

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

ROYAL GLEN CONDOMINIUM ASSOCIATION,)	Appeal from the Circuit Court of Du Page County.
)	
Plaintiff-Counter Defendant-Appellee)	
)	
v.)	No. 07-MR-617
)	
COMMERCIAL COIN LAUNDRY, SYSTEMS,)	
)	
Defendant-Counter Plaintiff-Appellant.)	Honorable Terence M. Sheen, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's resolution of an ambiguous provision in the parties' contract was not erroneous.

¶ 2 This case involves the trial court's interpretation of an ambiguous provision of a contract entered into between the plaintiff, Royal Glen Condominium Association, and the defendant, Commercial Coin Laundry Systems. Following a trial, the trial court interpreted the disputed

provision in the plaintiff's favor. As we cannot say that the trial court's decision was erroneous, we affirm its decision.

¶ 3 BACKGROUND

¶ 4 A) *Royal Glen I*

¶ 5 This is the second time that this case is before us. See *Royal Glen Condominium Ass'n v. Commercial Coin Laundry Systems*, No. 2-08-0742 (2009) (unpublished order under Supreme Court Rule 23) (*Royal Glen I*). We restate the facts from *Royal Glen I* that are relevant to this appeal.

¶ 6 In 1998, the plaintiff and the defendant entered into negotiations for the plaintiff to lease space in the laundry rooms of its buildings in Glen Ellyn to the defendant. The defendant would install washing and drying machines that the residents of the plaintiff's buildings would pay to use. The defendant would pay to the plaintiff as rent a certain amount of the money it received from the use of the laundry machines. The defendant submitted to the plaintiff a proposed lease. The proposed lease provided that the lease would last for 10 years. The lease would automatically extend an additional 10 years unless the defendant provided the plaintiff with notice at least 60 days before the expiration of the lease that it did not wish for the lease to continue. The proposed lease also included the following provision, paragraph 7:

“Lessor acknowledges that title to the aforesaid laundry equipment (including fixtures, wiring, plumbing and accessories, supplied or installed by Lessee) shall at all times remain vested solely in Lessee and not the Lessor, and further acknowledges that any rider, addendum, or codicil to Lease shall terminate upon change of ownership or change of managing agent or change of management company or sale of property or transfer or assignment of this Lease, notwithstanding anything to the contrary set forth in this Lease or

in any such rider, addendum, or codicil to Lease. Lessee acknowledges that the original parties hereto shall have all of the rights, benefits and privileges, both substantive and procedural, granted to the original parties hereto in any rider, addendum, or codicil that may be attached to this Lease and thereby made a part of Lease Agreement, if applicable.”

The proposed lease further provided that the “Lessor shall be liable for all costs, including attorney’s fees, incurred by Lessee in enforcing this Lease.”

¶ 7 In submitting the proposed lease to the plaintiff, the defendant indicated that it was open to modifications to the proposed lease. However, any changes to the lease would be made via a rider and not to the lease document itself.

¶ 8 After receiving the proposed lease, the plaintiff requested certain changes. Specifically, the plaintiff requested that the term of the lease be changed from 10 years to 7 years with an option to extend the lease on a year by year basis, terminable on notice by either party. The defendant agreed to these changes. Both parties executed the lease by November 23, 1998, and the lease took effect on December 1, 1998.

¶ 9 As of December 1, 1998, the plaintiff was represented by Property Specialists, Inc. (PSI) as its management company. In approximately August 1999, the plaintiff fired PSI and became self-managed. On April 1, 2006, the plaintiff hired Vista Property Management to manage the property.

¶ 10 On September 11, 2006, the plaintiff sent notice to the defendant of its intent to terminate the lease on November 30, 2006, and requested the defendant to make arrangements to remove its laundry equipment from the premises immediately upon termination of the lease. The defendant refused to vacate the property.

¶ 11 On August 7, 2007, the plaintiff filed a complaint for declaratory relief seeking a declaration that it had properly terminated the lease. On August 23, 2007, the defendant filed an answer and a counterclaim for declaratory judgment. The counterclaim alleged that after the plaintiff changed management companies, paragraph 7 of the lease nullified the rider to the parties' lease. Therefore, the unmodified lease governed the parties' relationship and the plaintiff did not have the right to terminate the lease prior to December 1, 2018.¹ In its counterclaim, the defendant also requested that it be awarded its attorney fees.

¶ 12 Both parties subsequently filed motions for summary judgment. On March 20, 2008, following a hearing, the trial court denied the plaintiff's motion for summary judgment and granted the defendant's cross-motion for summary judgment. The trial court explained that paragraph 7 of the parties' lease agreement was not ambiguous. Thus, once the plaintiff changed management companies, the rider to the parties' contract was no longer effective, and the unmodified lease agreement governed the parties' relationship. As such, the plaintiff did not have the right to terminate the lease in 2006 because the lease document provided that the initial lease was for 10 years (through 2008) and gave the defendant the option of automatically extending the lease for an additional 10 years (through 2018). Following the denial of its motion to reconsider, the plaintiff filed a timely notice of appeal.

