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NO. COA11-347
NORTH CAROLINA COURT OF APPEALS

Filed: 1 November 2011

LILA KAYE GARNER JOHNSON,
Plaintiff,

v.

Carteret County
No. 09-CVD-267

JOHN J. LYNCH, II, and JERRY'S
BODY SHOP OF NEWPORT, INC.,
Defendants.

Appeal by defendants from order entered 2 September 2010 by Judge Paul L. Jones in Carteret County Superior Court. Heard in the Court of Appeals 15 September 2011.

Wheatly, Wheatly, Weeks & Lupton, P.A., by Stevenson L. Weeks, for the plaintiff.

Harvell and Collins, P.A., by Wesley A. Collins and Russell C. Alexander, for the defendants.

THIGPEN, Judge.

Lila Kaye Garner Johnson ("Plaintiff") brought an action against her former commercial tenants, John J. Lynch, III, and Jerry's Body Shop of Newport, Inc. (collectively "Defendants"), to determine the legal ownership of an Air Filtration Company automotive paint booth ("AFC paint booth"). Because we conclude

the trial court did not err by granting judgment notwithstanding the verdict for Plaintiff, we affirm.

In 1996, Plaintiff inherited the real property and structures located at 6734 Highway 70, Newport, North Carolina ("the Property") from her father, Swindell Garner ("Mr. Garner"), who had owned and operated an automotive repair and wrecker service on the Property in the 1970's. In 1980, Mr. Garner let his nephew and employee, Jerry Linebarger, take over the business. Mr. Linebarger began operating the business under the name "Jerry's Body Shop" and constructed the first paint room building between 1981 and 1985. In 1985, Mr. Garner and Mr. Linebarger entered into a Lease Agreement and Option to Purchase for a 20 year term ("1985 Lease Agreement and Option to Purchase"). The 1985 Lease Agreement and Option to Purchase provided, in part:

10. No major alterations, additions or improvements to the leased premises shall be made by the Lessee without the consent of the Lessor which consent shall not be unreasonably withheld. Any such alteration, addition or improvement made by Lessee, after said consent, and any fixtures installed as a part thereof, shall of Lessor's option, become the property of the Lessor upon expiration of this Lease unless Lessee shall exercise his option to purchase, at which time Lessor agrees that the appraisal of the market value of the premises pursuant to the terms said option

shall not include any appraisal of said alterations, additions, or improvements.

. . .

14. At any time during the term of this Lease or during any extended term of this Lease, Lessee, upon giving not less than sixty (60) days notice in writing to Lessor, shall have the right to purchase the leased property. The purchase price shall be determined by the average of three appraisals. The appraisers are to be chosen one by Lessor, one by Lessee, and the third selected by the two appraisers. If said option is exercised, Lessor and Lessee will, within the sixty (60) days notice period, execute and deliver a formal contract of sale which shall provide that the sale shall be for cash and that FIVE HUNDRED DOLLARS (\$500.00) shall be paid upon the execution and delivery of the contract as earnest money to be applied toward the purchase price, the balance paid at closing which shall take place within sixty (60) days of the date of the execution and delivery of the sale contract.

PROVIDED, that the Lessor and Lessee agree that Lessee has constructed a paint room adjacent to and now a part of the leased premises. In the event Lessee exercises the option to purchase described herein, the appraisal of the market value of the premises shall not contain any appraisal of said paint room since it has been erected and maintained at Lessee's sole expense. Should Lessee fail to exercise said option, however, the paint room will be sold as a part of the premises.

. . .

18. This Lease shall be binding upon the

heirs, executors, administrators, personal representatives, attorneys and assigns of the parties hereto.

