

STATE OF MICHIGAN
COURT OF APPEALS

LARS ASSOCIATES, LLC,

Plaintiff-Appellant,

v

PAMIDA STORES OPERATING CO, LLC,

Defendant-Appellee.

UNPUBLISHED

January 29, 2013

No. 308984

Washtenaw Circuit Court

LC No. 10-001351-CZ

Before: WHITBECK, P.J., and SAAD and SHAPIRO, JJ.

SHAPIRO, J. (*dissenting*).

I respectfully dissent because the phrase “irrevocably exercise its right of renewal” is ambiguous and its meaning must be determined by the fact finder after hearing extrinsic evidence regarding the parties’ intent.

The parties entered into a 10 year lease in 1993 that provided for a right to renew for two additional five year periods under the same terms and conditions. The original lease provided for the right of Pamida to terminate the lease with one year’s notice if certain conditions occurred. In October 2002, the parties renewed the lease for another five years beginning in August 2003. In September 2007, the parties executed a “Contribution Agreement” which renewed, but modified, the original lease. The Contribution Agreement, which was drafted by Pamida, provided that in exchange for plaintiff landlord agreeing to contribute \$35,000 toward certain improvements in the premises, Pamida would “irrevocably” exercise its option to renew the lease for another five year period beginning in August 2008.

Each side has offered reasoned interpretations of the meaning of “irrevocably exercise” in the context of this case and whether or not it means that Pamida had waived its right of early termination under the original lease. Lars asserts that to “irrevocably” renew the five year lease meant that Pamida was waiving any right to early termination of the new lease since irrevocable means that the lease cannot be terminated prior to its expiration. Pamida asserts that the word “irrevocably” simply means that it would not withdraw its agreement to renew prior to the actual date that the renewal began. Each of these interpretations is consistent with the bare language of the provision and neither is excluded by it. There is no other phrasing within the contract that reveals the intended meaning of the word and so this provision of the contract is ambiguous. Where contract language is ambiguous, the parties’ intent is a question of fact and the jury is to consider extrinsic evidence beyond the bare language at issue:

“The interpretation of a contract whose language is ambiguous is a question of fact for the jury to decide. When interpreting a contract whose language is ambiguous, the jury is to consider relevant extrinsic evidence. . . . In interpreting a contract whose language is ambiguous and in which the parties’ intent cannot otherwise be determined through resort to relevant extrinsic evidence, the jury should construe any ambiguities against the drafter of the contract. That is, if, after the jury has considered all conventional means of contract interpretation and all relevant extrinsic evidence, it is still unable to determine what the parties intended, the jury should then construe the ambiguity against the drafter. [*Klapp v United Ins Group Agency*, 468 Mich 459, 480-481; 663 NW2d 447 (2003).]

As the controlling contract language is ambiguous I would reverse the grant of summary disposition and remand for trial.

/s/ Douglas B. Shapiro