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Apr 17 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Robin B. Stillwell
Case No. 2019-CP-23-06187
Appellate Case No. 2022-001072

Taylors Mill Events, LLC d/b/a Southern Bleachery and Lawrence Black,

Appellants,

v.

Taylors Mill Development, LLC f/k/a Taylors Mill Development, LLP,

Respondent.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

Respondent Taylors Mill Development, LLC f/k/a Taylors Mill Development, LLP ("Respondent" or "TMD"), Appellants' landlord, presents several legally incorrect arguments in its Brief that warrant a reply.[1] Like the trial court, TMD erroneously ignores the full and accurate language of Paragraphs 19 and 28 of the subject Lease, thus leading to the same legal errors committed by the trial court in ruling on the interplay between these two paragraphs.

A. The trial court committed an error of law and did not give effect to the full language of both Paragraphs 19 and 28 of the Lease.

TMD accurately states that under South Carolina law, "the court should construe the contract as a whole and read together different provisions dealing with the same subject matter." TMD Initial Brief p. 9 (citing *Buice v. WMA Sec., Inc.*, 380 S.C. 149, 157, 668 S.E.2d 430, 434 (Ct. App. 2008)). TMD then, however, proceeds to do the opposite, effectively reading Paragraph 19 out of the Lease. TMD argues that because under Paragraph 28, improvements to the Premises must be handled by and through it as lessor, it can hold its tenant hostage by insisting on the tenant's agreement to conditions that have nothing to do with the restrictions placed on TMD itself by Paragraph 28. Appellants do not (as TMD charges) argue that Paragraph 19 should be construed in a vacuum. TMD Initial Brief p. 9. Instead, it is *Appellants'* construction (*see* Appellants' Initial Brief pp. 10-14) that gives common sense and good faith meaning to all provisions of the Lease. *See C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Com'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) ("Common sense and good faith are the leading touchstones of construction of

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[1] Because this appeal only involves questions of law, TMD's various factual misstatements or material omissions do not inform the issues before the Court. *See, e.g.*, TMD Initial Brief pp. 2 (regarding alleged shutoff valve retaliation, *contra* R. pp. 165-166, 169-170), 3 ("successful" operation "out of the leased space," *contra* R. pp. 92-94), 5-6 (TMD made multiple requests for an engineering opinion before issuing the stop work directive, *contra* R. pp. 338-356), 6 (scope of the B&F Materials easement, *contra* R. p. 394), 7 (Appellants' "refus[al]" to engage in discussions with TMD, *contra* R. pp. 91-92, 146-151, 236, 386-390).

the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair and just, the latter construction must prevail.").

1. Both TMD and the trial court employ a legally erroneous reading and analytical framework for Paragraphs 19 and 28 of the Lease.

Paragraph 19 states in full: "Subject to the conditions of this lease, the lessor agrees that the lessee may peaceable [sic] have, hold and enjoy the premises, without hindrance by the lessor or lessor's agent." (R. p. 259, ¶ 19). Paragraph 28 states in full: "Lessor and Lessee acknowledge and agree that certain improvements will be required to be made to the premises in order to make the premises suitable for occupancy and use by Lessee. All improvements shall be handled by and through the Lessor, regardless of whether Lessee is bearing all or any portion of the costs of such improvements. Lessor and Lessee are entering into a separate agreement relating to the specifications for the improvements to be made to the premises and the responsibility for the costs thereof." (R. p. 260, ¶ 28).[2]

Like the trial court, TMD does not meaningfully engage with Appellants' argument that the hindrance and resulting breach of Paragraph 19 arose not out of the stop work directive itself, but rather occurred after its imposition due to TMD's abandonment of Premises improvement-related issues as a condition of the release of that directive. Appellants' Initial Brief pp. 5-8, 10-14. Both the trial court's Order and TMD's argument presume that an agreement under Paragraph 28 must be found before any hindrance under Paragraph 19 can occur. TMD Initial Brief pp. 9-10; (R. p. 2 ("The dispositive question in this case is whether there was ever an agreement or

[2] Despite acknowledging that "each and every part" of a contract must be taken into account (TMD Brief p. 9), TMD omits the entire first sentence of Paragraph 28 when stating what that paragraph "provides." *Id.* TMD thus constructs its argument on a partial reading of Paragraph 28.

meeting of the minds regarding the Phase II construction. ... The Plaintiffs submitted proposed plans, permits, and drawings. In response, the Defendant clearly articulated remaining questions and concerns regarding the proposed construction. These questions and concerns were never resolved, and the Defendant issued the Stop Work order when it learned of the commencement of the construction.")). The plain language of Paragraphs 19 and 28 does not support either the trial court's Order or TMD's argument in support of that Order.

