

IN THE COURT OF APPEALS OF IOWA

No. 3-1017 / 13-0496
Filed December 5, 2013

ALTA VISTA PROPERTIES, LLC,
Plaintiff-Appellant.

vs.

MAUER VISION CENTER, P.C.,
Defendant-Appellee.

Appeal from the Iowa District Court for Black Hawk County, David F. Staudt, Judge.

A landlord appeals the district court's order awarding summary judgment to the tenant, finding the lease unambiguous on the issue of the landlord's right to access the property for the purpose of showing the property to a potential buyer. **AFFIRMED.**

Corey R. Lorenzen and Kate B. Mitchell of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C., Waterloo, for appellant.

Diane Kutzko, Donald L. Johnson, and Scott M. Wadding of Shuttleworth & Ingersoll, PLC, Cedar Rapids, for appellee.

Considered by Vogel, P.J., and Mullins and McDonald, JJ.

MULLINS, J.

Alta Vista Properties, LLC, the landlord, appeals the district court's order awarding summary judgment to Mauer Vision Center, P.C., the tenant. On appeal, Alta Vista argues its commercial lease with Mauer contains ambiguities; therefore, the district court should have considered its relevant extrinsic evidence. Alta Vista asserts the extrinsic evidence would have shown it had the implied right to access the leased property for the purpose of showing the property to a potential buyer. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

In October 2003, Mauer and I4NI L.L.C. entered into a lease for a commercial property located in Waverly. The lease provided Mauer, as tenant, with the right to the property for a term starting November 2003 and ending April 2019. In June 2006, Mauer and I4NI amended the lease to provide Mauer with the option to extend at the end of the lease term. The other provisions of the lease remained unchanged. That same month, I4NI assigned its interest in the lease to Alta Vista when it purchased the property. Mauer had permitted I4NI to show the property to Alta Vista before Alta Vista made the decision to purchase the property.

In May 2012, Alta Vista contacted Mauer to ask for permission to show the property to a prospective buyer. Mauer declined that request and two subsequent requests. Alta Vista alleges that Mauer's denial of access to the property blocked its sale of the property. Alta Vista then filed its petition in this case. In December 2012, Mauer filed a motion for summary judgment. Alta

Vista filed an amended petition, a resistance to the summary judgment, and a cross-motion for summary judgment. Mauer then filed a motion to strike the affidavit of one of the original owners of I4NI.¹ The district court held an unreported hearing in January 2013. In February the court issued a written ruling in which it granted Mauer's motion for summary judgment, overruled Alta Vista's motion for summary judgment, and overruled Mauer's motion to strike as moot. This appeal followed.

The focus of the controversy is on the lease establishing the landlord and tenant relationship between Alta Vista and Mauer. The first provision at issue is paragraph 12(B):

Landlord, during the last ninety (90) days of this Lease, or any extension, shall have the right to maintain in the windows or on the building or on the premises a "For Rent" or "For Sale" sign, and Tenant will permit, at such time, prospective tenants or buyers to enter and examine the premises.

The other provision at issue is paragraph 18:

Landlord covenants that Landlord's estate in said Premises is in fee simple; and that the Tenant on paying the rent herein reserved and performing all the agreements by the Tenant to be performed as provided in this Lease, shall and may peaceably have, hold and enjoy, the non-exclusive use of the Leased Premises for the term of this Lease.

II. STANDARD OF REVIEW.

A grant of summary judgment is reviewed for corrections of errors at law.

Hills Bank & Trust Co. v. Converse, 772 N.W.2d 764, 771 (Iowa 2009). The

¹ The affidavit featured a statement from one of the co-owners of I4NI, Mathew Pollastrini, concerning the sale of the property to Alta Vista. The affidavit presents extrinsic evidence showing Mauer allowed I4NI to show the property to Alta Vista and other prospective buyers.

nonmoving party is afforded every legitimate inference that can be reasonably deduced from the evidence. *Id.* If reasonable minds can differ on how the issue should be resolved, a fact question exists. *Id.* Summary judgment is appropriate if “the pleadings, depositions, answers to interrogatories, 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.” *Frontier Leasing Corp. v. Links Eng’g, LLC*, 781 N.W.2d 772, 775 (Iowa 2010) (citing Iowa R. Civ. P. 1.981(3)).

III. LEASE INTERPRETATION.

Alta Vista argues the district court erred as a matter of law in granting Mauer’s motion for summary judgment. In support of its claim, Alta Vista asserts that because the lease is ambiguous it should have been allowed to present extrinsic evidence demonstrating it had the right to enter the property for the purpose of showing it to prospective buyers. Mauer argues the lease unambiguously limits Alta Vista’s access to the property to the final ninety days of the lease term, pursuant to the language in paragraph 12(B). Mauer further argues since the district court did not address the issue of extrinsic evidence, that argument has not been preserved on appeal.

The district court applied the principles of contract interpretation to evaluate the lease for ambiguities. First, the district court found paragraph 12(B) unambiguous and stated: “The time period allowed to permit entry relates back to the term ‘last 90 days of this lease.’ Paragraph 12 provides a specific and

determinative time, place, and setting that allows prospective buyers to view the property.” The court then looked to the “nonexclusive use” language in paragraph 18 and found it clear: “The term ‘nonexclusive use’ may well be describing the effect of paragraph 12. The right of the landlord to show the property within the final 90 days of the lease term easily fits within a logical definition of ‘nonexclusive use.’”

