

2016 IL App (2d) 150734-U
No. 2-15-0734
Order filed June 16, 2016

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

CAPITAL FITNESS-BATAVIA, LLC,)	Appeal from the Circuit Court
)	of Kane County.
Plaintiff-Appellee,)	
)	
v.)	No. 13-MR-222
)	
DIKA-WINDMILL LAKES, LLC,)	Honorable
)	David R. Akemann,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court correctly granted summary judgment in favor of plaintiff by finding that the tender of the Added Lease Premises under the terms of the lease was February 11, 2013, and plaintiff was not obligated to pay increased rent from the period of January 20, 2013, and April 11, 2013.

¶ 2 Defendant, Dika-Windmill Lakes, LLC, appeals the trial court's finding of summary judgment in favor of plaintiff, Capital Fitness-Batavia, LLC. Specifically, defendant contends that the court erred in: (1) finding that defendant was in breach of the commercial lease in connection with construction of certain leased premises; and (2) failing to find that plaintiff was

estopped from asserting that defendant was in breach of the commercial lease in connection with construction of certain leased premises. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In June 2005, Express Fitness Systems, LTD. (Express) entered into a lease to rent 12,000 square feet of commercial space located at 81 N. Randall Road from Dika-Jefferson, LLC. (Dika-Jefferson). According to the terms of the lease, Express agreed to pay \$14,500 in monthly rent to Dika-Jefferson for seven years. In May 2006, plaintiff, Capital Fitness-Batavia, LLC, executed an assignment of the lease agreement and assumed the lease and its obligations as tenant from Express. Sometime after this assignment of the lease, Dika-Jefferson conveyed the leased premises and its rights in that premises to defendant, Dika-Windmill Lakes, LLC.

¶ 5 In June 2012, plaintiff and defendant entered into an amendment and extension to the lease. Plaintiff agreed to lease an additional 6,000 square feet of floor space (added leased premises) from defendant, increasing the leased space to 18,000 square feet. As part of plaintiff's decision to rent the additional 6,000 square feet, defendant agreed to improve the added leased premises at defendant's sole cost and expense, referred to in the new lease agreement as "Landlord's Work." Specifically, defendant agreed to perform the following work in the added leased premises:

- “(a) Re-route the electrical wiring from the Added Leased Premises to Tenant's electrical panel;
- (b) Re-route the gas line(s) servicing the Added Leased Premises to the existing gas line in the Original Leased Premises;
- (c) Demolish interior walls in the Added Leased Premises;
- (d) Install a separation wall between the Added Leased Premises and the adjacent space.”

¶ 6 In July 2012, plaintiff and defendant entered into a second amendment and extension to the lease which revised Landlord's Work to include the obligations set forth above and also required defendant to "provide all necessary emergency exit ways with the proper hardware on the first floor to grade, as required by all entities with jurisdiction for Tenant's occupancy codes." Landlord's Work was to be "completed in a good and workmanlike manner, in compliance with all applicable federal, state, county, local and municipal laws, rules, regulations, codes and ordinances, and applicable permits and approvals, and, if done so, is reasonably accepted by Tenant." The second amendment and extension to the lease defined "reasonably accepted" as:

"Tenant's ability to obtain certificate of occupancy for the Added Leased Premises and the Original Leased Premises without Tenant having to correct, finish, perform, revise or renovate any of Landlord's Work."

¶ 7 The first amendment and extension to the lease provided that plaintiff's rent would increase from \$14,500 per month to \$18,000 per month sixty days following the "Effective Date." "Effective Date" is defined in the first amendment as the date in which plaintiff "reasonably accepted" the Added Leased Premises. Until plaintiff "reasonably accepted" the Added Leased Premises and sixty days elapsed, rent would remain at \$14,500.

