

IN THE COURT OF APPEALS OF IOWA

No. 1999-543 (9-804) / 98-2111

Filed July 12, 2000

JAMES WALSH, JR.,

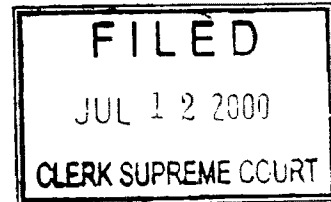
Plaintiff-Appellant/Cross-Appellee.

vs.

DONNA NELSON and VERNER NELSON

d/b/a **RIVER PLAZA BUILDING,**

Defendants-Appellees/Cross-Appellants.



Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

Plaintiff appeals, and defendants cross-appeal, the district court's ruling on plaintiff's declaratory judgment action requesting an interpretation of the parties' commercial lease. **AFFIRMED IN PART AND REVERSED IN PART.**

Max E. Kirk of Ball, Kirk & Holm, P.C., Waterloo, for appellant.

David L. Riley of Yagla, McCoy & Riley, P.L.C., Waterloo, for appellees.

Considered by Vogel, P.J., and Zimmer and Miller, JJ. Mahan, J., takes no part.

MILLER, J.

James Walsh Jr. appeals the district court ruling on his action for a declaratory judgment requesting an interpretation of a commercial lease. Walsh rented office space from Donna and Verner Nelson (Nelson), doing business as the River Plaza Building. Walsh claims the court erred in finding the lease was clear and unambiguous and gave him only a single opportunity to terminate the lease. In a cross-appeal, Nelson claims the district court improperly calculated the amount of rent which Walsh owed under the lease. We affirm in part and reverse in part.

In 1983, Donna Nelson purchased the River Plaza Building in Waterloo and renovated it to create an office building.¹ Walsh was interested in moving his law firm to the River Plaza Building. Walsh and Nelson negotiated over a substantial period of time. In May 1985, they signed a lease for eighteen years. The lease, however, included the following provision:

Modification of Term. This lease is terminable at tenant's option if, at the end of the first six year term, but not sooner, any members of the Clark, Butler, Walsh & McGivern law firm are deceased or permanently retired from practice of law or are disabled. A determination of what constitutes disability for purposes of this paragraph shall be made solely by the tenant. Tenant shall give landlord 30 days notice of any intent to terminate pursuant to the provisions of this paragraph.

The lease set a specific schedule of rents for the first six years. After that time, the rent was to be annually adjusted "to reflect the average rate of the building with the exception of the athletic club." At the beginning of the eighth, tenth, twelfth, and fifteenth years, the rent was also to be adjusted according to

¹ The River Plaza Building is on the National Register of Historic Places.

the Consumer Price Index (CPI). In addition to rent, Walsh was responsible to pay triple nets. These were the costs of utilities, insurance and taxes, which Nelson paid for the building and then assessed as a monthly charge to the tenants.

The parties proceeded amicably for the first six years while the rent was set by a schedule. Thereafter, they were unable to agree to a method to adjust the amount of rent which was due. On December 13, 1994, the parties settled all past disputes concerning basic rent payments. They were unable to agree to the amount of triple nets for 1992, 1993, and 1994. Nelson claimed Walsh owed \$7275.81 for these years. In 1997, Walsh deducted \$2500 per month from his rent for three months as an offset for legal fees which Nelson and her brothers owed to him.

Craig Clark, who was a member of the Clark, Butler, Walsh & McGivern law firm retired in December 1996. Wallace Butler, who was also a member of the firm, retired shortly thereafter. In 1997, Walsh informed Nelson he intended to exercise his option for early termination of the lease. Nelson would not agree to the termination, stating Walsh could only terminate on the sixth anniversary of the lease, which would have been in May 1991.

Walsh filed a petition for a declaratory judgment, seeking an interpretation of the modification of term provision in the parties' lease. Nelson filed a counterclaim, asserting Walsh owed unpaid rent of \$51,224.85.

The district court determined the provision for early termination of the lease was clear and unambiguous. The court found the provision gave Walsh a single opportunity to terminate the lease, which he did not exercise. The court

concluded the lease was clearly an eighteen-year lease, which would end on June 30, 2003.

The court determined Walsh had paid \$9.40 per square foot in rent after July 1, 1996, when the rent should have been \$9.04 per square foot. The court determined Walsh had overpaid \$7226.34. The court noted Walsh agreed he should not have withheld \$7500 from his rent for legal fees, and he owed this amount to Nelson. The court also found Walsh was responsible to pay \$7275.81 for unpaid triple nets for the years 1992 through 1994. Walsh appealed and Nelson cross-appealed.

I. SCOPE OF REVIEW

This action was tried at law and our scope of review is for errors at law. See Iowa R. App. P. 4. Findings of fact in a law action are binding upon the appellate court if supported by substantial evidence. Iowa R. App. P. 14(f)(1). We are not, however, bound by the trial court's determinations of law. *Harmsen v. Dr. MacDonald's, Inc.*, 403 N.W.2d 48, 50 (Iowa App. 1987).