The proper legal framework is as follows: First, Paragraph 28 explicitly recognizes that improvements to the Premises are "required" to make them suitable for occupancy and use. (R. p. 260, ¶ 28). The Lease makes clear that all 16,000 square feet of the Premises are to be used as an event space, restaurant, and bar. (R. p. 256, ¶ 4). It is undisputed that the required Phase I improvements covered only the front half of the Premises, and the required Phase II improvements would have allowed the remaining half of the Premises to be used and occupied as contemplated in the Lease. (R. pp. 49-54, 123-124, 265-266). In other words, Phase II improvements are not something that Appellants thought would be a nice idea or a discretionary undertaking–they are recognized as *required* under the Lease for the *use and occupancy* of the Premises as contemplated in the Lease. Second, while Paragraph 28 provides that these improvements will "be handled by and through" TMD, it also provides contractual parameters for what the parties would need to agree on for those required improvements: "the specifications for the improvements to be made to the premises and the responsibility for the costs thereof." (R. p. 260, ¶ 28). This final, specific sentence in Paragraph 28 thus defines how the required improvements will "be handled by and through" TMD and guides the parties on the scope of the agreement for these required improvements (specifications for the improvements and cost responsibility). *See Evins v. Richland County Historic Pres. Comm'n*, 341 S.C. 15, 19, 532 S.E.2d 876, 878 (2000) ("When certain

persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred.") (internal quotation omitted); *see also Ellis v. Taylor*, 316 S.C. 245, 449 S.E.2d 487 (1994) (finding that under the plain language of the contract which included a general term and then specific terms, "the general words are construed to embrace only persons or things of the same general kind or class as those enumerated"). Third and finally, Paragraph 19 makes clear that TMD is liable to its tenant if it hinders the tenant in its activities outside the bounds of the Lease. (R. p. 259, ¶ 19). As conditioning approval for required improvements to the Premises on items beyond specifications for the improvements and cost responsibility is outside the bounds of Paragraph 28, a Paragraph 19 hindrance analysis is required. By not following this framework, which reads together every word of these two paragraphs, the trial court committed legal error.

2. TMD's subordination argument is misplaced.

TMD argues that a specific lease term (Paragraph 28) controls over a general, boilerplate lease term, such as Paragraph 19, and that Paragraph 19 is subordinate to Paragraph 28. TMD Initial Brief pp. 10-11 (citing *Richland-Lexington Airport Dist. v. Am. Airlines, Inc.*, 306 F. Supp. 2d 548 (D.S.C. 2002), *aff'd* 61 F. App'x 67 (4th Cir. 2003)). TMD's argument is misplaced. First, there is no record evidence to show whether or not Paragraph 19 is, in fact, a "general, boilerplate lease term" as neither party developed evidence on that drafting issue. Second, subordination can only occur if there is "inconsistency between a general clause and a specific clause" and if applying the general clause would render the specific provision "null." *Id.* at 563, 564.[3] TMD simply assumes that Paragraph 19 (which contains more general language) is subordinate to Paragraph 28

[3] TMD admits, however, that "[t]here is no tension between Paragraphs 19 and 28..." thus casting doubt on its own subordination argument. TMD Initial Brief p. 10.

(which contains specific language) and concludes with scant analysis that because TMD withheld its consent for Phase II construction, TMD can never be held liable for "hindering" its tenant in violation of Paragraph 19. As discussed above, Paragraphs 19 and 28 are entirely consistent and every word in both paragraphs can be read in a cohesive legal framework. *See also* Appellants' Initial Brief pp. 10-14.

B. Appellants only attack the trial court's legal errors.

TMD misleadingly states that Appellants are challenging the trial court's factual findings in the face of disputed evidence. TMD Initial Brief p. 12. *See McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) ("In an action at law, tried without a jury, the trial court's findings of fact will not be disturbed unless found to be without evidence with reasonably supports the court's findings."). Appellants do no such thing. Had TMD quoted Appellants' contentions in full instead of a cherry-picked snippet, it would be clear that Appellants are challenging the trial court's conclusions of law in its Order and the natural ramifications of such conclusions: "*Because the Court erroneously treated a Paragraph 28 agreement as dispositive of the Paragraph 19 alleged breach*, the Court did not address the voluminous and undisputed evidence that TMD's TV-only related and coercive conditions hindered the use of the Premises as allowed pursuant to the Lease" (emphasis added). *Compare* TMD Initial Brief p. 12 *with* Appellants' Initial Brief p. 14. The interpretation of a contract is a question of law for the court to decide, and review of that decision is *de novo*. *First S. Bank v. Rosenberg*, 418 S.C. 170, 180, 790 S.E.2d 919, 925 (Ct. App. 2016); *Milliken & Co. v. Morin*, 399 S.C. 23, 30, 731 S.E.2d 288, 291 (2012). All Appellants seek is a review of the legal issue of contract interpretation. Properly framed as discussed above naturally leads to a reassessment of the relevant evidence.

TMD also suggests that there is nothing "wrong with TMD seeking a global resolution" of its concerns with Appellants and the neighboring property owned by Taylors Village, LLC. TMD

Initial Brief p. 12. While not objectionable on its face, TMD's position ignores the fact that a Lease governs the relationship between TMD and Appellants. TMD's position also ignores the fact that the Lease itself imposes restrictions on the leverage TMD holds in approving the required improvements to the Premises. Withholding approval for improvements until there is agreement about the improvement specifications and the cost responsibility is a contractually available leverage point for TMD. Withholding approval for improvements until Appellants make concessions with regard to other property (R. pp. 373-376, 378-381, 386-390) or increase their rental payments (R. pp. 233, 386) is simply not a contractually valid leverage point for TMD. As TMD was acting outside the contractual bounds of Paragraph 28, it is liable to Appellants for hindering their use and enjoyment of the Premises in violation of Paragraph 19.

CONCLUSION

For the reasons discussed herein and in Appellants' Initial Brief, the trial court's Order finding in favor of Respondent on Appellants' breach of Paragraph 19 of the Lease claim should be reversed.

Respectfully submitted,

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