IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
January 19, 2023 Session

DR. DAVID BRUCE COFFEY v. BUCKEYE HOME HEALTH CENTER, INC.

Appeal from the Circuit Court for Scott County
No. 9452 John D. McAfee, Judge

No. E2022-00928-COA-R3-CV

A landlord appeals from the grant of summary judgment to a commercial tenant in the landlord's breach of contract action. The lease contained a provision requiring the tenant to obtain fire insurance on the "Premises." The trial court concluded that the lease failed to define the term "Premises" and that such failure rendered the fire insurance provision unenforceable. We reverse because we find the term "Premises" as used in the fire insurance provision to unambiguously refer to the space within the commercial building that the tenant rented and occupied during the lease. We further conclude that there is a genuine issue as to a material fact regarding whether it was possible for the tenant to obtain fire insurance on only the portion of the building which it rented and occupied. Consequently, we remand the case for further proceedings consistent with this opinion.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed; Case Remanded

JOHN W. MCCLARTY, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and THOMAS R. FRIERSON, II, J., joined.

Ashleigh Rose Beer-Vineyard, Knoxville, Tennessee, for the appellant, Dr. David Bruce Coffey.

Dudley W. Taylor, Knoxville, Tennessee, for the appellee, Buckeye Home Health Center, Inc.

OPINION

I. BACKGROUND

Plaintiff/Appellant Dr. David Bruce Coffey ("Dr. Coffey" or "Landlord") executed a lease with Defendant/Appellee Buckeye Home Health Center, Inc. ("Buckeye" or "Tenant"). The lease provided that Buckeye would rent office space located at 277 Underpass Drive, Oneida, Tennessee, from Dr. Coffey for one year beginning May 1, 2019. Dr. Coffey owned the entire building, which contained approximately 22,394 square feet; however, under the lease Buckeye occupied approximately 1,800 square feet of the building.

The parties' dispute concerns a lease provision requiring Buckeye to obtain insurance coverage, including "fire coverage," on the "Premises." Section 12A of the lease provided:

> Tenant agrees to secure an[d] keep in force from and after the date Landlord shall deliver possession of the Premises to Tenant and throughout the terms of this Lease, at Tenant's own cost and expense: fire coverage; theft coverage; open peril coverage; plate glass insurance with extended coverage for all plate glass window frames in the Premises; and public liability insurance coverage on the Premises for every portion thereof, with a contractual liability endorsement on the policy, in a company qualified to transact business in Tennessee, stipulating limits of liabilities of not less than 1,000,000 for an accident affecting any one person; not less than 2,000,000 for an accident and affecting more than one person; and 300,000 property damage . . . .

The parties agree that the term "Premises" is not defined in the lease. They also agree that the lease referred to that portion of Dr. Coffey's property occupied by Buckeye as the "Premises," but with no more specific or other identification. The fire insurance provision does not identify a specific area or space as the "Premises."

A fire destroyed Dr. Coffey's building on January 30, 2020. Buckeye had obtained insurance from The Southern Agency, Inc. to cover its contents located in the office space it leased from Dr. Coffey. However, Buckeye's insurance policy neither named Dr. Coffey as an additional insured nor did it provide the required coverage type or limits. Buckeye agrees that it "did not have any fire loss insurance that would pay for the loss of [Dr. Coffey's] building or any part thereof."

On May 13, 2021, Dr. Coffey filed a complaint against Buckeye for breach of the lease contract and alleged failure to maintain a fire insurance policy in accordance with the lease. Buckeye moved for summary judgment arguing that: (1) the lease failed to provide an enforceable obligation with respect to fire insurance because it failed to define the term "Premises"; and (2) regardless of whether the term "Premises" was interpreted to mean a portion of Dr. Coffey's building or the entire structure, it was impossible for Buckeye to obtain fire coverage.

To buttress its impossibility argument, Buckeye submitted the affidavit of Derek Wirz, the principal owner and producer of The Southern Agency, Inc. Mr. Wirz has been an insurance agent for more than thirty years and holds several industry designations, including a Certified Insurance Counselor ("CIC") designation. Mr. Wirz indicated in his affidavit that it would not have been possible to write effective fire insurance coverage for only the portion of the building that Buckeye occupied. He further indicated that, "it would not be possible to write effective building insurance coverage insuring against loss by fire for the entirety of the building on behalf of Buckeye." He noted that "Buckeye did not own, nor did Buckeye have an insurable interest in any part of the building."

In response to Buckeye's motion for summary judgment, Dr. Coffey submitted the affidavit of Chad Daniel, a commercial lines manager at Daniel Insurance Agency, LLC.[1] Mr. Daniel stated that he has been a licensed insurance agent for approximately sixteen years. Mr. Daniel asserted that it "would have been possible to write effective fire insurance coverage for only a portion of [Dr. Coffey's] commercial building." In a subsequent deposition, Mr. Daniel admitted that he had never obtained a policy for a tenant leasing only a portion of a building. He testified that his statement that it would be possible was based on conversations he had with underwriters at two different insurance companies.

