2012 IL App (2d) 110387-U
No. 2-11-0387
Order filed February 10, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SOCIETY INSURANCE CO., as subrogee of Lewis Produce Market, Inc.,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellant,	)	
v.	)	10-L-0740
WAUKEGAN ROOFING COMPANY, INC.,	)	Honorable Margaret J. Mullen,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Bowman concurred in the judgment.

ORDER

Held: The plain and unambiguous contractual language reflected that defendant and Lewis Fresh Market, Inc., intended the contractual term "work site" to not be restricted to the specific portion of the building where defendant performed its roofing work, *i.e.*, the roof. Therefore, we affirmed the trial court's grant of summary judgment in favor of defendant pursuant to a valid subrogation waiver provision.

¶ 1 In 2009, defendant, Waukegan Roofing Company, Inc., contracted with Lewis Produce Market, Inc., (Lewis) to remove an existing roof and install a new sloped roof on a Lewis Fresh Market store (the building) in Waukegan. During the course of the project, a fire caused damage to Lewis's store, inventory, and ongoing business operations. Lewis submitted an insurance claim to

plaintiff, Society Insurance Company, Inc., which reimbursed Lewis for the damages caused by the fire. Thereafter, plaintiff, as subrogee of Lewis, brought the current action alleging that the fire damages resulted from defendant's negligence. The trial court granted summary judgment in defendant's favor pursuant to section 2-1005 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1005 (West 2010)) after concluding that defendant's contract with Lewis contained a valid subrogation waiver provision. Contending that the trial court erred by granting summary judgment in defendant's favor, plaintiff now appeals. We affirm.

¶ 2 I. Background

¶ 3 The relevant facts for the purposes of this appeal are not in dispute. On August 26, 2009, defendant entered into a contract with Lewis for the tear off and removal of the existing roofing system for Lewis Fresh Market store and the installation of a new sloped roof. The contract contained a provision titled "Scope of work for the tear-off and removal of the existing roofing system." This provision recommended that, for the safety and protection of valuable inventory stored on shelves or on wall hangings, Lewis should remove and store those items until the project was completed. The scope-of-services provision also provided that defendant would use protective tarps and plywood to protect the exterior of the building, including the existing pavement, lawn, plants, and shrubs around the "outside of the project." The provision expressly provided that, "[d]ue to the extreme nature of this type of roofing project, damage to the building and property can occur." The scope-of-work provision further provided that accumulated dust and dirt in the existing ceiling and attic space were expected to become loose and fall into the interior of the building, and that cleanup would be Lewis's sole responsibility.

¶ 4 In addition, subdivision (D) of the contract's insurance paragraph, titled "Property Damage

Insurance on the work site" provided:

> "[Lewis] agrees to maintain at [its] own expense during the entire course of this roofing project property damage insurance on the work site to its full insurable value including interests of [Lewis], contractor, and subcontractors against fire, vandalism and other perils ordinarily included in extended coverage, losses under such insurance will be adjusted with and made payable to the [Lewis] as trustee for the parties insured as their interests appear."

Subdivision (E) of the contract's insurance paragraph, titled "Waiver of work site property damage claims to extent of insurance coverage," provided:

> "[Lewis] and [defendant] hereby waive all claims against each other for fire damages from other perils covered by insurance provided in subdivision (D) of this paragraph."

Defendant completed the roofing project in September 2009.

¶ 5 On September 16, 2009, the building suffered fire damage. On August 11, 2010, after reimbursing Lewis for the damages caused by the fire, plaintiff filed its complaint against defendant as subrogee of Lewis. Plaintiff's complaint alleged that, during the course of its work, defendant failed to take adequate precautions while lifting an HVAC unit approximately 9 to 12 inches in the air with a hydraulic jack. According to plaintiff, defendant's failure to take adequate precautions while lifting the HVAC unit damaged the gas line assembly leading to the unit, allowing gas to escape and ignite. As a result, a fire erupted in the building and caused damages in excess of $310,000. Plaintiff alleged that the fire and resulting damages were a direct and proximate cause of defendant's negligence.

