language of paragraph one of the assignment that says in general terms that all of the liabilities and obligations under the lease were being assigned. This, however, overlooks the very specific language of paragraph two that assignee was only accepting the assignment of the liabilities and obligations that arose on or after the date of the assignment. Moreover, paragraph three includes the assignor's representation that there were no outstanding past liabilities as of the date of the assignment, reflecting that there was no intent for assignee to assume any prior obligations or liabilities.

Absent ambiguity, a contract interpretation presents a question of law that we review de novo. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465-466; 581 NW2d 237 (1998). Similarly, we review the trial court's grant of summary disposition de novo. *General Motors Corp v Dep't of Treasury*, 466 Mich 231, 236; 644 NW2d 734 (2002). We conclude that the trial court was correct that the unambiguous terms of the contract provided that Little Daddy's was

not responsible for tax payments coming due before the date of the assignment and, therefore, Little Daddy's was entitled to summary disposition.

Affirmed. Defendant Little Daddy's may tax costs.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Karen M. Fort Hood