FILED
JAN 24 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

FIRST MIDWEST DEVELOPMENT & REALTY CORPORATION, f/k/a **POMERANTZ REALTY CO.,**	)	
Plaintiff-Appellee,	)	Filed January 24, 1984
vs.	)	
HUTTIG SASH AND DOOR COMPANY, Individually, and d/b/a **ROCK ISLAND MILLWORK COMPANY,**	)	3-367 / 2-68763
Defendant-Appellant,	)	
and	)	
ROCK ISLAND CORPORATION,	)	
Defendant.	)	

Appeal from the Iowa District Court for Polk County - Richard A. Strickler, Judge.

Defendant tenant appeals from judgment for plaintiff landlord in an action for damages based upon breach of a commercial lease, asserting that under a 1963 lease the premises were required to be surrendered in the condition as of the date of execution in 1963 rather than the condition as of the date of execution of a previous lease in 1958. AFFIRMED.

Henry A. Harmon, Craig S. Shannon, and Rolland E. Grefe of Grefe & Sidney, Des Moines, for defendant-appellant.

Richard A. Bartolomei, Des Moines, and William R. King of Davis, Hockenberg, Wine, Brown & Koehn, Des Moines, for plaintiff-appellee.

Heard by Snell, P.J., and Schlegel and Hayden, JJ.

PER CURIAM

In 1958, the plaintiff-appellee landlord, First Midwest Development & Realty Corporation, executed a ten-year commercial lease with the defendant-appellant tenant, Rock Island Millwork Company. The lease provided inter alia that the tenant had the right to make certain alterations but, upon termination of the lease, would be required to restore the premises "substantially to its prior condition" upon the landlord's request with regard to any portion altered without the landlord's written consent. When adjoining premises became available in 1963, a new agreement was executed covering both properties and overriding the previous lease. The 1963 lease provided that alterations to the premises would require the landlord's written consent and that upon termination of the lease the tenant, upon the landlord's request, would "restore substantially to its prior condition" any portion of the premises altered without the landlord's prior written consent. The 1963 lease also stated that it contained the entire agreement of the parties and that there were no other "prior or contemporaneous, oral or written understandings."

Article 8 of the 1963 lease provided the following:

> D. Condition of Premises at Termination. At the expiration of this lease, by lapse of time or otherwise, Tenant will quit and surrender the Demised Premises in as good state and condition as they were when entered into, reasonable use and wear thereof, damage by fire and other casualty, and alterations, additions or changes permitted under preceding Paragraph C [alterations made with written consent of the landlord], excepted. All furniture, partitions, shelves, or other wood or metal work and fixtures installed by the Tenant in or about the Demised Premises, and all additions and improvements in and to the Demised Premises, which may be made by the Tenant at its own cost and expense by way of alteration or otherwise, prior to and during the term hereby demised, or any extensions thereof, shall be and remain the property of the Tenant, and prior to or upon the termination of this lease, or of any extension thereof, may be detached, taken down or removed from the Demised Premises by the Tenant provided the Tenant shall repair all injury thus caused, which the Tenant hereby agrees to do at their own expense. Upon the termination of this lease or any extension thereof

> the Tenant will, at Landlord's request, restore substantially to its prior condition any portion of the Demised Premises which the Tenant may have altered without Landlord's prior written consent, such restoration to be at Tenant's expense.

[emphasis added]. The landlord did not at that time request any restoration of the premises with regard to alterations made between 1958 and 1963 without written consent. Under both leases the tenant was given the right to install signs but was obligated to repair any injury caused by removal of the signs if any were removed upon termination of the lease.

In 1969, Rock Island Millwork Company was purchased by defendant Huttig Sash & Door Company. The latter guaranteed the obligations of the 1963 lease.

Under the 1963 lease the tenant was obligated to make any necessary repairs to the parking lot. In 1977 a dispute arose concerning repaving of the parking lot that had become necessary. The tenant eventually repaved the parking lot in a manner which covered a platform, causing water to run into the lobby of the building with resulting damage to the floor. During a conversation prior to commencement of the repaving of the parking lot, a representative of the landlord allegedly stated as follows to a representative of the tenant: "I don't care how you do it as long as you get it done."

In 1978, following termination of the lease, the landlord filed an action seeking damages resulting from numerous alleged breaches of the lease. The tenant counterclaimed for damages resulting from the landlord's alleged breach of the lease. Following trial, the court awarded the landlord damages of $31,476.87 offset by $7,652.04 awarded to the tenant upon the counterclaim. Inter alia the court construed the 1963 lease to require restoration of the premises to the condition existing in 1958 and awarded the landlord damages resulting from both the 1977 repaving and alterations made between 1958 and 1963. Pursuant to a provision of the lease allowing an award of reasonable attorney fees, the landlord was, upon application, awarded attorney fees of $9,231.

The tenant appeals the district court's decision. First, it claims that the clause requiring it to restore the premises to the previous condition means to restore the premises to the condition existing at the time the parties entered into the 1963 lease, not to the condition existing at the time they entered into the 1959 lease. Therefore, the tenant claims it should only be responsible to compensate the landlord for injuries done to the premises after 1963. Second, the tenant claims the landlord knew of the tenant's plans to pave the parking lot and, by saying "I don't care how you do it as long as you get it done," consented to the plans. Thus, the landlord should not be allowed to hold the tenant responsible now for the drainage problem and the repairs necessary to the front lobby. Third, the tenant submits that the district court awarded unreasonable attorney fees.

We review this case on assigned error. Iowa R. App. P. 4 (1983). Findings of fact in a law action are binding upon us if supported by substantial evidence. Iowa R. App. P. 14(f)(1) (1981). In the construction of written contracts, the intent of the parties controls, and in cases of ambiguity, this is determined by what the contract itself says. Iowa R. App. P. 14(f)(14) (1981).

We review the trial court's interpretation and construction of the lease. The difference between these is as follows:

> Interpretation involves ascertaining the meaning of contractual words; construction refers to deciding their legal effect. Interpretation is reviewed as a legal issue unless it depended at the trial level on extrinsic evidence. Construction is always reviewed as a law issue.

Fashion Fabrics of Iowa v. Retail Investors, 266 N.W.2d 22, 25 (Iowa 1978). Because the trial court considered extrinsic evidence in interpreting the contract in the present case, we may only review the construction issue.

The trial court determined that in both the 1958 and 1963 lease agreements, possession of any non-real property installed by the tenant was preserved for the tenant. The trial court, in its Conclusions of Law, stated:

> Under the 1963 lease the landlord had the power to request the tenant to remove all of the alterations which were created without the landlord's permission .... This clause is to encompass both the pre-1963 alterations as well as the post-1963 alterations.
>
> It would be a fiction in law if the tenant, at the beginning of the 1963 lease, had to quit the premises . . ., and take out all their alterations to stop them from becoming fixtures owned by the landlord. The parties contracted to keep all alterations property of the tenant in both leases. The 1963 lease implicitly includes the 1958 and 1963 alterations with the words "prior to".

We agree with the trial court's conclusions in this case. The legal effect of the trial court's interpretation of the 1963 lease is that the tenant is responsible for all damages caused by alterations it made in the premises during the terms of both the 1958 and 1963 leases. The trial court properly required the tenant to pay damages.

The tenant's last two claims of error by the trial court are unconvincing. Therefore, we do not alter trial court's award to the landlord for damages caused by the repaving of the parking lot or trial court's attribution of the landlord's attorneys' fees to the tenant.

AFFIRMED.