¹ The defendant argued that the lease document provided that the lease would last for 10 years, that being until December 1, 2008. Furthermore, the lease document gave the defendant sole discretion as to whether the lease should continue for an additional 10 years thereafter. Thus, under the terms of the lease document, the defendant insisted that the plaintiff would not have the right to terminate the lease prior to December 1, 2018.

¶ 13 In *Royal Glen I*, the plaintiff argued that the trial court erred in granting the defendant's motion for summary judgment because a genuine material fact existed as to whether paragraph 7 was ambiguous. We agreed with the plaintiff's argument. We found that paragraph 7 contains two sentences and expresses three ideas. The first sentence provides that the defendant shall always have title to the laundry equipment that it installs on the property. The first sentence also provides that any rider to the lease shall terminate upon the plaintiff's change of the managing agent or change of the management company. The second sentence provides that the defendant acknowledges that the plaintiff shall have all the rights, benefits, and privileges granted to it in any rider that is attached to the lease and thereby made part of the lease agreement.

¶ 14 We held that the second part of the first sentence was inconsistent with the second sentence. The first sentence set forth that the plaintiff gave up its rights provided for in the rider if it changed management companies. The second sentence provided that the rider was part of the lease agreement and that the plaintiff had all the rights, benefits, and privileges provided therein. As such, according to this second sentence, as the rider was part of the lease agreement, the logical inference was that if the rider were to be removed, there would be no lease agreement. This sentence was therefore inconsistent with the second part of the first sentence which suggested that the rider was not an integral part of the lease agreement as it could be terminated upon the change of a management company. As the two sentences in paragraph 7 were internally inconsistent, we held that paragraph 7 was ambiguous. We therefore determined that the trial court had improperly granted the defendant's motion for summary judgment, and we reversed and remanded for additional proceedings.

¶ 15

B) Proceedings after Remand

¶ 16 Following this court's order, the plaintiff filed a second amended complaint for declaratory relief. The plaintiff sought a declaration that it had properly terminated its lease agreement with the defendant. The defendant filed a counterclaim for declaratory judgment. The defendant sought a declaration that the parties' lease remained in full force and effect.

¶ 17 Between February 14 and 16, 2012, the trial court conducted a bench trial. The trial court considered testimony as well as various correspondence between the parties' agents when the parties were negotiating their contract in 1998. Kathleen Donofrio, the plaintiff's former president, testified that she had signed the lease agreement with the defendant's agent. She testified that the purpose of the rider was to modify the boilerplate lease and that the issue of whether a change of management companies would terminate the rider was never discussed.

¶ 18 Larry Lolli testified that he worked for PSI and worked on the plaintiff's behalf in negotiating the terms of the contract with the defendant. He testified that it was the plaintiff's intent that the rider was to be made part of the lease agreement and it was never discussed that the rider would not survive a change in the managing agent or the management company.

¶ 19 Barbara Ridzak testified that she worked for the defendant and had negotiated the contract on its behalf. She testified that she did not discuss paragraph 7 with Lolli because he did not ask about it. She acknowledged that the only method to effectuate changes to the boilerplate portion of the lease agreement was through the use of a rider and that the lease coupled with the rider would constitute a single lease agreement.

¶ 20 At the close of the trial, the trial court ruled in favor of the plaintiff and its interpretation of the contract. The trial court found that the rider was an essential element of the lease between the parties. If the rider were voided, that would cause the agreement to fail, such that there would be no

agreement between the parties. The trial court further found that paragraph 7 of the parties' agreement was ambiguous and that neither party had produced evidence of a reasonable or plausible construction of the ambiguity. The trial court then determined that the ambiguity could be resolved if the second sentence of paragraph 7 was interpreted to control all other provisions of the lease. Based on such an interpretation, the rider was in full force and effect when the plaintiff sought to terminate the lease at the end of its term on November 30, 2006. Thus, the plaintiff's termination of the lease was proper and the defendant did not have the right to continue to occupy the property.

¶ 21 Following the trial court's ruling, the defendant filed a timely notice of appeal.

¶ 22 ANALYSIS

¶ 23 On appeal, the defendant argues that the trial court erred in its interpretation of the parties' contract. The defendant contends that the trial court should have found that the rider terminated when the plaintiff changed management companies. Thus, as the rider had terminated, the provisions of the unmodified lease document controlled, and the defendant therefore still had the right to operate its laundry machines at the plaintiff's location.