By order entered June 22, 2022, the trial court granted summary judgment in Buckeye's favor, finding that "[t]he Lease referred to that portion of [Dr. Coffey's] property occupied by [Buckeye] as the 'Premises,' but with no specific identification as to the square footage or otherwise." The trial court held that Dr. Coffey's "failure . . . to define the term 'Premises' in the Lease renders the requirement that [Buckeye] obtain fire coverage for the 'Premises' unenforceable." The trial court did not address whether it was impossible for Buckeye to obtain fire insurance on only a portion of Dr. Coffey's building. Dr. Coffey appealed.

[1] Buckeye subsequently deposed Mr. Daniel and included his deposition testimony in a supplement to its motion for summary judgment. The summary of Mr. Daniel's testimony is taken from both his affidavit and his deposition testimony.

II. ISSUES

Dr. Coffey raises one issue for review: Whether the trial court erred in holding that Plaintiff's failure to define the term "Premises" in the lease renders the requirement that Defendant obtain fire coverage for the "Premises" unenforceable.

III. STANDARD OF REVIEW

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." Tenn. R. Civ. P. 56.04.

When a party moves for summary judgment but does not have the burden of proof at trial, the moving party must either submit evidence "affirmatively negating an essential element of the nonmoving party's claim" or "demonstrating that the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the nonmoving party's claim or defense." *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 264 (Tenn. 2015). Once the moving party has satisfied this requirement, the nonmoving party "'may not rest upon the mere allegations or denials of [its] pleading.'" *Id*. at 265 (quoting Tenn. R. Civ. P. 56.06). Rather, the nonmoving party must respond and produce affidavits, depositions, responses to interrogatories, or other discovery that "set forth specific facts showing that there is a genuine issue for trial." Tenn. R. Civ. P. 56.06; *see also Rye*, 477 S.W.3d at 265. If the nonmoving party fails to respond in this way, "summary judgment, if appropriate, shall be entered against the [nonmoving] party." Tenn. R. Civ. P. 56.06.

Contract interpretation is a question of law, and we review a trial court's summary judgment determination de novo, with no presumption of correctness. *Rye*, 477 S.W.3d at 250; *Allstate Ins. Co. v. Watson*, 195 S.W.3d 609, 611 (Tenn. 2006). Therefore, "we make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied." *Rye*, 477 S.W.3d at 250. In reviewing a summary judgment motion on appeal, "we are required to review the evidence in the light most favorable to the nonmoving party and to draw all reasonable inferences favoring the nonmoving party." *Shaw v. Metro. Gov't of Nashville & Davidson Cnty*., 596 S.W.3d 726, 733 (Tenn. Ct. App. 2019) (citations and quotations omitted).

IV. DISCUSSION

The threshold issue in this case is the proper interpretation of a lease provision between the parties, namely the meaning of the term "Premises," which is not specifically defined in the lease. In Tennessee, a court must attempt to ascertain and give effect to the intention of the parties to a contract. *Christenberry v. Tipton*, 160 S.W.3d 487, 494 (Tenn. 2005). Courts are instructed to look to three sources to seek this intention: "the four corners of the contract, the circumstances in which the contract was made, and the parties' actions in carrying out the contract." *Individual Healthcare Specialists, Inc. v. BlueCross BlueShield of Tennessee, Inc.*, 566 S.W.3d 671, 692 (Tenn. 2019) (quoting *Hughes v. New Life Dev. Corp*., 387 S.W.3d 453, 465 (Tenn. 2012)).

"Tennessee Courts 'give primacy to the contract terms, because the words are the most reliable indicator – and the best evidence – of the parties' agreement when relations were harmonious, and where the parties were not jockeying for advantage in a contract dispute.'" *Id.* at 694. Our courts have firmly rejected "any notion that courts are a fallback mechanism for parties to use to 'make a new contract' if their written contract purportedly fails to serve their 'true' intentions." *Id.*

"[A] court's initial task in construing a contract is to determine whether the language of the contract is ambiguous." *Planters Gin Co. v. Fed. Compress & Warehouse Co*., 78 S.W.3d 885, 890 (Tenn. 2002). The "central tenet of contract construction" holds that the parties' intent at the time of executing the agreement should govern which is "presumed to be that specifically expressed in the body of the contract." *Id*. When resolving disputes of contract interpretation, a court should determine the intentions of the parties based upon the usual, natural, and ordinary meaning of the contractual language. *Id*. at 889–90. Contractual language is ambiguous "when its meaning is uncertain and when it can be fairly construed in more than one way." *Lamar Advert. Co. v. By-Pass Partners*, 313 S.W.3d 779, 792 (Tenn. Ct. App. 2009) (internal citations omitted). A contract is not ambiguous, however, "simply because the parties have different interpretations of its provisions." *Id.* (internal citations omitted). Importantly, "[d]etermining whether a contractual provision is ambiguous is a question of law." *Id.* (internal citations omitted). If the terms of the contract are clear and unambiguous, "the literal meaning of the language controls the outcome of the contract disputes." *Planters Gin Co*., 78 S.W.3d at 890.