¶ 8 On November 20, 2012, defendant tendered possession of the Added Leased Premises to plaintiff. Defendant was under the impression that the Landlord's work had been completed because the City of Batavia inspected the work performed pursuant to the approved construction plans and provided a written, signed Inspection Record. At this time, the Added Leased Premises contained an emergency exit that was accessible only by entering an area controlled by another tenant. This exit was deemed unacceptable pursuant to the requirements of the Batavia

Building Code because the exit only allowed egress from the Added Leased Premises to the exterior of the building through an area controlled by the other tenant. As such, plaintiff was unable to obtain an occupancy permit from the City of Batavia. Plaintiff completed construction of the premises and installed the required emergency exit on February 11, 2013. At this time plaintiff was able to obtain its occupancy permit.

¶ 9 On January 20, 2013, defendant informed plaintiff that monthly rent was increased to \$18,000 from \$14,500 due to sixty days having elapsed since the Added Leased Premises was tendered on November 20, 2012. Under protest following defendant's demand for payment in February 2013, plaintiff paid defendant \$9,007.20 in unpaid rent and a \$1,738.53 late fee.

¶ 10 On February 25, 2013, plaintiff filed a complaint for declaratory judgment and breach of contract against defendant. Plaintiff asserted that it did not owe increased rent to defendant because defendant failed to install the required emergency exit in the Added Leased Premises which prevented plaintiff from obtaining its Certificate of Occupancy from the City of Batavia. Defendant argued that it was not required to install an emergency exit and was unaware that an emergency exit was required by the City of Batavia in order for plaintiff to obtain a Certificate of Occupancy. Following cross-motions for summary judgment, the trial court granted plaintiff's motion and denied defendant's cross-motion for summary judgment. The trial court found that possession of the Added Leased Premises was not tendered until February 11, 2013, following the completion of an adequate emergency exit. The trial court found that, under the terms of the lease, the date plaintiff obtained its occupancy permit from the City of Batavia was the "Effective Date." Plaintiff was not obligated to pay increased rent during the period of time January 20, 2013, through April 11, 2013. The trial court entered a final judgment for plaintiff in the amount of \$43,451.31 which consisted of \$10,206.31 in overpaid rent, \$1,745.00 for the cost

of installation of the emergency exit door, and attorney fees of \$31,500.00. Defendant timely filed this appeal.

¶ 11

II. ANALYSIS

¶ 12 Defendant's first contention is that the trial court erred in granting plaintiff's motion for summary judgment by determining that defendant breached the lease by not installing an emergency exit door in the Added Leased Premises.

¶ 13 Summary judgment is appropriate when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2010). Deciding a summary judgment motion implicates a *de novo* standard of review. *See Palm v. 2800 Lake Shore Drive Condo. Ass'n*, 2013 IL 110505, 28 (citing *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill.2d 281, 309 (2010)). The interpretation of a lease is a question of law which is appropriate for summary judgment. *Premier Title Co. v. Donahue*, 328 Ill. App. 3d 161, 164 (2002). Accordingly, we review a trial court's decision on a summary judgment motion under a *de novo* standard of review.

¶ 14 The primary goal in construing a contract is to give effect to the intent of the parties. *Omnitrus Merging Corp. v. Illinois Tool Works, Inc.*, 256 Ill. App. 3d 31, 34 (1993). When the language of a contract is clear, a court must determine the intent of the parties solely from the plain language of the contract. *Owens v. McDermott, Will & Emery*, 316 Ill. App. 3d 340, 344, (2000). The language of a contract must be given its plain and ordinary meaning. *Id.* In the absence of ambiguity, a court must construe a contract according to its own language, not according to the parties' subjective constructions. *J.M. Beals Enterprises, Inc. v. Industrial Hard Chrome, Ltd.*, 194 Ill. App. 3d. 744, 748 (1990). Unless a contract clearly specifies its own

meanings, a court must interpret the words of the contract with their common and generally accepted meanings. *Id.* When interpreting a contract, a court must consider the document as a whole, rather than focusing upon isolated portions. *Spectramed, Inc. v. Gould, Inc.*, 304 Ill. App. 3d 762, 770 (1998).