¶ 6 On January 28, 2011, defendant moved for summary judgment. Defendant argued that its contract with Lewis contained a valid and enforceable subrogation waiver provision, demonstrating

that Lewis and defendant intended to bar Lewis from recovering for damages resulting from fire covered by insurance on the work site. Defendant further argued that plaintiff's negligence claim fell within the scope of the subrogation waiver provision because that provision expressly applied to property damage caused by fire at the work site. Specifically, because the complaint alleged that the fire resulted from defendant negligently lifting an HVAC unit on the roof and Lewis's damages were covered by insurance, "[t]he loss alleged is precisely the type of peril contemplated by the subrogation waiver clause."

¶ 7 Responding to defendant's motion, plaintiff maintained that the subrogation waiver provision was limited to the "work site," a term not defined by the contract. Plaintiff argued that the subrogation waiver provision was intended to be limited to the exterior roof area where the roofing work was being performed because (1) a reasonable interpretation of "work site" in the contract was limited to the exterior roof of the building; and (2) not limiting the definition of "work site" to the exterior roof would render other contractual provisions meaningless because "work site" was intended to have a narrower meaning than "job site," which was also used in the contract.

¶ 8 On April 5, 2011, the trial court granted defendant's motion for summary judgment. In its written order, the trial court found that "the term 'work site' contained in the subject subrogation waiver clause at issue is unambiguous and means the entire structure comprising the [building where defendant performed the roofing work.]." Plaintiff timely appealed.

¶ 9 II. Analysis

¶ 10 Plaintiff contends that the trial court erred when it granted defendant's motion for summary judgment. The gravamen of this issue is whether the contractual term "work site" means the entire building where defendant performed its work or is limited to the portion of the building where

defendant performed its roofing work, *i.e.*, the building's roof. Plaintiff argues that the term "work site" in the contract's insurance provisions is not defined, and therefore, is ambiguous. As a result, according to plaintiff, the contractual term "work site" should be construed against defendant—who drafted the contract—and be limited to the location of where the roofing work was performed and not the entire building.

¶ 11 "The purpose of summary judgment is to determine whether a genuine issue of material fact exists, not to try a question of fact." *Thompson v. Gordon*, 241 Ill. 2d 428, 438 (2011). Summary judgment is proper if, and only if, the pleadings, depositions, admissions, affidavits and other relevant matters on file show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Chubb Insurance Co. v. DeChambre*, 349 Ill. App. 3d 56, 59 (2004) (citing *Prowell v. Loretto Hospital*, 339 Ill. App. 3d 817, 822 (2003)). In determining whether a genuine issue of material fact exists, we must construe the pleadings, affidavits, and admissions strictly against the movant and liberally in favor of the nonmoving party. *Chubb Insurance Co.*, 349 Ill. App. 3d at 59. This court reviews *de novo* a trial court's ruling on motions for summary judgment. *Id.* (citing *Travelers Insurance Co. v. Eljer Manufacturing, Inc.*, 197 Ill. 2d 278 (2001)).

¶ 12 As our supreme court recently noted, the basic rules of contract interpretation are well settled. *Thompson*, 241 Ill. 2d at 441. Our primary objective is to give effect to the parties' intent. *Gallagher v. Lenart*, 226 Ill. 2d 208, 232 (2007). The best indication of the parties' intent is the contract's language, giving the words used their plain and ordinary meaning. *Id.* at 233. A contract must be construed as a whole, viewing each contractual provision in light of the other provisions; and therefore, the parties' intent cannot be determined by viewing a specific provision in isolation

or by looking at detached portions of the contract. *Thompson*, 241 Ill. 2d at 441. If the language of a contract is unambiguous, then the court must derive the parties' intent from the writing itself, without resort to matters extrinsic to the contract; and further, if the words in a contract are clear and unambiguous, they must be given their plain, ordinary, and popular meaning. *Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141, 153 (2004). If, however, the contractual language is susceptible to more than one meaning, the language is ambiguous and a court can consider extrinsic evidence to determine the parties' intent. *Gallagher*, 226 Ill. 2d at 233.