Dr. Coffey contends that the fire insurance provision is unambiguous and clearly refers to the space within his building that Buckeye rented and occupied during the lease term until the fire. He argues that the parties' actions throughout the lease term showed their intent at the time they executed the lease. He points to the facts that Buckeye occupied space in his commercial building for approximately nine consecutive months before the fire and that he accepted such presence in exchange for payment of rent. Buckeye

maintains that the failure to specifically define the term "Premises" renders the fire insurance provision unenforceable.

Upon a review of the lease, the record, and the applicable law, we conclude that the term "Premises" as used in the lease is unambiguous. We acknowledge that the term is not defined in the lease and that there is no specific reference to a particular square footage, area, or space within the building defining the "Premises." Buckeye argues that without a specific definition, "Premises" could be interpreted to mean the entire building rather than the smaller space within the building which it leased. This argument is unfounded and strains credibility. When interpreting contractual language, courts are prohibited from assigning a strained construction to the language to find an ambiguity where none exists. *Farmer's–Peoples Bank v. Clemmer*, 519 S.W.2d 801, 805 (Tenn. 1975).

It is undisputed that Buckeye occupied space within the building for which it paid rent for approximately nine months. It is clear that at the time the parties entered the lease agreement and throughout the time that Buckeye occupied leased space within the building, the parties understood the meaning of the term "Premises" to mean the space that Buckeye actually occupied. This is the only logical conclusion to be drawn and the only interpretation that gives meaning to the plain language used by the parties at the time they entered the agreement. Our conclusion is based on the usual, natural, and ordinary meaning of the word "Premises" in the lease agreement and the lack of a plausible countervailing definition. In our view, it would be unusual to interpret the lease to require Buckeye to obtain insurance on some other space in the building for which it neither paid rent nor occupied and to which it had no other connection or legal interest.

Importantly, the parties agree that the term "Premises" as used in the lease refers to the space occupied by Buckeye. Buckeye simply attempts to give the term a different meaning only in the insurance provision. However, this construction fails to give meaning to the entire lease as a whole. "All provisions of the contract should be construed in harmony with each other to promote consistency and avoid repugnancy among the various contract provisions." *Adkins v. Bluegrass Ests.*, 360 S.W.3d 404, 411 (Tenn. Ct. App. 2011) (citing *Teter v. Republic Parking Sys., Inc.*, 181 S.W.3d 330, 342 (Tenn. 2005)). "The interpretation of an agreement is not dependent on any single provision, but upon the entire body of the contract and the legal effect of it as a whole. The entire contract must be considered in determining the meaning of any or all of its parts." *Id.* (citing *Aetna Cas. & Surety Co. v. Woods*, 565 S.W.2d 861, 864 (Tenn. 1978)).

Here, defining "Premises" to mean the entire building at Underpass Drive creates conflict when applied to almost every other provision of the lease that uses the term "Premises." For example, the lease provides that, "[t]he Premises shall be occupied and used solely for the purpose of buying, storing, marketing, and selling medical equipment"

and that "Tenant agrees . . . to continuously occupy and use the entire Premises for the uses herein specified . . . to conduct Tenant's business. . . ." Buckeye agreed to pay for the utilities it used on the "Premises" and not to make alterations, additions, or improvements to the "Premises" without obtaining prior written approval. Buckeye agreed to provide reasonable access to the "Premises" to Dr. Coffey or his agents and to keep the "Premises" in a neat and orderly condition. These are common lease provisions, and it is unreasonable in light of the entire lease to conclude that the parties intended "Premises" to mean anything other than the space that Buckeye rented and occupied during its lease term. It is likewise unreasonable to conclude that the parties intended "Premises" to mean one thing throughout the lease but to mean something different only in the insurance provision.

Accordingly, the trial court's grant of summary judgment must be reversed. We hold as a matter of law that the term "Premises" as used in the lease refers to the approximately 1,800 square feet that Buckeye rented and occupied within the larger commercial building until it was destroyed by fire.

However, this conclusion does not entirely end the inquiry. Buckeye also argued before the trial court that it was not possible for it to obtain insurance coverage on only a portion of the building. In support of its argument, Buckeye offered the affidavit of Mr. Wirz, who indicated that it would not have been possible to write effective fire insurance coverage for only the portion of the building that Buckeye occupied under the lease. Dr. Coffey countered with the affidavit and deposition testimony of Mr. Daniel who indicated that it would have been possible to obtain effective fire insurance coverage on only a portion of the building.

The parties devote considerable space in their appellate briefs to parsing the relative credentials and credibility of Mr. Wirz and Mr. Daniel. However, the trial court's order does not address the issue of impossibility nor the competing testimony of Mr. Wirz or Mr. Daniel. Whether it was possible to underwrite effective fire insurance coverage to satisfy the terms of the lease is a genuine issue as to a material fact. Because the trial court did not rule on this issue, we remand for further proceedings consistent with this opinion.

V. CONCLUSION

For the foregoing reasons, we reverse the trial court's grant of summary judgment. The case is remanded for such further proceedings as are necessary and consistent with this opinion. Costs of the appeal are taxed to the appellee, Buckeye Home Health Center, Inc.

_____

JOHN W. McCLARTY, JUDGE