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FOURTH DIVISION
September 18, 2014

No. 1-13-3959

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

TED MONIUSZKO, GAIL MONIUSZKO,)	
STEPHEN B. MONIUSZKO, individually and as)	Appeal from the Circuit Court
Trustee for STEPHEN B. MONIUSZKO LIVING)	of Cook County, Illinois,
TRUST; GENERAL MACHINING SOLUTIONS,)	County Department, Chancery
INC.,)	Division.
)	
Plaintiffs-Appellees)	No. 2006 CH 19302
)	
v.)	
)	The Honorable
JOHN KARUNTZOS AND GEORGE)	Mary Lane Mikva,
KARUNTZOS, individually and JOHN)	Judge Presiding.
KARUNTZOS AND GEORGE KARUNTZOS, as)	
beneficiaries of MARQUETTE NATIONAL BANK)	
as trustee u/t/a #178095 dated 3/26/04,)	
)	
Defendants-Appellants.)	

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Howse and Taylor concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in entering a mandatory injunction requiring the landlords to relinquish their security interest in the tenants' equipment, which was used as collateral, upon the signing of the commercial lease. The plain language of the lease required the landlords to relinquish any such security interest by a certain date, unless the tenants were found to be in default of the lease. The lease, however, nowhere authorized the landlords to

unilaterally declare a default, but rather required them to obtain such a determination from a court of competent jurisdiction.

¶ 2 This is an interlocutory appeal from an order of the circuit court granting the plaintiffs-appellees request for injunctive relief pursuant to a settlement agreement entered into by the parties in 2009. The underlying settled case involved a commercial lease agreement (hereinafter the lease) entered into by the defendants-appellants, John Karuntzos and George Karuntzos, individually and as beneficiaries of the Marquette Bank Land Trust No. 170895 (hereinafter the Karuntzos), and the plaintiffs-appellees, General Machining Solutions, Inc. (hereinafter GMS), GMS president Gail Moniuszko (hereinafter Gail) and Ted Moniuszko (hereinafter Ted). Under the terms of the lease, which was personally guaranteed by Gail and Ted on behalf of GMS, the defendants leased a commercial property located at 13820 South Marquette Avenue, in Burnham, Illinois (hereinafter the property) to GMS. As collateral, the defendants were given a security interest in all of GMS's equipment at the property. After the parties settled the underlying case, the plaintiffs filed an emergency motion to enforce the terms of the settlement agreement, arguing, *inter alia*, that the defendants had impermissibly retained a lien over their equipment and asking the court to compel them to release that lien and relinquish their asserted security interest. The court granted the plaintiffs' motion, and the defendants now appeal. For the reasons that follow, we affirm.

¶ 3 I. BACKGOURND

¶ 4 The record reveals the following undisputed facts and procedural history. On December 1, 2008, the parties entered into a commercial lease agreement whereby the defendants leased the property to GMS for a period of seven years, to expire on November 30, 2013, for an annual net

base rent of \$272,400.¹ Article XX of the lease entitled "Default of Tenant" specified what would happen if GMS defaulted on the lease. Specifically, section 20.1 stated that "the occurrence of any of the following would constitute a default hereunder." Section 20.1 then went on to list numerous events, including: (1) failure to pay rent, and remedy such failure within five days; (2) failure in the prompt and full performance of any terms of the lease; (3) abandonment of the property; and (4) bankruptcy or insolvency of the tenant. Section 20.2 announced the landlord's remedies in the event of any such default, and included, *inter alia*: (1) terminating the lease or the tenant's right to possession of the property; (2) recovering all the past-due rent; (3) taking legal action; and (4) in the event that the tenant voluntarily abandoned the property, entering the premises and removing the tenant's property so that the property could be released to a new tenant.

