



1-12-0713

Care Center (Little Shepherd), in a dispute over defendants' purported termination of their lease with TWJ. We conclude that a genuine issue of material fact exists regarding defendants' purported written notice of termination, reverse the summary judgment, and remand the case for further proceedings.

¶ 3

### BACKGROUND

¶ 4 The record on appeal discloses the following facts. On December 26, 2000, Robert, on behalf of Little Shepherd, signed a lease for Space A2 at 24 Hillside Avenue in Hillside, Illinois, from G & R Graphics. The term of the lease was from January 1, 2001, through December 31, 2003.

¶ 5 Paragraph 3A of the lease includes the option for a three-year extension, providing that the tenant must notify the landlord 150 days prior to the end of the lease to exercise the option. Paragraph 30 of the lease also provides in general that any notice under the lease must be in writing and shall be deemed given: (1) when personally delivered; (2) upon receipt if delivered by a nationally recognized overnight courier; or (3) on the second business day after being deposited in United States registered or certified mail. Exhibit "G" to the lease, titled "Kick-Out," indicates that the "[t]enant reserves the right to cancel [the] lease providing a six-month written advance notice to Landlord." Delivery of the notice was required to follow the general notice provision of the lease. Defendants exercised the option on the lease.

¶ 6 On November 13, 2006, defendants signed a lease extension agreement with TWJ. The lease recites that TWJ purchased the leased premises on December 7, 2004, and thereafter assumed the role of lessor under an assignment attached as an exhibit to the extension agreement.

1-12-0713

Paragraph 2 of the extension agreement states that, [e]xcept as otherwise provided herein," the terms of the lease "shall continue in full force and effect throughout the term of any extensions of the Lease pursuant to this Agreement." Paragraph 3 of the extension agreement extends the lease through December 31, 2009, "unless sooner terminated as provided herein." Paragraph 5 of the extension agreement provided an option to extend the lease through December 31, 2012.

However, paragraph 5 of the extension agreement also states that "[s]aid option shall be deemed to have been exercised unless Tenant notifies Landlord of its intent to not exercise the extension option no less than 150 days prior to the end of the Term."

¶ 7 On September 29, 2009, defendants gave TWJ a letter advising TWJ of their intention to not exercise the option to extend the lease. In a letter dated October 5, 2009, TWJ responded that the extension agreement required defendants to notify TWJ of an election to not extend the lease no later than August 3, 2009, and that defendants' purported notice was untimely. On or about November 30, 2009, Robert met with representatives of TWJ, handed them a copy of Exhibit "G" to the lease, and told them defendants were exercising the "kick-out" option to terminate the lease.

¶ 8 On March 29, 2010, TWJ filed suit against defendants, seeking rent due for March 2010 and subsequent months under the lease extension agreement. On May 4, 2011, the parties filed cross-motions for summary judgment. On August 22, 2011, following briefing and hearing on the motions, the circuit court entered an order partially denying and partially granting summary judgment. The trial judge ruled in favor of defendants that the "kick-out" provision of the lease survived and was incorporated into the lease extension agreement. However, the trial court also

1-12-0713

ruled, in agreement with TWJ, that defendants failed to provide timely written notice of their exercise of the "kick-out" provision. Further, the trial court set the matter for a status conference on August 30, 2011.

¶ 9 On November 14, 2011, defendants filed a motion for clarification and reconsideration of the denial of summary judgment regarding the written notice. On February 15, 2012, following briefing and hearing on the motion, the circuit court entered an order vacating its prior ruling on the effectiveness of the written notice, granting summary judgment to the defendants, and dismissing the case with prejudice. On March 14, 2012, TWJ filed a timely notice of appeal with this court.

¶ 10

#### DISCUSSION

¶ 11 The sole issue on appeal is whether the circuit court erred in granting summary judgment to the defendants. Summary judgment is appropriate when "the pleadings, depositions, 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." 735 ILCS 5/2-1005(c) (West 2010). The purpose of summary judgment is not to try a question of fact, but to determine whether a genuine issue of triable fact exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). In determining whether a question of fact exists, "a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent." *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). Summary judgment is "a drastic means of disposing of litigation," and thus, should only be

1-12-0713

awarded when the moving party's right to judgment as a matter of law is "clear and free from doubt." *Id.* We review grants of summary judgment *de novo*. *Id.*