II. INTERPRETATION OF LEASE

Walsh contends the district court improperly interpreted the parties' lease. He asserts a plain reading of the provision in question does not support the district court's conclusion there was only one opportunity to terminate the lease.

We look to ordinary contract principles when interpreting a lease.² *Dickson v. Hubbell Realty Co.*, 567 N.W.2d 427, 430 (Iowa 1997). In interpreting a contract, we give effect to the language of the entire contract in accordance

² Interpretation is a process for determining the meaning of words in a contract. *Fausel v. JRJ Enter., Inc.*, 603 N.W.2d 612, 618 (Iowa 1999). Construction, on the other hand, is a process of determining the legal effect of such words. *Id.*

with its commonly accepted and ordinary meaning. *Lange v. Lange*, 520 N.W.2d 113, 119 (Iowa 1994). The object of a court in interpreting an agreement is to ascertain the meaning and intention of the parties as expressed in the language used. *United Warehousing Corp. v. Interstate Acres Ltd. Partnership*, 458 N.W.2d 14, 15 (Iowa App. 1990).

In examining the lease as a whole, for two reasons we find the lease provision in question is not clear and unambiguous. First, it is undisputed that the parties discussed and intended to include a provision that would allow Walsh to terminate the lease sometime before the expiration of the full eighteen-year term.³ It is undisputed that the death, retirement or disability of one or more of the members of Walsh's law firm is required before Walsh would have a right to terminate the lease. Read literally, the provision in question provides that in order for Walsh to exercise the agreed to right to terminate, a member of the firm would have to be deceased, retired or disabled *at the end of the first six-year term*. However, it also requires that any qualifying death, retirement or disability must have occurred *not sooner than the end of the first six-year term*. Therefore, if read literally, the provision would require that any qualifying death, retirement or disability occur exactly at the end of the first six-year term of the lease. The probability of this happening would appear to be so remote and unlikely that such a reading of the provision would be highly unreasonable and cannot be what the parties intended. Accordingly, an interpretation of the provision consistent with its literal terms is inappropriate. See *American Soil Processing, Inc. v. Iowa*

³ They had originally discussed a sixteen-year lease and a right to terminate after five years. Later discussions involved an eighteen-year lease and a right to terminate at or after six years.

Comprehensive Petroleum Underground Storage Tank Fund Bd., 586 N.W.2d 325, 334 (Iowa 1998) (stating in part that because an agreement is to be interpreted as a whole, an interpretation which gives a reasonable meaning to all terms is preferred to one which leaves a part unreasonable).

Second, another provision of the lease suggests the right to terminate the lease may be broader than a right to do so at the end of the first six years. The lease provision immediately preceding the one in question states:

Relinquishment of Leasehold Improvements. If tenant decides to leave building after the first five years of this lease, Landlord hereby waives payment and agrees not to attempt collection of the last one month rent due under the first five year term of the lease. This shall be full payment for tenants leasehold improvements. Tenant shall not remove any of its improvements if tenant would cause damage to the property. This paragraph only applies if tenant moves from the premises.⁴

The use of the word "after" is consistent with Walsh's position that the provision in question does not limit him to only one opportunity to terminate the lease. It is inconsistent with Nelson's position, accepted by the trial court, that the provision in question clearly and unambiguously provided only one opportunity to terminate the lease.

We find the provision in question is open to more than one reasonable interpretation. We reverse that part of the district court decision finding the provision clearly and unambiguously gave Walsh only one opportunity to terminate the lease.

⁴ Provisions from earlier drafts which included phrases such as "first five year term" were changed to phrases such as "first six year term" in the final lease. The references in this provision to "five years" and the "first five year term" appear to be uncorrected language from those earlier drafts, which were based on a sixteen year lease and a right to terminate at or after five years, as noted at footnote 3 above.

III. EXTRINSIC EVIDENCE

If the language of a contract is found to be ambiguous, extrinsic evidence is admissible as an aid to interpretation of the contract. *Dental Prosthetic Servs., Inc. v. Hurst*, 463 N.W.2d 36, 39 (Iowa 1990). An ambiguity occurs in a contract when a genuine uncertainty exists concerning which of two reasonable interpretations is proper. *Hartig Drug Co. v. Hartig*, 602 N.W.2d 794, 797 (Iowa 1999). Extrinsic evidence is admissible as an aid to interpretation when it throws light on the situation of the parties, antecedent negotiations, the attendant circumstances, and the objects they were striving to attain. *Uhl v. City of Sioux City*, 490 N.W.2d 69, 73 (Iowa App. 1992). Extrinsic evidence cannot be used to vary or alter the language in a written agreement. *Bankers Trust Co. v. Woltz*, 326 N.W.2d 274, 276 (Iowa 1982).

We find the parties' lease is ambiguous on the issue of whether, assuming any of the members of the law firm were deceased, retired, or disabled, Walsh could terminate the lease only on the date of the end of the first six year term, or at any time after the end of the six year term. Because we find the lease is ambiguous, we may consider extrinsic evidence.