In 1994, Mr. Linebarger decided to construct a second small building to house a prefabricated AFC paint booth to be used to spray paint vehicles in connection with his business. Mr. Linebarger obtained Mr. Garner's permission and a building permit, and he subsequently constructed a concrete block building and installed the AFC paint booth. Mr. Linebarger testified that he planned on the AFC paint booth being a permanent part of the building that it was installed in and that he "didn't have thoughts of removing it." Mr. Linebarger continued to operate Jerry's Body Shop, and in 1995, he incorporated the business as Jerry's Body Shop of Newport, Inc. In 1996, Plaintiff inherited the Property from her father and continued to lease it to Mr. Linebarger.

In September 2002, Mr. Linebarger sold Jerry's Body Shop of Newport, Inc., to John J. Lynch, III, ("Defendant Lynch") through a Stock Purchase Agreement. At that time, and again in September 2007, Plaintiff and Defendants entered into a 5 year lease for "the building within which has been previously conducted the business known as 'Jerry's Body Shop' together with certain equipment as more particularly described on the

attachment hereto." The attachment to the 2002 and 2007 leases stated, in part, "One 30' x 100' commercial building, including two paint booths located at the East end thereof[.]"

In 2009, Defendant Lynch told Plaintiff he intended to vacate the lease, and he offered to sell the AFC paint booth to Plaintiff or to disassemble it and take it with him. Plaintiff informed Defendant Lynch that the AFC paint booth belonged to her. Plaintiff subsequently filed a complaint seeking a declaratory judgment that the AFC paint booth was her property. The matter came for trial on 24 August 2010.

At trial, Plaintiff and Defendants moved for a directed verdict, both of which the trial court denied. After the jury deliberated, the jurors were unable to reach a verdict, and the jury was "hopelessly deadlocked[.]" Plaintiff then moved for judgment notwithstanding the verdict. On 2 September 2010, the trial court entered an order granting judgment notwithstanding the verdict for Plaintiff. The trial court found that "the paint booth that was the subject of this action is the property of the Plaintiff[.]" Defendants appeal.

Defendants raise several arguments on appeal; however, because the following argument is dispositive, we address only that argument. Defendants argue the trial court erred in

granting Plaintiff's motion for judgment notwithstanding the verdict. We disagree.

"A motion for [judgment notwithstanding the verdict] is essentially a renewal of an earlier motion for directed verdict[.]" *Walker v. Fleetwood Homes of North Carolina, Inc.* 176 N.C. App. 668, 670, 627 S.E.2d 629, 631 (citation omitted), *disc. review denied*, 360 N.C. 545, 635 S.E.2d 62 (2006). "[O]ur standard of review for a judgment notwithstanding the verdict is the same as that for a directed verdict; that is, whether the evidence was sufficient to go to the jury." *Whitaker v. Akers*, 137 N.C. App. 274, 277, 527 S.E.2d 721, 724 (quotation and quotation marks omitted), *disc. review denied*, 352 N.C. 157, 544 S.E.2d 245 (2000). A motion for judgment notwithstanding the verdict "must be granted if the evidence when taken in the light most favorable to the non-movant is insufficient as a matter of law to support a verdict in favor of the non-movant." *Poore v. Swan Quarter Farms, Inc.*, 94 N.C. App. 530, 532, 380 S.E.2d 577, 578 (1989) (citation omitted), *disc. review denied*, 326 N.C. 50, 389 S.E.2d 94 (1990). However, the evidence is sufficient to withstand a motion for judgment notwithstanding the verdict "if there is more than a scintilla of evidence supporting each

element of the non-movant's case." *Id.* at 532-33, 380 S.E.2d at 578 (citation omitted).

"[T]here are neither constitutional nor procedural impediments to directing a verdict for the party with the burden of proof where the credibility of [the] movant's evidence is manifest as a matter of law." *North Carolina Nat. Bank v. Burnette*, 297 N.C. 524, 537, 256 S.E.2d 388, 396 (1979) (emphasis omitted). "[W]here the controlling evidence is documentary and [the] non-movant does not deny the authenticity or correctness of the documents, the credibility of [the] movant's evidence is manifest as a matter of law." *Goodwin v. Investors Life Ins. Co. of North America*, 332 N.C. 326, 330, 419 S.E.2d 766, 768 (1992) (quotation and quotation marks omitted). "Contract language which is plain and unambiguous on its face can be interpreted as a matter of law; however, if it is ambiguous, it is a question for the jury." *Taha v. Thompson*, 120 N.C. App. 697, 701, 463 S.E.2d 553, 556 (1995) (quotation marks and citation omitted). "Ambiguity exists where the language of the contract is fairly and reasonably susceptible to either of the constructions asserted by the parties." *Id.* (quotation and quotation marks omitted).