¶ 5 Furthermore, under the lease, the defendants were given, as collateral, a security interest in all of GMS's equipment at the property. In that respect, section 12.4 of the lease entitled "Security Interest" provided in full:

"The Tenant [GMS] and the Guarantors [Gail and Ted], by executing this Lease, are hereby giving the Landlord [the defendants] a security interest in the equipment, as that term is defined by the Uniform Commercial Code, whether presently owned or hereafter acquired by Tenant [GMS] or the Guarantors [Gail and Ted], located upon the Premises, including but not limited to those items identified in Exhibit A to the Security Agreement, incorporated herein by reference ('Equipment'). In addition to the Security Agreement provided to Lessor [the defendants] by the above sentence, Tenant [GMS] and the Guarantors [Gail and Ted] of this Lease shall execute a Security Agreement, in

¹ In addition, both Gail and Ted signed a personal guarantee on the lease on behalf of GMS.

the form attached hereto as Exhibit B, the terms of which Security Agreement are incorporated herein by reference.

On November 30, 2011, Landlord [the defendants] shall, in writing, relinquish its security interest in all the Equipment and shall release all right, title, and interest Landlord [the defendants] has in the Equipment. If during the term of the Lease prior to November 30, 2011, if Tenant [GMS] was found to be in default of this Lease and failed to cure such default pursuant to the requirements of section 20.1 of this Lease, then Landlord shall have no obligation to relinquish its security interest as set forth in paragraph 12.4."

¶ 6 The separate security agreement referred to in the aforementioned language of the lease as Exhibit B and incorporated into it by reference was signed by Gail. The language of that security agreement gave the defendants as collateral all of the equipment "as that term is defined by the Uniform Commercial Code, whether presently owned or hereafter acquired" by GMS located at the property.

¶ 7 In addition, sections 7 and 8 of the security agreement defined "events of default" and remedies available to the defendants upon any such default. Section 7, which defined "defaults" stated in full:

"The occurrence of any of the following shall, at the sole discretion and option of Lessor, be an Event of Default:

- (a) [A]ny default in payment or performance by Obligor or any Obligation;
- (b) Obligor's failure to comply with any of the provision of, or the incorrectness of any representation or warranty contained in, this Security Agreement, or any of the other Obligations;

- (c) Obligor's transfer or disposition of any of the Collateral, except as expressly permitted by this Security Agreement;
- (d) Any attachment, execution, or levy on any of the Collateral by any third party;
- (e) Any Obligor's respective voluntary or involuntarily becoming subject to any proceeding under the Bankruptcy Code or any similar remedy under state statutory or common law, or Obligors" making an assignment for the benefit of creditors;
- (f) Any Obligors' respective failure to comply with or becoming subject to any administrative or judicial proceeding under any federal, state, or local (i) hazardous waste or environmental law, (ii) asset forfeiture or similar law that can result in the forfeiture of property, or (iii) other law for which noncompliance may have any significant effect on the Collateral; or
- (g) Lessor's receipt at any time following the date of this Security Agreement of a lien search report indicating the Lessor's security interest I not prior to all other security interests or other interest in the report."

Section 8, further provided that, among other things, "upon any event of default" the defendants had the following rights against the tenant: (1) to pursue any remedy available in law, or in equity; (2) to file a suit and obtain judgment against the tenant; (3) to take possession of any collateral, or in the alternative without taking possession of it, to sell, lease or otherwise dispose of it in accordance with the UCC; and (5) to recover all costs, expenses and attorney fees incurred in the process.

¶ 8 The record reveals that during the pendency of the lease, on April 29, 2011, the defendants' attorney sent Gail a letter advising her that GMS was past due in its rent payments. The letter further advised that GMS was "presently in default of [its] lease." After this, the parties must

have proceeded to court, because a judgment was subsequently entered in favor of the defendants granting them possession of the property as well as monetary damages. The plaintiffs then filed for Chapter 11 bankruptcy and the case proceeded solely on citations to discover their assets. On January 21, 2009, the parties settled the case and entered into an agreed order approving the settlement agreement. Among other things, that settlement agreement explicitly provided that the court would "retain jurisdiction over the subject matter of *** the settlement agreement, as well as the lease and the security agreement contemplated thereby, to enforce the provisions thereof, if necessary."

¶ 9 Several years later, both parties filed motions to enforce the settlement agreement. In their motion, filed on November 28, 2012, the defendants alleged that the plaintiffs had paid their tax rental payment late, which incurred interest under the terms of the settlement agreement, and that as a result, the defendants were entitled to apply rent payments to outstanding interest before principle. In addition, the defendants asserted that under the settlement agreement they were entitled to costs and fees related to collection, including attorney fees.

