

THIRD DIVISION
March 31, 2011

No. 1-10-2238

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ICM PROPERTIES, INC.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	
IMAD SHEHADE and MAXIMO MORTGAGE)	
CORPORATION,)	No. 08 M1 728603
)	
Defendants-Appellants)	
)	
(Source One Properties, LLC,)	
and Unknown Occupants,)	Honorable
)	Sheldon Garber,
Defendants).)	Judge Presiding.

JUSTICE STEELE delivered the judgment of the court.
Presiding Justice Quinn and Justice Neville concurred in the judgment.

ORDER

HELD: Summary judgment reversed when pleadings and affidavits raised a genuine issue of material fact as to the intended lessees on a commercial lease.

This appeal arises from an order of the circuit court granting summary judgment in favor

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of plaintiff, ICM Properties, Inc. (ICM), and against defendants, Imad Shehade (Shehade) and Maximo Mortgage Corporation (Maximo), jointly and severally for \$11,600. A third defendant, Source One Properties, LLC (Source One), was previously dismissed from the action by the court. On appeal, defendants contend that the circuit court committed reversible error in granting the summary judgment because a genuine issue of material fact exists regarding the identity of the lessees in the lease extension agreement at issue, which contained only one signature. For the following reasons, we reverse and remand.

BACKGROUND

Shehade signed a commercial lease for premises located at 3054 North Greenview in Chicago, Illinois on May 4, 2007. The time period of the lease was from June 1, 2007, through May 31, 2008. The lease indicated that the lessees were Shedade¹ and Source One. Shehade was president of Source One. However, Shehade's was the only signature on the lease, with no indication of his position with the company by his signature.

The lease contained a provision allowing a written lease extension of the terms and provided a time frame for its completion. Shehade subsequently executed a lease extension agreement for the premises on March 18, 2008. The time period of the lease was extended from June 1, 2008, through May 31, 2009. The lease extension agreement indicated that the lessees

¹The trial court allowed ICM to change all pleadings referencing defendant as "Shedade" as opposed to the correct spelling of defendant's name, which is "Shehade." "Shedade" and "Shehade" are the same person. For the purposes of this order, we will refer to defendant as Shehade.

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were Shehade and Maximo. Shehade was also Maximo's president. Again, however, Shehade's was the only signature on the lease and there was no indication of his position with the company by his signature.

Full rent was not paid for September 2008, and rent was not paid for October 2008, or any month subsequent, up to and including May 2009. ICM filed an action seeking judgment for possession and unpaid rent on November 17, 2008, pursuant to a commercial lease for the premises. The complaint originally named Shehade and Maximo as defendants. The complaint was amended to revise the spelling of Shehade's name, to correct Maximo's name, to add Source One as a defendant, and to include a count for confession of judgment.

All three defendants filed a motion to dismiss the claims against them because none of them were identified by names as lessees under the original lease or lease extension; the lease itself terminated months before the alleged failure to pay rent occurred; and only one signature appeared on the lease extension agreement. The trial court granted the motion to dismiss with respect to Source One, but denied the motion with respect to Shehade and Maximo. The court subsequently denied ICM's motion for confession of judgment.

ICM filed a motion for summary judgment on March 30, 2010. Attached to its motion was the affidavit of its employee, Jodi Shanin, who averred that ICM always considered Shehade as the actual tenant. Defendants responded with Shehade's affidavit, in which he averred that he never intended to personally sign the lease extension agreement but rather to execute it on Maximo's behalf. ICM replied by providing copies of rent checks drawn on Shehade's personal account as well as an authorization to withdraw funds from Shehade's personal account.

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On April 27, 2010, the trial court entered partial summary judgment in ICM's favor and against Shehade and Maximo for \$11,600. On May 24, 2010, the trial court entered a final and appealable order granting attorney's fees and costs in the amount of \$6,929 in ICM's favor, making the total judgment amount against Shehade and Maximo the sum of \$18,529.

Defendants' motion for reconsideration and reversal of judgments entered against them was denied on July 2, 2010. This timely appeal followed.

DISCUSSION

On appeal, defendants contend that the trial court committed reversible error by granting ICM's motion for summary judgment because genuine issues of material fact existed.

The purpose of summary judgment is to determine whether any issues of material fact exist. *Winnetka Bank v. Mandas*, 202 Ill. App. 3d 373, 386-87 (1990). Summary judgment is proper when "the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c); *Winnetka Bank*, 202 Ill. App. 3d at 387.

