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STATE OF VERMONT
WINDSOR COUNTY, SS

Estate of Anthony Costa Plaintiff v. Sports Odyssey, Inc. Joseph L. Rolka Defendant	SUPERIOR COURT Docket No. 344-5-09 Wrcv

DECISION ON MOTIONS FOR SUMMARY JUDGMENT

The question presented is whether defendant Joseph Rolka is liable under a personal guaranty for the lease obligations of a business known as Sports Odyssey. Both parties have moved for summary judgment on the grounds that the undisputed facts entitle them to judgment as a matter of law.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, referred to in the statements required by Rule 56(c)(2), show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law." V.R.C.P. 56(c)(3). The party moving for summary judgment has the burden of demonstrating that no genuine issue of material fact exists and that he is entitled to judgment as a matter of law. *Price v. Leland*, 149 Vt. 518, 521 (1988). The non-moving party has the burden of setting forth specific facts showing a genuine dispute for trial. V.R.C.P. 56(e). The purpose of summary judgment is to "pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986) (citation omitted). Summary judgment is mandated where the non-moving party fails to make a showing sufficient to establish the existence of an element essential to his or her case, and on which she has the burden of proof at trial. *Poplaski v. Lamphere*, 152 Vt. 251, 254–55 (1989); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

Undisputed Facts

The following facts are established for purposes of summary judgment, and are not disputed by either party. Anthony Costa and Sports Odyssey entered into a lease for commercial property at [address redacted] Ludlow, Vermont on January 24, 2001. The lease was for a period of five years and granted the lessee the option to renew. The lease was signed by Joseph Rolka in his capacity as authorized agent for Sports Odyssey, Inc.

Concurrent with the execution of the lease, Joseph Rolka signed a personal guarantee. The guarantee contained the following language:

> For valuable consideration, the receipt of which is herby acknowledged, the undersigned ("Guarantor") guarantees due fulfillment to Anthony Costa ("Lessor") of all obligations of Sports Odyssey, Inc., its successors or assigns, to Lessor, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, which are incurred as a result of Sports Odyssey, Inc.'s obligations under a certain lease between Sports Odyssey, Inc. and Lessor dated January , 2001.

While containing an option to renew solely at Lessee's choice, the lease does not contain any express provision that the guaranty shall continue if the option to renew is exercised. There are multiple clauses in the lease referencing the possibility of a renewal of the lease. The lease does not contain an integration clause. The guaranty contains no language indicating whether the guaranty would continue if the option to renew was exercised.

Sports Odyssey exercised its right to renew the lease in September 2005. The renewed lease expires on December 31, 2010.

This suit seeks to hold Sports Odyssey liable for breach of the lease and Rolka liable as guarantor under the lease for the obligations of Sports Odyssey following Sports Odyssey's departure from the leased premises prior to the expiration of the lease.

Discussion

Plaintiff argues that the contract terms contemplating renewal and the language of the guarantee clearly make the guarantee applicable to this renewed lease. In the alternative, the Plaintiff argues that the language is ambiguous and therefore Plaintiff should be allowed to discover and introduce evidence into the intention of the parties concerning the guarantee.

Where the terms of a contract are ambiguous, the court may admit parole evidence concerning the intention of the parties. *Trustees of Net Realty Holding Trust v. AVCO Financial Services of Barre, Inc.*, 144 Vt 243 (1984). However, where the contract terms are unambiguous, the interpretation of the contract is a matter of law. *Morrisseau v. Fayette,* 164 Vt. 358 (1995).

Vermont recently considered the interplay between personal guarantees and lease renewals in *O'Brien Brothers Partnership, LLP v. Plociennik*, 2007 VT 105, 182 Vt. 409. That case involved a personal guarantee which applied to an "executed lease dated 4-7-99." Nothing in either the lease or the personal guarantee spoke of possible modifications, renewals of the lease, or extensions of the lease obligations. *Id.*, ¶ 10.

On those facts, the Supreme Court concluded that the personal guaranty and lease agreement were unambiguous, and that the personal guaranty did not extend to any lease renewals. In reaching this conclusion, the Court reviewed cases from other jurisdictions, and adopted the rule that "a guaranty for a specific term does not apply to extensions or renewals of the lease unless the continuing obligation of the guarantor is expressly stated either in the personal guaranty, the original lease, or the subsequent lease agreements." *Id*., ¶ 12 (emphasis added).

Plaintiff attempts to distinguish *O'Brien* on the factual basis that the lease here, unlike *O'Brien*, contains a renewal provision and does not contain an integration clause. This court agrees that the inclusion in the lease of a renewal provision solely at the option of lessee makes this a closer case than *O'Brien*. However, a careful reading of O'Brien provides the conclusion that the outcome here is dictated by *O'Brien* despite the contractual differences in the two cases.

Vermont has long recognized that the obligations of a surety are to be strictly construed. *Stern v. Sawyer*, 78 Vt. 5 (1905). Here, the parties contemplated lease renewal as evidenced by the inclusion of a specific renewal provision and reference at various places throughout the lease to the possibility of renewal. Despite this, they included no language in the guaranty extending it to renewals and no language in the lease expressly extending the guarantee to renewals.

The Supreme Court made clear in *O'Brien* that its conclusion was not dictated by the presence or absence of provisions regarding lease renewals, but rather the absence of express language extending liability under the personal guarantee to any subsequent lease renewals:

> Without express language in the personal guaranty or the original lease that extended defendant's liability to any subsequent extensions or renewals, we hold that the personal guaranty and lease agreement are unambiguous and apply only to the original lease term from April 1999 to April 2001.

2007 VT 105, ¶ 17 (emphasis added).

The parties to this agreement knew how to reference the possibility of renewal and did so throughout the lease document. However, they did not expressly reference the application of the guarantee to any renewal of the lease.

Given the requirement of express language extending the guarantee to any renewal and the strict construction to be applied to a guarantor's surety obligations, the court cannot conclude that other provisions in the lease and guarantee create an ambiguity which might be resolved by extrinsic evidence. In other words, despite the expansive language in the guarantee and multiple references to lease renewals, the court

cannot overlook the absence of express language extending the guarantee to lease renewals. The absence of an integration clause and the execution of the lease and guarantee concurrently also do not change the outcome.

In short, the requirement of express language in the lease, the guarantee, or the lease renewal was not met here. Accordingly, as a matter of law, Rolka is entitled to judgment in his favor on the guarantee issue.

Dated at Woodstock this 25th day of November, 2009.

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Harold E. Eaton, Jr.
Superior Court Judge