COURT OF APPEALS
DECISION
DATED AND FILED

February 16, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP12 **Cir. Ct. No. 2002CV978**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

CUN XIN ZHENG D/B/A GRAND CHINA RESTAURANT,

PLAINTIFF-APPELLANT,

V.

BRADLEY OPERATING LIMITED PARTNERSHIP,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dane County: MICHAEL N. NOWAKOWSKI, Judge. *Affirmed*.

Before Lundsten, P.J., Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Cun Xin Zheng, the owner of Grand China Restaurant, appeals a judgment in favor of his former landlord, Bradley Operating Limited Partnership. The dispute concerns Bradley's decision not to extend Zheng's lease of space for his restaurant in the Fitchburg Ridge Shopping Center.

The issue is whether Zheng timely exercised his option to renew the initial five-year lease of the premises. We conclude that the trial court properly granted summary judgment to Bradley on that issue, and we therefore affirm.

¶2 Zheng and Bradley entered a five-year lease agreement. The agreement gave Zheng an option to renew the lease for five more years by giving notice at least six months before the lease's March 31, 2002 expiration date.

¶3 In August 1999, Bradley drafted a lease amendment and sent it to the Fitchburg Ridge tenants, including Zheng. The accompanying letter explained to Zheng that the amendment's purpose was to eliminate a promotional fund collected from tenants. The letter went on to report that the majority of mall tenants did not want to continue with the fund. The letter explained that the rent would be adjusted accordingly and stated "[o]nce all amendments have been signed, we will adjust the billings and your account to reflect the changes." The letter concluded by stating "[p]lease review the enclosed Amendment to Lease, and if it meets with your approval, please sign all four (4) copies and return them to this office. We will have the amendment fully executed and return one (1) copy to you for your files."

¶4 An agent for Bradley signed the letter. For reasons not addressed in the letter, the amendment also changed the lease's renewal option provision to allow a five-year extension if the tenant gave notice "within" six months of the lease expiration date.

¶5 Zheng signed and returned the amended lease agreement. However, the agreement was never signed on behalf of Bradley, and Bradley never implemented the proposed amendments because some mall tenants did not agree to the amended provisions.

¶6 In December 2001, Zheng's agent, Sue Jiang, advised Bradley orally that Zheng wanted to exercise his renewal option. Jiang followed this conversation with a letter stating that Zheng wanted the five-year renewal on different rent terms than provided in the lease. Arguably, either the oral notice or the letter would have been timely under the provisions of the lease amendment Zheng signed, but they were not timely under the original lease provision.

¶7 In February 2002, Zheng's attorney sent Bradley a letter indicating that Zheng had either previously exercised, or was now exercising, his renewal option. Bradley responded with a demand that Zheng vacate the premises. Zheng refused to do so and commenced this action to enforce his lease renewal option. Bradley counterclaimed for eviction. The trial court held, on the facts described above, that: (1) Zheng did not timely exercise his renewal option under the original agreement; (2) the August 1999 proposed amendment to the lease never became binding and enforceable; (3) the parties did not orally agree to modify the original renewal notice requirement; and (4) Zheng did not establish grounds to estop Bradley from evicting him.

¶8 On review of a summary judgment we apply the same method as the trial court. ***Leverence v. United States Fid. and Guar.***, 158 Wis. 2d 64, 73, 462 N.W.2d 218 (Ct. App. 1990). If, as here, the material facts are not in dispute, and if competing inferences cannot be drawn from those facts, summary judgment is appropriate. *See* ***id.***

¶9 Zheng first contends that the lease amendment he received in August 1999 combined with the cover letter accompanying it was an offer that became binding upon Zheng's acceptance. In his view it was not, as the court held, a proposal contingent on acceptance by all the other tenants. Consequently, in

Zheng's view, he provided timely notice in either December 2001 or February 2002 of his intent to exercise his renewal option. Bradley responds that the lease amendment was not enforceable because Bradley's agent never signed it and, without a signature, a lease agreement exceeding one year is not enforceable. *See* WIS. STAT. §§ 704.03 and 706.02(e) (2003-04).[1] Consequently, the original lease remained in effect and Zheng's notice was untimely.

¶10 We agree with Bradley that the lease amendment is unenforceable because it does not comply with the signature requirement of the statute of frauds. Zheng correctly notes that a writing signed by a party that authenticates the existence and terms of a contract, even though not the contract itself, satisfies the statute of frauds. *See* ***Bunbury v. Krauss***, 41 Wis. 2d 522, 533, 164 N.W.2d 473 (1969). However, a writing that accompanies or references a contract will not satisfy the statute of frauds unless it is definite as to the party's intent. *See* ***Asplund v. Fisher***, 19 Wis. 2d 450, 453, 120 N.W.2d 724 (1963). Here, the signed letter accompanying the lease amendment did not definitely offer to amend Zheng's lease regardless of circumstances. The letter explained that the proposed amendment would apply to all tenants, and the amendments were proposed to all tenants, because the principal change concerned a joint fund. The letter further stated that the provisions of the amendment would not go into effect until "all amendments have been signed." In other words, the letter creates only one reasonable inference: that the amendment would become a binding and enforceable contract only if all tenants returned signed agreements.

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶11 Zheng next contends that there is evidence that Bradley's agent orally agreed to renew the lease in discussions with Jiang in December 2001. However, the lease between the parties expressly prohibited oral modifications, and required all changes to be in writing. Additionally, because the original agreement was subject to the statute of frauds, so was any modification of it. *See* ***S & M Rotogravure Serv., Inc. v. Baer***, 77 Wis. 2d 454, 468-69, 252 N.W.2d 913 (1977).

¶12 Finally, Zheng contends that the circumstances of the December communications between Zheng and Bradley's agent supplied grounds to estop Bradley from non-renewal. We disagree. If, as here, a contract covers all the material elements of a party's relationship, the remedy of estoppel is not available. *See* ***Kramer v. Alpine Valley Resort, Inc.***, 108 Wis. 2d 417, 425, 321 N.W.2d 293 (1982).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.