

No. 1-12-0691

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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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GLOBAL CARE, S.C.,	)	Appeal from the
	)	Circuit Court of
Plaintiff and Counter-defendant-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CH 34588
	)	
K & K HOLDING, LLC,	)	The Honorable
	)	Leroy K. Martin
Defendant and Counterplaintiff - Appellant.	)	Judge Presiding.

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JUSTICE LAVIN delivered the judgment of the court.  
Presiding Justice Howse and Justice Fitzgerald Smith concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court's order granting judgment on the pleadings in favor of plaintiff was reversed and remanded where the trial court erroneously determined that the lease unambiguously supported plaintiff's interpretation and application of the parties' agreement.
- ¶ 2 This appeal arises from the trial court's order granting plaintiff Global Care S.C.'s motion for judgment on the pleadings as to Count III of plaintiff's amended complaint pursuant to section 2-615(e) of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-615(e) (West 2010)). On appeal, defendant K&K Holdings, LLC, asserts the trial court erred by granting plaintiff's motion because a genuine issue of material fact existed with respect to

an ambiguous provision in the parties' lease agreement and the application of that provision to the facts before the court. For the reasons discussed below, we reverse the trial court's judgment and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 A. Factual Background

¶ 5 Plaintiff is an Illinois corporation that renders professional medical services to the public.<sup>1</sup> Defendant, as landlord, entered into a lease agreement with plaintiff, as tenant, on July 30, 2004, for the premises at 523 Old Northwest Highway, Suites 101 and 102A, and 527 Old Northwest Highway, Suite 304, in Barrington, Illinois. According to the lease, the seven-year term commenced on August 1, 2004, and would terminate on July 31, 2011. The relevant provisions from this lease are paragraphs 14(b) and 23(p).

¶ 6 Paragraph 14(b) states:

“This Lease *may not be modified or amended* so as to reduce the rent or shorten the term provided hereunder, or *so as to adversely affect in any other respect to any material extent the rights of Landlord or Tenant*, nor shall this Lease be canceled or surrendered, without the prior written consent, in each instance of any ground lessor or mortgagee or trustee.” (Emphasis added).<sup>2</sup>

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<sup>1</sup>Following a merger with Palatine Heart Center, S.C., and Alpine Family Physicians, S.C., in January 2003, plaintiff was the sole surviving corporation. Because plaintiff transacts business under the assumed name of Palatine Heart Center, we refer to both names as plaintiff for consistency.

<sup>2</sup> The parties have apparently proceeded on the understanding that the “prior written consent” language applies to the entire paragraph. We will proceed according to their understanding.

No. 1-12-0691

In addition, paragraph 23(p) states:

“After payment of rent in the first three years of the lease, the tenant has the option to terminate the leases for 523 Old Northwest Highway, Barrington, IL 60010, Suite 102A and/or 527 Old Northwest Highway, Barrington, IL 60010, Suite 304 by paying six months rent in advance and vacating the premises. If the remaining term of the lease is less than 6 months, the tenant is only obligated for the payment of the exact number of months remaining.”

¶ 7 The addendum to this lease, executed on October 13, 2006, stated as follows:

“Tenant will be vacating 527 Old Northwest Hwy., Suite 304, on or around November 30, 2006. Tenant has already paid rent for the above-mentioned space until October 31, 2006. \*\*\* *Clause 23-P from original lease will also be removed from the lease with this addendum.* Tenant will add with this addendum, as part of the lease mentioned above, 525 Old Northwest Hwy., Suite 102B (Approximately 926 rentable square feet) as part of their rentable square footage, with the new terms and conditions set below.

In the event of any inconsistency between this rider and the terms of the Lease, the terms of the rider shall prevail.” (Emphasis added.)

Moreover, the payment schedule attached to the addendum provided for rental payments through October 31, 2013. Although not directly at issue on appeal, the parties disputed in the trial court whether the addendum was intended to extend the lease term from July 31, 2011, as stated in the original lease, to October 31, 2013.

¶ 8 According to plaintiff, in a meeting between the parties on May 11, 2010, they agreed that plaintiff would terminate its lease, vacate the premises on August 1, 2010, and continue to pay rent until October 31, 2010. Defendant disputed that the parties entered into such an oral agreement at this meeting. Following the meeting, plaintiff emailed Ann Wolf, defendant's representative, to confirm the alleged oral agreement. On May 12, 2010, however, Wolf responded that per the addendum dated October 2006, paragraph 23(p) had been removed from the lease and therefore, plaintiff could no longer exercise its right to terminate the lease early. Wolf also stated that the addendum had extended the lease to October 31, 2013.

