COURT OF APPEALS
DECISION
DATED AND FILED

April 17, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

No. 00-2006

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

C.S.B. PROPERTIES, INC., A WISCONSIN CORPORATION, AS THE SUCCESSOR IN INTEREST FROM ROGER MARTEN,

PLAINTIFF-RESPONDENT,

H & B RENTALS, LLP AND WOODMEN CORPORATION, D/B/A DIRECT STORES,

INTERVENORS,

V.

COLLINS OUTDOOR ADVERTISING, INC., A WISCONSIN CORPORATION,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Chippewa County: THOMAS J. SAZAMA, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Collins Outdoor Advertising appeals from a judgment declaring that its lease of a billboard sign with C.S.B. Properties is invalid. On appeal, Collins argues that: (1) the lease between Roger Marten and Collins is unambiguous; and (2) even if the lease is ambiguous, the trial court improperly determined the intent of the parties by ignoring Marten's conduct after the execution of the lease. We disagree and affirm.

BACKGROUND

¶2 In 1985, Marten purchased property in Eau Claire. Wayne Faust claimed a leasehold for the billboard sign located on the property. Marten and Faust negotiated a lease with an initial term of one year from January 1, 1986, through December 31, 1986. The lease was renewable on a year-to-year basis unless either party terminated the lease by giving written notice prior to December 1. Additionally, the annual rent was $690 and contained an option to increase or decrease the rent based on the consumer price index.

¶3 In 1987, Faust sold his leasehold to Collins. Kelly Stokke (f/k/a Kelly Sobkowiak), an agent of Collins, was assigned to obtain a renewal lease for the billboard. Stokke sent Marten a lease for him to sign. The lease contained a section where the drafter had the option of circling either "new" or "renewal." Stokke circled the word "renewal" prior to sending the lease to Marten. The lease set the annual rent at a flat rate of $690 and stated that it was for a term of ten years to begin running at the expiration of the prior lease. Marten signed the lease and mailed it back to Stokke.

¶4 In 1989, Marten informed Collins that he was terminating the lease. However, because of a pending city road project that would have resulted in the property being condemned, Marten put off the termination.

¶5 Marten sold the property to C.S.B. in 1992 and died in 1993. In 1995, the city passed an ordinance abandoning the road project near the property. C.S.B. then provided Collins with written notice of its intent to terminate the lease. Collins and C.S.B. could not reach an agreement as to the terms of the lease, and C.S.B. filed an action seeking declaratory relief.

¶6 Subsequently, H & B Rentals purchased the property from C.S.B. and intervened as successors in interest to C.S.B. A court trial was held. The court found that the lease was ambiguous and invalid. It determined that Collins' occupancy of the property was a month-to-month tenancy and that H & B was entitled to back rent payments based on a month-to-month lease. This appeal followed.

STANDARD OF REVIEW

¶7 The aim of all contract interpretation is to ascertain the intent of the parties. ***Dieter v. Chrysler Corp.***, 2000 WI 45, ¶15, 234 Wis. 2d 670, 610 N.W.2d 832. When the contract language is plain, the parties' intent is determined by applying the plain language. ***Id.*** When the language is ambiguous, extrinsic evidence of the parties' intent may be considered. ***Patti v. Western Mach. Co.***, 72 Wis. 2d 348, 352-54, 241 N.W.2d 158 (1976). Ambiguity exists if the contract is reasonably susceptible to more than one meaning. ***Wausau Underwriters Ins. Co. v. Dane County***, 142 Wis. 2d 315, 322, 417 N.W.2d 914 (Ct. App. 1987). Whether a contract is ambiguous is a question of law we review independently. ***Id.*** When a contract is ambiguous, the question of intent is for the trier of fact.

Armstrong v. Colletti, 88 Wis. 2d 148, 153, 276 N.W.2d 364 (Ct. App. 1979). We decide the questions of law involved in contract interpretation independently while benefiting from the trial court's analysis. *See* ***Wausau Underwriters***, 142 Wis. 2d at 322.

DISCUSSION

I. Ambiguous Lease

¶8 Collins argues that the lease is unambiguous. It contends that: (1) the parties' intent can be determined with reasonable certainty through a plain reading of the lease; (2) the trial court misinterpreted Wisconsin law by speculating that Marten did not read the contract, thus relieving C.S.B. of the terms of the lease; and (3) the trial court did not construe the lease as a whole. We disagree.

A. Intent of the Parties

¶9 Internal inconsistencies and provisions that create confusion will support a conclusion that a contract is ambiguous. ***Spencer v. Spencer***, 140 Wis. 2d 447, 450-51, 410 N.W.2d 629 (Ct. App. 1987). Here, the lease states that its purpose is to renew the Marten-Faust lease as opposed to creating a new lease. However, Collins argues that the meaning of "renewal" is limited to the definition found in the lease itself. In addition, Collins argues that the lease does not reference or incorporate any provision of the prior lease except for the termination date of the prior lease.