¶ 10 In response, the plaintiffs argued that the court lacked jurisdiction over the defendants' claim because the defendants had not alleged a breach of the settlement agreement, but rather had made a claim of default under the lease, which, they asserted, the court had no jurisdiction to enforce. In the alternative, the plaintiffs argued that the motion should be denied on its merits, since there remained material questions of fact as to whether the defendants had correctly applied interest under the lease.

¶ 11 On November 19, 2013, the circuit court denied the defendants' motion. In doing so, the court first found that it had jurisdiction over the defendants' claim, even though it was based upon the terms of the lease. The court noted that the lease had been explicitly incorporated into

the settlement agreement, and that the court itself had retained jurisdiction over that settlement agreement under the January 21, 2009, agreed order. The court, however, then found that there remained a genuine issue of material fact as to whether, and to what extent, the plaintiffs were in default on any lease payments. Accordingly, the court denied the defendants' motion.

¶ 12 On November 21, 2013, the plaintiffs filed the instant emergency motion to enforce the terms of the settlement agreement based upon a different provision of the lease. In their motion, the plaintiffs asserted that the defendants had impermissibly retained a lien over their equipment and asked the court, *inter alia*, to compel the defendants to release that lien and relinquish their asserted security interest.

¶ 13 In response, the defendants asserted numerous reasons by which the plaintiffs were in default of the lease and the security agreement, and which would have entitled them to possession of the equipment. These included, *inter alia*: (1) the plaintiffs' continued failure to pay rent; and (2) the plaintiffs impermissibly allowing the Illinois Secretary of State to dissolve GMS, so as to permit a new company to take over the its obligations under the lease without the defendants' permission.

¶ 14 On November 26, 2013, the circuit court granted the plaintiffs' motion. In doing so, the court once again reiterated that it had jurisdiction to enforce the lease, since that lease had been incorporated into the settlement agreement. The court then considered the merits of the plaintiffs' emergency motion and held that under the plain language of section 12.4 of the lease, the defendants were required to obtain a finding of default from a court of competent jurisdiction prior to November 30, 2011, in order to retain their security interest in the equipment as collateral. The court held that since the defendants had failed to do so, they violated the lease by failing to release their lien on the plaintiffs' equipment. The court then ordered the defendants to

"immediately and in writing relinquish their security interest in the equipment and relinquish all right title, and interest in the equipment." In addition, the defendants were ordered not to take any "action inconsistent with this court order, including, but not limited, to taking possession of the equipment."

¶ 15 The defendants subsequently filed an emergency motion to reconsider the court's mandatory injunction, which was denied. They now appeal.

¶ 16 II. ANALYSIS

¶ 17 We begin by noting that the plaintiffs here have not filed an appellees' brief. Nevertheless, because the record is simple and the issues straightforward, we will consider the merits of the defendants' claims pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill.2d 128, 133, 345 N.E.2d 493 (1976) (holding that "if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits on appeal;" noting that in doing so the court of review should not "be compelled to serve as an advocate for the appellee or *** be required to search the record for the purpose of sustaining the judgment of the trial court.").

¶ 18 On appeal, the defendants contend that the circuit court erred when it issued a mandatory injunction requiring them to release their security interest in the plaintiffs' collateral. The defendants assert that the court incorrectly found that under the terms of the lease, in order for them to retain their security interest in the plaintiffs' equipment, they were required to obtain a finding of the plaintiffs' default from the trial court prior to November 30, 2011. Instead, they contend that under the security agreement incorporated by reference into the lease, they were

permitted to unilaterally determine that the plaintiffs had defaulted on the lease before November 30, 2011, which they did. For the reasons that follow, we disagree.

