

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION

GHADEER HIJAZ, AMJAD HIJAZ,
and MOHAMAD HIJAZ,
Appellants,

KEN BURKE, CLERK OF COURT
PINELLAS COUNTY FLORIDA
INST# 2008127857 05/09/2008 at 03:28 PM
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vs.

Appeal No. 07-0046AP-88A
UCN522007AP000046XXXXCV

SHAKER MIKHAIL,
Appellee.

Appeal from Pinellas County Court

Elihu H. Berman, Esquire
Attorney for Appellant

Connie Davies, Esquire
Attorney for Appellee

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KEN BURKE
CLERK OF CIRCUIT COURT

ORDER AND OPINION

THIS CAUSE came before the Court on appeal, filed by the Ghadeer Hijaz, Amjad Hijaz, and Mohamad Hijaz (Hijaz), from the Final Judgment, entered July 30, 2007, in favor of Shaker Mikhail (Mikhail). The Final Judgment granted Mikhail possession of commercial property located at 1350 Cleveland Avenue, Clearwater. Upon review of the briefs, the record and being otherwise fully advised, the Court affirms the trial court's ruling as set forth below.

The record shows that Mikhail filed a Complaint for Eviction and Damages against Hijaz for failure to pay rent due between April 2007 and May 2007, totaling \$ 6,420.00, and sought related damages. Hijaz answered the complaint and deposited \$ 1,498.00 in the court registry. Upon order of the trial court, Hijaz deposited an

additional \$ 9,000.00 for rent due for May, June, and July 2007. The matter was tried without a jury on July 25, 2007. The trial court entered Final Judgment on July 30, 2007, awarding Mikhail possession of the property. The trial court also entered an order directing that funds held in the court registry be transferred to Mikhail's attorney. Hijaz timely filed his Notice of Appeal.

The issues raised by Hijaz are whether the trial court erred in entering Final Judgment in favor of Mikhail when the lease was not a binding contract and when Mikhail failed to provide additional parking spaces. The trial court's interpretation of a contract is a matter of law subject to a de novo standard of review. See Jenkins v. Eckerd Corporation, 913 So.2d 43, 49 (Fla. 1st DCA 2005). However, the findings of the trial court are clothed with a presumption of correctness and will not be disturbed on appeal as long as the findings are supported by competent substantial evidence. See Shaw v. Shaw, 334 So.2d 13, 16 (Fla. 1976); see also Covelli Family, L.P. v. ABG5, L.L.C., 2008 WL 782806 (Fla. 4th DCA 2008); Universal Beverages Holdings, Inc. v. Merkin, 902 So.2d 288, 290 (Fla. 3d DCA 2005).

Hijaz argues that the terms of the lease provided that Mikhail would add parking spaces to the back of the property pursuant to section 17.13, titled Additional Provisions. Section 17.13(e), simply states: "Landlord will add parking spaces in rear of premises." Since Mikhail failed to provide the parking spaces, Hijaz argues that the lease never became a binding contract. In the alternative, Hijaz argues that Mikhail's failure to add the parking spaces raised legal and equitable defenses for Mikhail's action for possession of the property.

There is no dispute that Hijaz stopped paying rent on April 1, 2007, and

thereafter, due to Mikhail's failure to add the parking spaces. Mikhail testified that Hijaz was notified that he must apply to Pinellas County to get approval for the additional parking spaces, but that Hijaz never submitted plans to the county. In looking at the lease, there is no time frame specified as to when the parking spaces would be installed or who was responsible for obtaining the appropriate permit from the county.

Hijaz is essentially arguing that the contract should not be binding since Mikhail failed to perform a condition precedent, that is, add additional parking spaces. However, as pointed out by Mikhail in his Answer Brief, the general language of section 17.13 does not contain express wording that the validity of the contract rests on the addition of parking spaces. See Covelli Family, supra; see also Gunderson v. School District of Hillsborough County, 937 So.2d 777, 779 (Fla. 1st DCA 2006). Further, there is nothing in the record to demonstrate that Hijaz sought to rescind the contract during the proceedings below. See Morris Investment Partnership v. Figueroa, 698 So.2d 288, 290 (Fla. 3d DCA 1997); see also Herskovitz v. Hershkovich, 910 So.2d 366, 367 (Fla. 5th DCA 2005). The Court concludes that Hijaz's argument that the contract never became binding must fail.

Lastly, Hijaz is unable to overcome the presumption of correctness of the trial court's finding that the lease was a valid, enforceable contract and that Hijaz should not be relieved from the payment terms. See Shaw, supra; see also Covelli Family, supra; Universal Beverages, supra.

Therefore, it is,

ORDERED AND ADJUDGED that the Final Judgment is affirmed. It is further

ORDERED AND ADJUDGED that the Appellee's Motion for Appellate Attorneys' Fees and Expenses is granted, in part. The Appellee is entitled to reasonable appellate attorneys' fees which shall be determined by the trial court. The Appellee may seek its expenses pursuant to the Florida Rules of Appellate Procedure, Rule 9.400(a).

DONE AND ORDERED in Chambers, at Clearwater, Pinellas County, Florida
this _____ of May 2008.

Original opinion entered by Circuit Judges John A. Schaefer, George M. Jirotko, & George W. Greer.

Copies furnished to:
Honorable Dorothy L. Vaccaro
County Court Judge

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