¶ 24 As set forth above, in *Royal Glen I* this court determined that paragraph 7 of the parties' contract was ambiguous. Where there is an ambiguity in a contract and if, after considering the contract language in light of parol evidence and rules of construction, doubt still remains as to the meaning of the contract, then the question of interpretation must be left to the trier of fact. *Countryman v. Industrial Comm'n*, 292 Ill. App. 3d 738, 741 (1997). If, however, the contract is susceptible to only one meaning when considered in light of parol evidence and rules of construction, the reviewing court may interpret the contract for itself. *Id.* Pertinent rules of construction provide that where an ambiguity exists in a contract due to a conflict between two of its provisions, the more

specific provision relating to the same subject matter controls over the more general provision. *Id.* at 742. Also, contract provisions and terms are to be interpreted as a whole and not in isolation. Effect is to be given to every provision because it is presumed that every clause was inserted for a purpose. *Id.*

¶ 25 Here, the trial court was required to resolve the meaning of paragraph 7 of the agreement and whether the parties intended that the rider to their agreement would terminate in the event that the plaintiff ever changed management companies. The plaintiff's two witnesses, Donofrio and Lolli, testified that they did not discuss with the defendant what the effect would be, if any, if the plaintiff changed management companies. The defendant's representative, Ridzak, confirmed this testimony as she explained that she did not discuss paragraph 7 with the plaintiff's representatives because they did not ask her about it. Further, the parties' written correspondence that was introduced into evidence did not reveal any discussions as to paragraph 7. Thus, the parol evidence does not shed any light on how the parties interpreted paragraph 7 at the time they entered the contract.

¶ 26 In terms of the rules of construction, neither of the clauses at issue is more specific than the other. In construing the contract as a whole, it is impossible to give every provision effect as the two clauses at issue remain irreconcilable.

¶ 27 Accordingly, we determine that, even after the parol evidence and the rules of construction are considered, paragraph 7 remains ambiguous. It was therefore for the trial court to interpret paragraph 7. See *id.* We cannot say that its interpretation was erroneous. We agree with the trial court that the rider was an essential part of the parties' agreement. This is borne out by the parties' written correspondence in which the rider was thoroughly discussed. By contrast, paragraph 7 could not be considered an essential part of the agreement since the parties never discussed it. In

particular, the parties did not discuss one of the key aspects of paragraph 7—the impact on the contract of the plaintiff changing management companies. We believe that, generally, whether a condominium association decides to change management companies would be inconsequential to its relationship with a third party, such as a company that oversees coin laundry machines. If, as the plaintiff argues, paragraph 7 had such profound ramifications (the termination of the rider) over such a minor occurrence (the plaintiff's changing of management companies), we believe that the record would have indicated that both parties agreed what paragraph 7 meant. As the record reveals no mutual understanding as to paragraph 7, we believe the trial court properly interpreted the parties' contract such that the rider did not terminate when the plaintiff changed management companies.

¶ 28 In so ruling, we reject the defendant's arguments that the trial court's decision should be reversed. First, the defendant argues that a review of the record reveals that the plaintiff did not read the parts of the contract that are at issue on appeal. Because the plaintiff did not read the contract, the defendant insists that the plaintiff could not escape the consequences of the rider-terminating provision. The record herein is not clear whether the plaintiff's representatives read paragraph 7 before the contract was signed. Even if they did not, however, it would be unfair to use this as a basis to construe an ambiguous provision in the contract against the plaintiff. We note that none of the cases that the defendant relies upon support its position that a court should construe an ambiguous provision against a party if there is evidence that the party did not read the contract. Moreover, it is possible that the plaintiff's representatives read paragraph 7 but did not raise any objections because they interpreted the ambiguous provision in the plaintiff's favor.

¶ 29 We also reject the defendant's argument as to the quantity of the evidence that was presented to the trial court. The defendant insists that it was the plaintiff's burden to establish what the

disputed provision meant. Because it did not, the trial court should have ruled in the defendant's favor. Alternatively, the defendant argues that because it presented unrebutted testimony as to the meaning of the parties' contract, the trial court should have ruled in its favor.

¶ 30 The plaintiff herein presented sufficient evidence for the trial court to resolve the parties' dispute. The plaintiff provided both testimonial evidence as well as written correspondence from the parties. As the defendant points out, the trial court specifically found that the plaintiff "did not present evidence as to the construction of the ambiguity in the contract." However, where a contract provision is clearly ambiguous, such as in this case, a party cannot be necessarily expected to present evidence that eliminates the ambiguity. Rather, as set forth above, if a contractual provision remains ambiguous even after the parties have presented evidence about it, it is then for the trial court to resolve the ambiguity.

¶ 31 Finally, although the defendant presented some evidence that was unrebutted, the defendant did not present evidence as to what both parties intended paragraph 7 to mean. The trial court therefore did not err in ruling in the plaintiff's favor.

¶ 32 CONCLUSION

¶ 33 For the reasons stated, we affirm the decision of the circuit court of Du Page County.

¶ 34 Affirmed.