On our review of the district court’s ruling for summary judgment, we engage in contract interpretation. *Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp.*, 266 N.W.2d 22, 25 (Iowa 1978) (“Interpretation is reviewed as a legal issue unless it depended at the trial level on extrinsic evidence.”). Because leases are contracts as well as conveyances of property, ordinary contract principles apply. *Dickson v. Hubbell Realty Co.*, 567 N.W.2d 427, 430 (Iowa 1997). The cardinal rule of contract interpretation is to determine the parties’ intentions at the time they executed the contract. *Hartig Drug Co. v. Hartig*, 602 N.W.2d 794, 797 (Iowa 1999). We strive to give effect to all the language of a contract, which is the most important evidence of the contracting parties’ intentions. *C & J Vantage Leasing Co. v. Wolfe*, 795 N.W.2d 65, 77 (Iowa 2011). “It is a fundamental and well-settled rule that when a contract is not ambiguous, we must simply interpret it as written.” *Smidt v. Porter*, 695 N.W.2d 9, 21 (Iowa 2005).

The Iowa Supreme Court set forth a two-step analysis for contract interpretation as follows:

First, from the words chosen, a court must determine what meanings are reasonably possible. In so doing, the court

determines whether a disputed term is ambiguous. A term is not ambiguous merely because the parties disagree about its meaning. A term is ambiguous if, after all pertinent rules of interpretation have been considered, a genuine uncertainty exists concerning which of two reasonable interpretations is proper.

Once an ambiguity is identified, the court must then choose among possible meanings. If the resolution of ambiguous language involves extrinsic evidence, a question of interpretation arises which is reserved for the trier of fact.

Walsh v. Nelson, 622 N.W.2d 499, 503 (Iowa 2001) (internal quotation marks and citations omitted).

Paragraph 12(B) details the rights of the landlord in the last ninety days of the lease. The landlord has the right to place a “for sale” or “for rent” sign in the window or on the premises, and the tenant will allow prospective buyers or tenants to inspect the property. The plain language of paragraph 12(B) establishes the landlord’s right to enter the property during the last ninety days for the purpose of showing the property to a prospective buyer. The clear, unambiguous language of this paragraph only concerns the landlord’s right to enter the property in final ninety days of the lease term.

Paragraph 18 lists the rights of the tenant in the leased property. The paragraph begins by asserting the landlord’s fee simple, or absolute ownership in the property. The landlord’s right to the property is relinquished to the tenant by the tenant’s act of paying rent and abiding by the lease terms. If the tenant performs its duties then the tenant enjoys the nonexclusive use of the property for the lease period. The controversy in this paragraph centers on the term “nonexclusive.” Alta Vista believes this term grants the landlord an implied right of access, or at the very least, the term creates enough ambiguity to defeat

Mauer's motion for summary judgment. Mauer asserts that since the contract does not specifically grant access to the landlord the court should not impose new contract terms creating such access. Alta Vista replies that it does not ask for the imposition of new terms, rather it asks the court to give effect to the language of the entire contract.

To determine the meaning of "nonexclusive," our initial step is to find the intent of the parties, as evidenced through the plain language of the contract. *C & J Vantage Leasing*, 795 N.W.2d at 77. We look to the terms of the lease as a whole in the light most favorable to Alta Vista. *Id.* The district court reasoned that "nonexclusive" could describe the landlord's right of access during the final ninety days stated in paragraph 12. Paragraph 12 acts to limit the tenant's exclusive hold over the property during the final ninety days. After reviewing the terms of the entire lease, we note that paragraph 12 is not the only paragraph granting the landlord a right to access the property. Implicit in paragraph 9 is the landlord's right to access the property for a planned addition and renovation, and paragraph 14A requires the landlord to repair damages in the event of partial destruction of the leased premises. Paragraphs 9, 12, and 14A, demonstrate the tenant does not have exclusive use of the leased property.

In the context of this lease, the term "nonexclusive use" is a recognition of the rights to access retained by the landlord as specified in the lease. Beyond those rights reserved to the landlord, the tenant "shall and may peaceably have, hold and enjoy" the use of the property. There are no alternative meanings or interpretations for the term, and there is no uncertainty as to its meaning. Simply

put, the term “nonexclusive use” is not ambiguous. As there is no ambiguity in the lease terms, there is no need to choose among possible meanings. Absent ambiguity in the lease terms, it would be improper to consider the extrinsic evidence proffered by Alta Vista. See *Walsh*, 622 N.W.2d at 503.

Finally, we decline Alta Vista’s invitation to grant an implied right of access to landlords of commercial leases. To do so would run against the grain of well-established and accepted common law in Iowa; “a lease vests in a tenant the right of exclusive possession, which precludes entry by the landlord except for limited purposes.” *Lewis v. Jaeger*, 818 N.W.2d 165, 186 (Iowa 2012) (quoting Milton R. Friedman, *Friedman on Leases* § 4:3.1, at 4–21 (Patrick A. Randolph Jr. ed., 5th ed. 2012)). The Iowa Supreme Court has addressed and upheld this principle in commercial lease cases in the context of landlord and tenant liability. See *Harms v. City of Sibley*, 702 N.W.2d 91, 103 (Iowa 2005) (“[A] tenant’s right to exclusive possession of the property suspends the landlord’s right of entry”); see also *Stalter v. Iowa Res., Inc.*, 468 N.W.2d 796, 798 (Iowa 1991) (“The rationale underlying the general rule that one who has transferred ownership and control is no longer held liable is that the former owner no longer has control and thus may not enter the property to cure any deficiency, and, he/she cannot control the entry of persons onto the property or provide safeguards for them.”). A landlord who desires to create a right to access his or her leased property must contract for that right.

V. CONCLUSION.

We find no error in the district court's ruling and affirm the district court's grant of summary judgment to Mauer.

AFFIRMED.