¶ 9 **B. Procedural Background**

¶ 10 Plaintiff filed its original complaint on August 11, 2010. Count I sought a declaratory judgment that the lease's termination date was July 31, 2011, regardless of whether the addendum was valid. Count I also sought a declaration that the addendum was void but developed no argument in support thereof. Count II, as an alternative to Count I, alleged that defendant breached the oral agreement entered into on May 11, 2010, by refusing to honor the terms fo that agreement.

¶ 11 Defendant then filed a motion to dismiss the complaint pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2010)). As to Count I, defendant primarily argued that a valid lease was in place between the parties through October 2013. As to Count II, the motion alleged that paragraph 14(b) of the lease specifically provided that the lease may not be terminated without the prior written consent of defendant's lender. Defendant

argued that because plaintiff did not obtain written consent to terminate the lease on May 11, 2010, the court was required to dismiss Count II. The trial court denied defendant's motion to dismiss as to Count I but granted it as to Count II, finding that paragraph 14(b) was controlling. Defendant then filed an answer to Count I, stating that the addendum extended the lease term to October 31, 2013.

¶ 12 On March 22, 2011, plaintiff filed an amended complaint adding Count III as an alternative to Count I. Count III asked the court to declare that plaintiff retained the right to terminate the lease in accordance with paragraph 23(p), that the addendum was unenforceable, and that the addendum was null and void. Specifically plaintiff alleged that by removing paragraph 23(p) from the lease, the addendum adversely affected, plaintiff's rights to a material extent because the addendum eliminated plaintiff's right to terminate the lease before July 31, 2011. Plaintiff further alleged defendant failed to obtain written consent for this modification from defendant's mortgagee before amending the lease in that regard, an express requirement of paragraph 14(b). Therefore, according to plaintiff, the addendum was unenforceable.

¶ 13 Defendant filed its answer to the amended complaint on April 12, 2011, adding as to Count III, that although the addendum removed plaintiff's right to terminate the lease early pursuant to paragraph 23(p), the addendum did not adversely affect plaintiff's rights to a material extent and, thus, did not require defendant's mortgagee's consent.

¶ 14 On May 3, 2011, plaintiff moved for judgment on the pleadings as to Count III pursuant to section 2-615(e) of the Code. Plaintiff again argued that because defendant failed to

obtain the prior written consent of its mortgagee before modifying the lease to adversely affect the plaintiff's rights to a material extent, as required by paragraph 14(b), the addendum was unenforceable. Furthermore, plaintiff requested the court to declare that plaintiff had the right to terminate the lease in accordance with paragraph 23(p).

¶ 15 In response, defendant argued that a question of fact remained because "adversely affected \*\*\* to any material extent" was ambiguous. Defendant maintained the addendum was a negotiated document that removed plaintiff's right to terminate the lease early as consideration for the benefits conferred on plaintiff. Specifically, the addendum gave plaintiff the added benefits of a contiguous office space, including a "build out" at defendant's expense, but defendant did not increase the rent per square foot rate. Defendant also alleged it extended the lease term to October 31, 2013, thereby expanding defendant's property rights.

¶ 16 On June 17, 2011, the trial court granted plaintiff's motion for judgment on the pleadings as to Count III. The court found that paragraph 14(b) was not ambiguous because it "clearly states that the lease may not be modified or amended if to do so would adversely affect \*\*\* to a material extent, the landlord or the tenant without the prior written consent." The trial court essentially rejected defendant's argument that the overall effect of the addendum did not adversely affect plaintiff to a material extent because plaintiff bargained for and received benefits pursuant to the addendum, which outweighed the removal of the early termination provision.

¶ 17 On July 22, 2011, defendant filed a motion to reconsider, or in the alternative, clarify the court's judgment on Count III. On September 22, 2011, the trial court denied the motion to reconsider but clarified that the addendum was not enforceable, was null and void, and was not legally binding. Plaintiff then filed a motion for judgment on the pleadings as to Count I, the sole remaining count, because the court had already declared the addendum to be unenforceable. Defendant responded by filing a motion to dismiss Count I, arguing that the count had been rendered moot by the previous finding that the addendum was null and void. The trial court subsequently entered an order finding the September judgment rendered Count I moot, thereby resolving all issues before the court. Defendant now appeals.

