

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

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HEN BURKE
CLERK OF CIRCUIT COURT

ART & WINE GALLERY OF CLEARWATER
BEACH INC., et al,
Appellants,

v.

Ref. No.: 14-000073-AP-88B
UCN: 522014AP000073XXXXCI

387 - 391 MANDALAY AVENUE, LLC,
Appellee.

ORDER AND OPINION

Art & Wine Gallery of Clearwater Beach, Inc. ("Appellant") appeals the trial court's order granting partial summary judgment in favor of 387 - 391 Mandalay Avenue, LLC ("Appellee") in a lease interpretation dispute. The trial court found the disputed provision (1.3) of the lease document to be unenforceable as a matter of law because it was too indefinite to constitute a binding agreement. The court declared that the lease terminated on October 31, 2014 — at the expiration of the initial term — and that the defendant should vacate the leased premises on or before that date. Having reviewed the briefs, the record, and pertinent legal authority, and being otherwise fully advised, the Court affirms the trial court's rulings as set forth below.

Facts

On or about October 30, 2009, Appellant, as tenant, entered into a lease agreement with Homer Properties, Inc., as landlord. Homer Properties subsequently assigned its interest in the lease to Appellee.

The original term of the lease was for a period of five years, from November 1, 2009 to October 31, 2014.

Section 1.3 of the lease provided for the tenant to extend the lease for up to three additional three year terms by notifying the landlord, in writing, no later than two months prior to the end of the current term of its election to do so. The extended term would be "at a rent to be agreed between the parties."

On or about February 21, 2014, Appellee, through its attorney, contacted Appellant, through Appellant's legal counsel, requesting that Appellant indicate whether Appellant intended to request an extension of the lease term, and if so, Appellant's proposed per square foot rental terms for such renewal period.

Appellant responded on or about August 25, 2014, by certified mail, with a request to extend the lease for an additional three year period. The letter did not contain any proposed rental amount. Subsequent communication between the parties' attorneys confirmed that Appellant was willing to pay no more than a 5% increase over the then-current year's monthly rate, subject to an additional 5% increase in each of the two ensuing years. That offer was rejected by Appellee.

A trial court's interpretation of a contract is a matter of law subject to a *de novo* standard of review. *Jenkins v. Eckerd Corp.*, 913 So. 2d 43, 49 (Fla. 1st Dist. App. 2005). Summary Judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law. Thus our review of the trial court's grant of partial summary judgment is also *de novo*. *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000).

Analysis

I. Appellant contends that the trial court lacked subject matter jurisdiction to direct Appellant to vacate the leased premises because eviction was not included in the relief sought in Count III of the amended complaint or in Appellee's Motion for Partial Summary Judgment. We disagree. Appellee specifically sought declaratory relief finding the renewal provision in Section 1.3 of the lease unenforceable and as a result, termination of the lease by its terms on October 31, 2014.

Appellant relies upon three cases for their argument: *Pro -Art Dental Lab, Inc. v. V-Strategic Group, LLC*, 986 So.2d 1244 (Fla. 2008), *In re Estate of Hatcher v. Dodd*, 439 So.2d 977 (Fla. 3rd DCA 1983), and *Instituto Patriotico Y Docente San Carlos, Inc. v. Cuban American National Foundation*, 667 So.2d 490 (Fla. 3rd DCA 1996). In *Pro-Art*, the county court unilaterally recast the plaintiff's pleadings from a claim of ejectment, over which the court had no subject matter jurisdiction, to a claim of eviction, so as to hear the case. No such judicial amendment of the pleadings occurred in the case before us. In both *In re Estate of Hatcher* and *Instituto Patriotico*, a court granted relief not requested anywhere in the pleadings. The

defendants in each case were not provided notice, and thus were denied due process. In the present case, eviction was sufficiently pled by the motion's specific request for a finding that the lease would terminate on October 31, 2014. The record shows that Appellant was properly on notice of the pleadings, thus their right to due process suffered no infringement.

II. Appellant also contends that the trial court's grant of partial summary judgment was improper because it: a) failed to follow contrary binding authority and b) misinterpreted Sections 1.3 and 2.2 of the lease agreement. We disagree.

a) The "contrary binding authority" cited by Appellant is *State Road Dep't v. Tampa Bay Theaters, Inc.*, 208 So.2d 485 (Fla. 2d DCA 1968), *cert. denied* 229 So.2d 867 (Fla. 1969). *State Road* was a condemnation action where a renewal option was challenged by a third party, not by a party to the lease. The court ruled that the renewal option was valid and enforceable for the sole purpose of valuating the option in determining money damages.

Appellee cited, and the trial court was persuaded by, *Edgewater Enterprises, Inc. v. Holler*, 426 So.2d 980 (Fla. 5th DCA 1983). In *Edgewater*, the court held that "the amount of rental is an essential element of a lease, if not the basis for a lease, and an agreement to make a lease, or to renew or extend a lease, that fails to specify either the amount of the rental or a definite procedure to be followed to establish the amount of the rental, is too indefinite to be legally binding and enforceable." *Id.*, at 983. *See also Bartke's, Inc. v. Hillsborough County Aviation Authority*, 217 So.2d 885, 887 (Fla. 2nd DCA 1969) (holding that when terms of an extension are left open to agreement, there is no right to the extension).

b) Appellant's reading of Sections 1.3 and 2.2 of the lease is contrary to its plain wording. Section 1.3 clearly sets out that the rent amount for any extended term is to be *determined and agreed to by the parties*. Section 2.2, by its terms, applies to annual increases within any given three-year term, providing that *once the monthly rent for that term has been determined and agreed upon by the parties*, a 5% increase shall take effect on the second and third anniversaries. The trial court did not ignore Section 2.2 of the lease; that section was not triggered because the rent amount for the extended term was not agreed upon by the parties.

Conclusion

The trial court properly exercised jurisdiction over the matter and granted possession of the leased premises to the landlord. As there were no genuine issues of material fact, the trial court's grant of Partial Summary Judgment was appropriate. Accordingly, we affirm.

ORDERED AND ADJUDGED that the trial court's order granting Partial Summary Judgment is **AFFIRMED**. Pursuant to Fla. R. App. P. rule 9.400, the assessment of entitlement and amount of appellate attorneys' fees, if any, is remanded to the lower tribunal.

DONE AND ORDERED in Chambers in St. Petersburg, Pinellas County, Florida, on this 5 day of May 2015.

Original Order entered on May 5, 2015, by Circuit Judges Jack Day, Peter Ramsberger, and Amy M. Williams.

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