¶10 A review of the lease establishes that it does not contain a definition of the term "renewal." All that is stated is that "if this lease is designated as a renewal, the term of the lease begins at the expiration of the initial term of the

prior lease." This language simply provides the date the renewal lease becomes effective. The definition of "renewal" is not limited nor does it lose its plain meaning based on this language, contrary to Collins' assertions. The very nature of a renewal means that it incorporates provisions of whatever is being renewed.

¶11 As a renewal lease, there is an ambiguity as to which of the original lease's terms were being included. It is not clear whether the lease is renewing every provision of the prior lease or whether it is modifying certain provisions.[1]

¶12 Collins urges this court to ignore the common usage of the word "renewal" and, instead, interpret the lease as a new, separate lease, standing on its own. However, if this were a new contract that stood on its own, then the word "new" as opposed to "renewal," would be circled on the lease and there would be no reference to the prior lease.

B. Marten's Duty

¶13 Collins argues that the trial court erred by speculating that Marten did not pay attention to what he was signing. Collins correctly states that a person signing a document has a duty to read it and know its contents. *See* ***Richards v. Richards***, 181 Wis. 2d 1007, 1017, 513 N.W.2d 118 (1994). Collins further contends that if Marten had read the lease, he would have clearly understood it as a stand-alone lease. We disagree.

¶14 As stated above, the lease is ambiguous. The trial court's comments regarding whether Marten read through the lease are irrelevant. The presumption

[1] On the one hand, "renewal" implies that the previous terms are reactivated. On the other hand, and as indicated, the new document amends the term and the option to adjust the monthly rental fee.

that parties to contracts read them before signing does not destroy the potential for ambiguity or a failure of a meeting of the minds. Whether Marten read the lease is unknown. However, assuming he read the lease, the fact remains that the lease is ambiguous.

C. Contract as a Whole

¶15 Collins argues that the trial court failed to construe the lease as a whole. It contends that the trial court improperly focused on the use of "new/renewal" provision with the term "renewal" being circled. According to Collins, the trial court ignored every other term and condition of the lease. We disagree.

¶16 A contract must be construed as a whole, so as to give each of its provisions the meaning intended by the parties. ***Campion v. Montgomery Elevator Co.***, 172 Wis. 2d 405, 416, 493 N.W.2d 244 (Ct. App. 1992). Moreover, in construing a contract the court should select the construction that gives meaning to each of its provisions so that no part is rendered surplusage or meaningless. ***Maas v. Ziegler***, 172 Wis. 2d 70, 79, 492 N.W.2d 621 (1992).

¶17 Applying the principles of contract construction, the existence of the "new/renewal" option and the circling of the word "renewal" must be given effect. To ignore the word "renewal" would make it surplusage. However, as a renewal lease, it deviates substantially from the terms of the prior lease. It is because of this conflict that the lease is ambiguous.

II. Invalid Lease

¶18 Collins argues that even if the lease is ambiguous, Marten's conduct after the execution of the lease removes any ambiguity regarding its terms, thus

making the lease valid. Collins contends that Marten accepted the terms of the "new" lease that set the rental price at a flat rate of $690 because he never attempted to adjust the rent in accordance with the Consumer Price Index. Again, we disagree.

¶19 "[A]fter a contract has been found to be ambiguous, courts may look beyond its face and consider extrinsic evidence." ***Spencer***, 140 Wis. 2d at 450. "Where the evidence permits more than one reasonable inference concerning the parties' intent, the trial court, not the appellate court, must make the factual determination and resolve the ambiguity." ***Id.*** This court will only overturn findings of fact if they are clearly erroneous. WIS. STAT. § 805.17(2). "In construing an ambiguous contract, the object is to ascertain and effectuate the parties' intent." ***Spencer***, 140 Wis. 2d at 450. "Intent may be gathered from surrounding circumstances as well as from words." ***Id.***

¶20 The trial court made a factual determination regarding the parties' intent from testimony, the lease itself, and the interpretation of the word "renewal." We conclude the record supports the trial court's determination.

¶21 There was testimony from Stokke from which the court could conclude that the parties intended to continue the terms of the prior lease. Stokke testified that she actually intended to insert into the lease the rental provisions of the prior lease. Stokke testified:

> Q. Where did the amount of $690.00 come from?
>
> A. The same price as what Faust was paying him.
>
> Q. It was your intention then to present a lease to Mr. Marten that would feature the same rental as the Faust lease?
>
> A. Correct.

¶22 There was testimony from Marten's attorney that Marten had made it perfectly clear that he wanted a lease that was only year-to-year and which either party could terminate. There was also testimony from Marten's agent that Marten and Collins discussed the year-to-year nature of the Collins lease and the possible termination by Marten. At no time in these discussions did Collins dispute this characterization. As a result, the record supports the trial court's factual determinations.

By the Court.—Judgment affirmed.

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