¶ 18 II. ANALYSIS

¶ 19 On appeal, defendant asserts the trial court erred in granting plaintiff's motion for judgment on the pleadings. Specifically, defendant asserts that the "adversely affect \*\*\* to a material extent" language is ambiguous because while plaintiff understands such language to refer to any single aspect of a modification, this language may also be reasonably interpreted to refer to the aggregate effect of all aspects of the modification. As a result, while plaintiff, considering in isolation the elimination of its right to terminate the lease early, contends that its right was adversely affected to a material extent, defendant, considering the addendum as a whole, alleges that plaintiff was arguably better off as a result of the addendum.

- ¶ 20 Judgment on the pleadings is appropriate where there is no genuine issue of material fact so that the movant is entitled to judgment as a matter of law. *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 455 (2010). In resolving such a motion, courts must consider all well-pleaded facts set forth in the pleadings of the nonmoving party, as well as fair inferences drawn therefrom, as having been admitted. *State Building Venture v. O'Donnell*, 239 Ill. 2d 151, 158 (2010). We review the trial court's order granting judgment on the pleadings *de novo*. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217 (2010). Similarly, this court reviews interpretation of a lease *de novo*. *Sears, Robuck and Co. v. Charwil Associates Ltd. Partnership*, 371 Ill. App. 3d 1071, 1076 (2007).
- ¶ 21 The rules governing contract interpretation apply equally to the interpretation of a lease. *Id.* The primary objective is to give effect to the parties' intention. *Gallagher v. Lenart*, 226 Ill. 2d 208, 232 (2007). In addition, courts must construe a contract as a whole, considering each provision in light of the contract's other provisions, rather than considering a provision in isolation. *Thompson v. Gordon*, 214 Ill. 2d 428, 441 (2011). If the contract's language is clear and unambiguous, it must be given its plain meaning. *Id.* Furthermore, while a contract is not ambiguous solely because the parties dispute the meaning of a provision (*Lease Management Equipment Corp. v. DFO Partnership*, 392 Ill. App. 3d 678, 686 (2009)), a contract is ambiguous where susceptible to more than one meaning (*Gallagher*, 226 Ill. 2d at 233). Where a contract's language is ambiguous, the court can consider extrinsic evidence to decipher the parties' intent. *Thompson*, 214 Ill. 2d at 441. Furthermore, where a lease is subject to two constructions, one of which is fair



and would naturally be executed by prudent men, while the other makes it inequitable or not likely to be entered into by reasonable men, the construction which leads to a rational and probable agreement is preferable. *Sears, Robuck and Co.*, 371 Ill. App. 3d at 1076.

¶ 22 Here, we agree that a genuine issue of material fact exists, precluding judgment on the pleadings. The disputed language in the original lease provided that it could not "be modified or amended \*\*\* so as to adversely affect in any other respect to any material extent the rights of \*\*\* Tenant." Defendant correctly argues that such language could reasonably be interpreted to require a determination of whether the modification adversely affected to a material extent plaintiff's rights as a whole. Specifically, while the removal of plaintiff's early termination right was adverse, the word "material" implicates an examination of the significance this adverse effect relative to plaintiff's other rights. In addition, this language refers to the effect on the tenant's "rights," not an individual "right."

¶ 23 We reject plaintiff's assertion that defendant took an inconsistent position in its motion to dismiss Count II by arguing that the contract unambiguously required consent from defendant's mortgagee before entering into an alleged oral agreement to terminate the lease early. Defendant's position in that regard relied on paragraph 14(b)'s language stating that the lease could not be "canceled or surrendered" without the mortgagee's prior consent, not the language presently at issue. In addition, plaintiff argues that where uncertainty or doubt exists regarding the meaning of a lease's language, such language should be construed against the lessor and in favor of the lessee. *Sears, Robuck and Co.*,

No. 1-12-0691

371 Ill. App. 3d at 1076. Nonetheless, at this stage, we find it more appropriate to remand for further proceedings, pursuant to which any doubts may be resolved.

¶ 24 Finally, we note that defendant asserts for the first time in its reply brief that the trial court also erred in granting plaintiff judgment on the pleadings because the court assumed that it was defendant's burden to contact its mortgagee, whereas the contract did not specify which party was responsible for doing so. Defendant has waived this contention, however, by failing to include it in the appellant's brief. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 25 In conclusion, we reverse the trial court's order granting judgment on the pleadings as to Count III and remand for further proceedings. In light of the trial court's determination that the order rendered Count I moot, we also reverse the judgment in that respect.

¶ 26 For the foregoing reasons, we reverse and remand for further proceedings.

¶ 27 Reversed and remanded.