¶ 15 Defendant argues that the lease did not require a new emergency exit as part of the “Landlord’s Work.” Defendant points to Section 3 of the second amendment and extension of the lease which details the items of “Landlord’s Work.” Specifically, defendant relies upon subparagraph 3[10](f) of the second amendment, which provides:

“Landlord will provide all necessary emergency exit ways with the proper hardware on the first floor to grade, as required by all entities with jurisdiction for Tenant’s occupancy codes.”

Defendant argues that the express wording of the above provision does not require defendant to install new emergency exit ways or doors but limited defendant’s obligation to providing “proper hardware” required for emergency use. Interpretation of the provision to include installation of new exits would require the court to insert the additional term “new,” according to defendant.

¶ 16 We disagree with defendant. The plain language of the provision requires installation of “all necessary emergency exit ways,” not just the hardware. The trial court was provided with evidence that defendant installed an emergency exit door to the Added Leased Premises in the separation wall between the Added Leased Premises and another tenant. This exit way did not meet the City of Batavia’s requirements and plaintiff was unable to obtain its occupancy permits. Thus, defendant did not complete the “Landlord’s Work” in compliance with all local “rules, regulations, codes and ordinances,” such that it was “reasonably accepted” by plaintiff on November 20, 2012, because plaintiff could not “obtain certificate of occupancy for the Added

Leased Premises *** without Tenant having to correct, finish, perform, revise or renovate any of Landlord's Work." The "Effective Date" of plaintiff having "reasonably accepted" the Added Leased Premises was February 11, 2013, when plaintiff was able to obtain its occupancy permits following installation of the required emergency exit. Defendant could not acquire the increased rent amount from plaintiff until sixty days following February 11, 2013. Therefore, we affirm the trial court's grant of summary judgment in favor of plaintiff as defendant was required to install all necessary emergency exits in order for plaintiff to obtain its occupancy permits before it "reasonably accepted" the Added Leased Premises.

¶ 17 Alternatively, defendant contends that the trial court erred in failing to find that plaintiff was estopped from asserting that defendant failed to install an emergency exit. Defendant asserts that plaintiff sat silently, knowingly allowed defendant to perform the "Landlord's Work," and then later asserted through its complaint that defendant failed to fully perform. Defendant argues plaintiff's silence between the performance of "Landlord's Work," and the filing of the complaint is the basis of an estoppel because plaintiff had a duty to speak, and the duty arises if the person having a right sees another about to infringe on that right. See *Geddes v. Mill Creek Country Club*, 196 Ill. 2d. 302, 314 (1982). The trial court made no findings upon this issue when it granted summary judgment in favor of plaintiff.

¶ 18 Here, plaintiff had no duty to inform defendant that the required emergency exit was not installed. Plaintiff discovered an emergency exit was required when it failed to obtain occupancy permits from the City of Batavia following inspection. Plaintiff then took steps to correct the issue by installing the emergency exit and obtaining permits. Plaintiff then filed a complaint against defendant following defendant's attempt to collect an amount of rent not yet owed. Nothing in the lease states that plaintiff had to inform defendant of any work that needed

to be corrected. Plaintiff was under no contractual duty to inform defendant of insufficient “Landlord’s Work.” Nor were there any words or conduct by the party against whom the estoppel is alleged amounting to a misrepresentation or concealment of material facts. *Vaughn v. Speaker*, 126 Ill. 2d 150, 162-63 (1988) (holding that words or conduct amounting to misrepresentation or concealment of material facts is one of six elements necessary to arise to equitable estoppel). Therefore, we find that plaintiff was not estopped from asserting that defendant failed to install the emergency exit in the Added Leased Premises.

¶ 19

III. CONCLUSION

¶ 20 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 21 Affirmed.