¶ 12 TWJ contends that the trial judge misinterpreted the lease in ruling that the "kick-out" provision of the lease survived and was incorporated into the lease extension agreement. A lease agreement is a contract. Hence, contractual rules of interpretation apply. See *Clarendon America Insurance Co. v. Prime Group Realty Services, Inc.*, 389 Ill. App. 3d 724, 729 (2009). In contract interpretation, the primary goal is to give effect to the parties' intent by interpreting the contract as a whole and applying the plain and ordinary meaning to unambiguous terms. *Village of Arlington Heights v. Anderson*, 2011 IL App (1st) 110748, ¶ 22. "Language \*\*\* is not ambiguous merely because the parties disagree as to its interpretation." *Id.* This court will not strain to find ambiguity where none exists, and disagreements as to the interpretation of a contract must be reasonable. *Id.* As with summary judgments, the construction, interpretation, or legal effect of a contract is a question of law subject to *de novo* review. See *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 129 (2005).

¶ 13 In this case, paragraph 3 of the extension agreement extends the lease through December 31, 2009, "unless sooner terminated as provided herein." Paragraph 5 provides an option to extend the lease through December 31, 2012, unless canceled by defendants 150 days prior to the end of the term. However, paragraph 2 of the extension agreement provides that, [e]xcept as otherwise provided herein," the terms of the lease "shall continue in full force and effect throughout the term of any extensions of the Lease pursuant to this Agreement." TWJ maintains this language creates an ambiguity precluding summary judgment. We disagree. The "kick-out"

1-12-0713

provision of the lease is clearly separate from the options to extend contained in the lease and the lease extension agreement. Thus, pursuant to paragraph 2 of the extension agreement, the "kick-out" provision continued in full force throughout any extensions of the lease under the extension agreement. Nor is the preservation of the "kick-out" provision inconsistent with paragraph 3 of the extension agreement. Accordingly, the trial judge did not err in ruling that the "kick-out" provision remained available to the defendants after signing the lease extension agreement.

¶ 14 In the alternative, TWJ argues that the trial judge erred in ruling that there was no genuine issue of material fact regarding the defendants' delivery of written notice. In *Dikeman v. Sunday Creek Coal Co.*, 184 Ill. 546 (1900), the Illinois Supreme Court announced the general rule that a lessee must strictly comply with the terms of an option to extend a lease. *Id.* at 550-51. Illinois courts have applied that general rule to require strict compliance with an option to terminate a lease, reasoning that a lessee should be strictly held to the terms of the parties' contract where the parties to commercial leases are generally sophisticated and the lessor typically receives no consideration for agreeing to the option. *Genesco, Inc. v. 33 North LaSalle Partners, L.P.*, 383 Ill. App. 3d 115, 119 (2008). Absent "just excuse" for the exercise of equity under *Dikeman* and its progeny, timely verbal notice will not excuse a commercial lessee from the rule of strict compliance with a requirement of written notice. See *id.* at 119-22.

¶ 15 Here, defendants provided TWJ with a copy of exhibit "G" to the lease. Defendants note that, generally, "effective notice is a notice that is so full and clear as to inform persons of ordinary intelligence what is proposed." *Owens v. Second Baptist Church of La Grange*, 163 Ill. App. 3d 442, 447 (1987) (citing *Department of Revenue v. Jamb Discount*, 13 Ill. App. 3d 430,

1-12-0713

435 (1973)). On one hand, when read in isolation, a copy of exhibit "G" to the lease may not read as a written notice to exercise the "kick-out" option. On the other hand, TWJ has suggested no reason why defendants would submit exhibit "G" to TWJ other than to exercise the option described therein. Moreover, neither the lease nor the extension agreement specifies the form or content of written notice adequate to exercise the "kick-out" option.

¶ 16 Accordingly, we conclude (as the trial judge initially did) that a genuine issue of material fact exists regarding whether defendants gave adequate written notice of the "kick-out" to TWJ. Thus, we conclude that the circuit court erred in granting summary judgment to the defendants in granting the motion for reconsideration.

¶ 17 CONCLUSION

¶ 18 In short, we conclude that the circuit court did not err in making the finding that the defendants could exercise the "kick-out" provision of their lease. However, we conclude that a genuine issue of material fact exists regarding whether the defendants gave adequate written notice in strict compliance with their commercial lease. Accordingly, we reverse the circuit court's judgment of February 12, 2012, and remand the case for further proceedings consistent with this order.

¶ 19 Reversed and remanded.