When a contract is not ambiguous, it will be enforced as written, but when there are ambiguities in a contract, they are strictly construed against the drafter. *Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents*, 471 N.W.2d 859, 862 (Iowa 1991). The evidence in this case shows both parties had input in the lease. Walsh was an attorney and Nelson had extensive experience as a landlord. They negotiated the lease over a long period of time, and the final

lease was the result of several redraftings. Therefore, we do not strictly construe the lease against either party.

Walsh testified he wanted to take advantage of the historic building rehabilitation tax credit, and this required a lease of at least eighteen years. However, at the time of the negotiations, both Clark and Butler were in their sixties, and Walsh was aware they might retire soon. He testified he wanted a provision in the lease which would allow him to terminate the lease if the law firm needed to move to a smaller space.

Walsh testified Nelson needed only a five or six year lease for her financing and was not interested in the length of the lease beyond that. During the parties' negotiations, they exchanged letters discussing possible lease rates for the first five years. Nelson stated that in order to obtain financing she was required to charge Walsh a certain amount of rent. There is no discussion of the length of the lease. In an affidavit filed in this case, Nelson stated she needed a lease term for a minimum of six years.

During negotiations, Walsh wrote a letter to Nelson's architect, J. D. Singer, which stated:

It has also been suggested that a 15 year lease is enough for historic buildings. If that is true, perhaps we could work out a 15 year lease arrangement that provided us with appropriate "escape hatches" and provided you with adequate notice of our intentions so that while it would be a 15 year lease it could be flexible enough to look and act like a 5 year lease.

Nelson testified she was aware of the letter to Singer, and of Walsh's concerns.

Earlier versions of the lease contained an additional sentence in the provision for modification of term, which provided:

This lease is terminable at tenants option after the end of the first five year period if the character of the building tenants at that time is not suitable and amenable to the successful practice of law as shall be determined by tenant.

In May 1985, when Walsh sent the signed lease to Nelson, he enclosed a letter which stated he had modified the provision for modification of term to eliminate this sentence because he thought it was too lenient to pass the review of the Internal Revenue Service. He continued, "At any rate, it shouldn't effect you one way or the other." Contrary to Walsh's assertion, at the trial, Nelson testified this sentence was taken out at her insistence.

Nelson testified she needed long-term leases in order to obtain financing for the building. There was evidence, however, she had arranged for financing at the time she signed the lease. Nelson stated she agreed to the early termination provision because it gave Walsh just one chance to get out of the lease. She testified Walsh told her he needed six years to determine if his practice was stable, but he felt that if his practice was good at that time, he would be able to meet the remaining twelve years of the lease.

The parties' testimony does not provide much guidance because they have opposing views on the meaning of the early termination provision in the lease. The documents generated at the time of the negotiations, however, support Walsh's interpretation of the lease. The documents show Walsh wanted "escape hatches" in case his law firm decreased in size, and that Nelson was only concerned the lease term be at least six years. Nelson did not produce any documents to support her claim she needed leases longer than six years in order to obtain financing to renovate the River Plaza Building. For these reasons, we

conclude the lease should be interpreted to allow Walsh to terminate the lease any time after the first six year period, if any members of his law firm became deceased, retired, or disabled during the term of the lease. We reverse the decision of the district court on this issue.

IV. RENT

Nelson claims the district court improperly found Walsh's rent should have been \$9.04 per square foot after July 1, 1996, instead of \$9.40 per square foot. Nelson asserts Walsh agreed to pay \$9.40 per square foot. They also contend that under the terms of the lease, the rent should not decrease. There was no appeal on the issue of triple nets.

On December 13, 1994, the parties settled past disputes concerning basic rent payments. They agreed Walsh's rent should be \$9.40 per square foot, which was \$8635.46 per month. The letter does not discuss future rent payments, but Walsh continued to pay \$9.40 per square foot until the hearing in May 1998.

Pursuant to the lease, at the end of the eleventh year, which would have been June 30, 1996, the rent should be adjusted to "reflect the average rate of the building with the exception of the athletic club." The average rent in the River Plaza Building, excluding the athletic club and unrented areas, in 1996 was \$9.04 per square foot. Concerning this average rent adjustment, the lease specifically provides for a decrease in the rental rate. Thus, Walsh's rent could be

decreased under this provision.⁵ The district court properly determined that beginning July 1, 1996, Walsh's rent should be \$9.04 per square foot.

The lease also provides for an increase in rent at the beginning of the twelfth year, which would have been July 1, 1996, according to the CPI for January 1, 1996. Nelson failed to present evidence of the CPI for 1996, and therefore, we have no basis to calculate an increase in Walsh's rent based on the CPI. Based on the evidence presented at the trial, we determine Walsh's rent after July 1, 1996, should be \$9.04 per square foot. The district court properly found Walsh overpaid rent of \$7226.34.

We affirm the district court on the issue of rent, and reverse on the issue of interpretation of the early termination provision of the lease. Costs of this appeal are assessed to Nelson.

AFFIRMED IN PART AND REVERSED IN PART.

⁵ The provision concerning adjustments for the Consumer Price Index (CPI) states the rent shall not be reduced, but we find this statement refers only to adjustments based on the CPI.