¶ 19 The basic rules of contract interpretation are well settled. When construing a contract, our primary objective is to effectuate the intent of the parties. *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011); see also *Gallagher v. Lenard*, 226 Ill. 2d 208, 232 (2007). In doing so, we first look to the plain language of the contract to determine the parties' intent. *Thompson*, 241 Ill. 2d at 441; see also *Gallagher*, 226 Ill. 2d at 233. If the words in the contract are clear and unambiguous, we must give them their plain, ordinary and popular meaning. *Thompson*, 241 Ill. 2d at 442 (citing *Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill.2d 141, 153 (2004)). However, if the language of the contract is ambiguous, we may look to extrinsic evidence to determine the parties' intent. *Thompson*, 241 Ill. 2d at 442; *Gallagher*, 226 Ill. 2d at 233. Language in a contract is ambiguous if it is "susceptible to more than one meaning." *Thompson*, 241 Ill. 2d at 442. However, mere disagreement between the parties concerning a provision's meaning will not automatically render such language ambiguous. *Thompson*, 241 Ill. 2d at 443. Rather, instead of focusing on one clause or provision in isolation, we, as the reviewing court, must read the entire contract in context and construe it as a whole, viewing each provision in light of the other ones. See *Gallagher*, 226 Ill. 2d at 233; see also *Thompson*, 241 Ill. 2d at 441.

¶ 20 In the present case there can be no dispute that section 12.4 of the lease explicitly gives the defendants a security interest in the plaintiffs' equipment. However, section 12.4 also explicitly provides:

"On November 30, 2011, Landlord [the defendants] shall, in writing, relinquish its security interest in all the Equipment and shall release all right, title, and interest Landlord [the defendants] has in the Equipment. If during the term of the Lease prior to

November 30, 2011, if Tenant [GMS] was found to be in default of this Lease and failed to cure such default pursuant to the requirements of section 20.1 of this Lease, then Landlord shall have no obligation to relinquish its security interest as set forth in paragraph 12.4."

¶ 21 The defendants assert that when read in context of section 7 of the security agreement, which was incorporated by reference into the lease, they were permitted to unilaterally declare a default before November 31, 2011. Section 7, entitled "Event of Default" states that: "[t]he occurrence of any of the following shall, at the sole discretion and option of the Lessors, be an Event of Default."

¶ 22 While we agree that this section grants the defendants the authority to determine an event of default under the security agreement, it does not govern the lease, which has its own default provisions, defined in sections 20.1 and 20.2 of the lease. Section 7 of the security agreement permits the defendants to exercise their extensive remedies under the security agreement for violations of the lease or the settlement agreement. It does not, however, confer the right to unilaterally determine a default under the lease or to exercise any of the lease remedies. Indeed, the lease conspicuously omits the security agreement's "sole discretion" language in defining what constitutes a default. To that effect, section 20.1 of the lease states that "the occurrence of any of the following shall constitute a default hereunder." In addition, section 20.2 of the lease which discusses the remedies available to the defendants upon default of the lease nowhere discusses the security interest, but rather explicitly provides that the defendants have a right to avail themselves of the courts of law. Accordingly, when read in context of the entire lease, it becomes apparent that the parties' choice to include the "sole discretion" language in section 7 of the settlement agreement but to leave it out of section 20.1 of the lease was deliberate. It evinces

their intent not to confer such a right under the lease. See *e.g.*, *Adames v. Sheahan*, 233 Ill. 2d 276, 311 (2009) ("When Congress includes particular language in one section of a statute but omits it in another section of the same act, courts presume that Congress has acted intentionally and purposely in the inclusion or exclusion."); *Divane v. Smith*, 332 Ill. App. 3d 548, 553 (2002) ("where the legislature uses certain words in one instance and different words in another it intends different results. [Citation]. *The same general principles apply in interpreting contract provisions.*" (Emphasis added.)) We therefore, conclude that the plain language of the lease did not authorize the defendants to unilaterally find the plaintiffs in breach of the lease, but rather required them to obtain such a finding by a court.

¶ 23 Since the defendants here admit that they neither petitioned for nor received a finding from the trial court that the plaintiffs were in default prior to November 30, 2011, as they were required to do under the plain language of the lease, we conclude that the circuit court properly found the defendants to be in default of the lease for failing to release their lien on the plaintiffs' equipment.

¶ 24 III. CONCLUSION

¶ 25 For all of the aforementioned reasons, we affirm the judgment of the circuit court and the entry of the mandatory injunction requiring the defendants to immediately and in writing relinquish their security interest (and any and all other right, title and interest) in the equipment.

¶ 26 Affirmed.