The law of trade fixtures is as follows:

As a general rule, whatever is attached to the land is understood to be a part of the realty; but as this depends, to some extent, upon circumstances, the rights involved must always be subject to explanation by evidence. Whether a thing attached to the land be a fixture or chattel personal, depends upon the agreement of the parties, express or implied. . . . Such an understanding between the original owner of the personalty who affixes it to the land of another and the owner of land to which it is affixed is binding on subsequent purchasers of the land who take with notice, actual or constructive, of the understanding.

Lee-Moore Oil Co. v. Cleary, 295 N.C. 417, 419-20, 245 S.E.2d 720, 722-23 (1978) (quotations and citations omitted).

In this case, Defendants argue the lease agreements do not justify the grant of Plaintiff's motion for judgment notwithstanding the verdict because the term "paint booth" is ambiguous as it is not clear whether the term refers to the painting equipment or the building that contains it. We conclude, however, that the following provision of the 1985 Lease Agreement and Option to Purchase between Mr. Linebarger and Mr. Garner is unambiguous:

10. No major alterations, additions or improvements to the leased premises shall be made by the Lessee without the consent of the Lessor which consent shall not be unreasonably withheld. *Any such alteration, addition or improvement made by Lessee, after said consent, and any fixtures installed as a part thereof, shall of*

Lessor's option, become the property of the Lessor upon expiration of this Lease unless Lessee shall exercise his option to purchase, at which time Lessor agrees that the appraisal of the market value of the premises pursuant to the terms said option shall not include any appraisal of said alterations, additions, or improvements.

(Emphasis added).

Pursuant to the 1985 Lease Agreement and Option to Purchase, Mr. Linebarger and Mr. Garner intended for any "alteration, addition or improvement" to the land, such as the concrete building installed to house the paint booth, and "any fixtures installed as a part thereof", such as the prefabricated AFC paint booth, to become Mr. Garner's property unless Mr. Linebarger exercised his option to purchase the Property on which Jerry's Body Shop was located. The parties agree that Mr. Linebarger did not exercise his option to purchase the Property. When Mr. Garner died in 1996, Plaintiff inherited the Property from her father and became the lessor under the 1985 Lease Agreement and Option to Purchase. Then, in 2002, Mr. Linebarger sold Jerry's Body Shop of Newport, Inc. to Defendant Lynch, and Plaintiff executed a lease with Defendants.

Because Mr. Linebarger did not exercise his option to purchase the Property, Plaintiff became the owner of the AFC paint booth when she inherited the Property from her father

pursuant to the 1985 Lease Agreement and Option to Purchase. Where, as in this case, "the controlling evidence is documentary and [the] non-movant does not deny the authenticity or correctness of the documents, the credibility of [the] movant's evidence is manifest as a matter of law." *Goodwin*, 332 N.C. at 330, 419 S.E.2d at 768 (quotation omitted). Thus, we hold the trial court did not err by granting Plaintiff's motion for judgment notwithstanding the verdict. In light of our holding, we need not address Defendants' remaining arguments on appeal. See *Hawkins v. SSC Hendersonville Operating Co., LLC*, ___ N.C. App. ___, ___, 690 S.E.2d 35, 40-41 (2010) (declining to address the defendants' remaining arguments in light of the court's holding that the defendants were entitled to a directed verdict as a matter of law), *disc. review denied*, ___ N.C. ___, 706 S.E.2d 248 (2011).

AFFIRMED.

Judges GEER and STROUD concur.

Report per Rule 30(e).