It has been held that the moving party for summary judgment must affirmatively show a clear legal right thereto, free from doubt. *Winnetka Bank*, 202 Ill. App. 3d at 387. If any facts upon which reasonable persons may disagree are identified or inferences may be fairly drawn from those facts leading to different conclusions, the circuit court must deny the motion and direct the resolution of those facts and inferences to be made at trial. *Winnetka Bank*, 202 Ill. App. 3d at 387.

Summary judgment motions are intended to pierce the pleadings and test whether the pleadings raise factual issues warranting a trial and their resolution must be based on evidentiary

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facts, not the pleadings' allegations. *Winnetka Bank*, 202 Ill. App. 3d at 387. "While parties opposing a summary judgment motion are not required to prove their case, they are under a duty to present a factual basis which would arguably entitle them to judgment in their favor, based on the applicable law." *Winnetka Bank*, 202 Ill. App. 3d at 387-88; see also *Soderlund Brothers, Inc. v. Carrier Corp.*, 278 Ill. App. 3d 606, 615 (1995).

A disputed issue of fact exists when a material writing contains an ambiguity requiring the admission of extrinsic evidence. *Ebert v. Dr. Scholl's Foot Comfort Shops, Inc.*, 137 Ill. App. 3d 550, 558 (1985). Similarly, determining intent regarding a particular instrument presents a question of fact precluding summary judgment when the language of the instrument contains ambiguities requiring the admission of extrinsic evidence. *Ebert*, 137 Ill. App. 3d at 558. However, when the parties' intent can be ascertained by the plain language of the instrument, no disputed question of fact exists. *Ebert*, 137 Ill. App. 3d at 558.

In appeals from summary judgment rulings, we conduct a *de novo* review. *Atlantic Mutual Insurance Co. v. American Academy of Orthopaedic Surgeons*, 315 Ill. App. 3d 552, 559 (2000). On an appeal from the propriety of summary judgment, the reviewing court is not to judge the strength of the evidence or weigh the credentials, credibility, and testimony of one deponent against another. See *McDonald's Operators Risk Management Association, Inc. v. CoreSource, Inc.*, 307 Ill. App. 3d 187, 191 (1999); *McCullough v. Gallagher & Speck*, 254 Ill. App. 3d 941, 948 (1993).

In the instant case, defendants contend that a genuine issue of material fact existed regarding the identity of the lessees in the lease extension agreement as only one signature appeared on the lease extension agreement and the Statute of Frauds applied.

Rules of contract construction are applicable to the construction of a written lease. *Sol K. Graff & Sons v. Leopold*, 92 Ill. App. 3d 769, 771 (1981). The principal function of a court in construing a lease is to give effect to the intentions of the parties as expressed in the language of the document when read as a whole (*Leopold*, 92 Ill. App. 3d at 771), and the words used should be given their common and generally accepted meaning (*American National Bank & Trust Co. of Chicago v. Olympic Savings and Loan Ass'n*, 60 Ill. App. 3d 722, 724 (1978)). In such cases where the language of a lease is ambiguous, either latent or patent, the court may consider the position of the parties, the surrounding circumstances which existed at the time of the execution of the lease and the facts in connection with it. *American National Bank*, 60 Ill. App. 3d at 724-25. A latent ambiguity occurs when a writing appears to be clear and unambiguous on its face, but which in fact, may be shown by extrinsic evidence to be unclear in meaning. *American National Bank*, 60 Ill. App. 3d at 725. Such latent ambiguity may be explained by parol evidence. *American National Bank*, 60 Ill. App. 3d at 725.

Here, the record reveals that the original lease named Shedade and Source One as the lessees and was signed solely by Shehade. There was no indication that Shehade was signing on behalf of Source One in any capacity. Similarly, the lease extension agreement named Shedade and Maximo as the lessees and was signed solely by Shehade. As with the original lease, there was no indication that Shehade was signing on Maximo's behalf in any capacity. Accordingly, on its face, it appears that Shehade executed the lease extension agreement solely in his personal capacity. Additionally, the affidavit ICM attached to its summary judgment motion indicated that despite the two lessees named in the lease extension agreement, ICM considered Shehade as the actual tenant. Defendants responded in turn with Shehade's affidavit, in which he indicated

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that he never intended to execute the lease in his personal capacity, but solely in his capacity as Maximo's president. ICM then replied with copies of rent checks drawn on Shehade's personal account, as well as an executed authorization to withdraw funds from Shehade's personal account. Clearly, this contradictory evidence raises a genuine issue of material fact about whom the responsible party or parties were under the lease extension agreement. Consequently, the trial court erred in granting summary judgment in ICM's favor. Accordingly, we reverse the judgment of the trial court.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Cook County is reversed and remanded.

Reversed and remanded.