¶ 13 Here, after construing the contract in its entirety, the plain and ordinary contractual language reflects that Lewis and defendant intended the contractual phrase "work site" to encompass more than just the roof of the building. Although defendant's contractual obligations were limited to removing the existing roofing system and installing a new sloped roof, the parties clearly contemplated that defendant's work would likely impact parts of the building beyond the roof, including the building's interior. For example, the contract's scope-of-work provision expressly recommended that Lewis cover, remove, or store any valuable inventory items stored on shelves or wall hangings during the course of the project. The scope-of-work provision further provided that defendant would take measures to protect and maintain the exterior of the building and areas outside of the building, including the existing pavement, lawn, plants, and shrubbery because damage might result due to the nature of the work. Finally, the scope-of-services provision expressly noted that accumulated dust and dirt would become loose and fall into the building and onto the floor. These contractual provisions demonstrate that Lewis and defendant recognized that areas of the building other than where defendant performed its roofing project were likely to be affected during the course of the project, including inventory stored inside the building and the area surrounding the building.

As a result, in construing the "[p]roperty damage insurance on work site provision" and the subrogation waiver provisions in light of the whole contract, the reasonable and natural interpretation of "work site" is that the term was not restricted to the building's roof or exterior. See *Chicago Hospital Risk Pooling Program v. Illinois State Medical Inter-Insurance Exchange*, 397 Ill. App. 3d 512, 531 (2010) (noting that a contract should be construed as a whole and such construction should be reasonable and natural).

¶ 14 Moreover, the contract's scope-of-work provision expressly used the phrase "roof top" when specifying where materials and accessories to be used during the project would be stored. The plain and ordinary meaning of the word "roof" is "(1) : the cover of a building (2) : material used for a roof." *Webster's Ninth New Collegiate Dictionary* 1023 (1990). We must presume Lewis and defendant purposefully chose the words of the contract, and to interpret the phrase "work site" to mean "roof top" would render the contractual term "work site" meaningless. See *Thompson*, 241 Ill. 2d at 442 (holding that a court will not interpret a contract in a manner that would nullify or render provisions meaningless). Thus, if Lewis and defendant intended for the contract's property damage insurance and subrogation waiver provisions to apply only to damages to the roof, they could have used the phrase "roof top" in those provisions. See *id.* (noting that there is a strong presumption against phrases that could have easily been added to a contract but were not).

¶ 15 Finally, we reject plaintiff's argument that the term "work site" is superfluous because the contract also contains the term "job site." The commonly understood meaning of "job" is "that is for hire for a given service or period," "used in, engaged in, or done as job work," or "of or relating to a job or to employment." *Webster's Ninth New Collegiate Dictionary* 650 (1990). Similarly, the commonly understood meaning of "work" is "[p]hysical and mental exertion to attain an end,

[especially] as controlled by and for the benefit of an employer; labor." Black Law's Dictionary 1635 (8th ed. 2004). That the commonly understood meaning of "job" and "work" both include work being performed in an employment-related context strongly suggests that Lewis and defendant intended for the contractual phrases "work site" and "job site" to by synonymous and used interchangeably. See *Lease Management Equipment Corp. v. DFO Partnership*, 392 Ill. App. 3d 678, 687 (2009) (holding that two contractual terms are synonymous, and therefore, unambiguous).

¶ 16 In sum, after construing the contract in its entirety, the plain and unambiguous language reflects that Lewis and defendant intended the term "work site" in the property-damage-insurance provision to include more than just the roof or the exterior of the building. As a result, the contract's subrogation waiver provision extended beyond the building's roof, and therefore, the trial court properly granted summary judgment in defendant's favor pursuant to a valid subrogation waiver provision. See *Hartford v. Burns International Security Services, Inc.*, 172 Ill. App. 3d 184, 191 (1988) (recognizing that when an injured party executes a release to the tortfeasor of any and all claims that he may have because of an accident, there is a bar to any action against the tortfeasor by the injured party or his subrogee).

¶ 17 III. Conclusion

¶ 18 For the foregoing reasons, we affirm the judgment of the circuit court of Lake County.

¶ 19 Affirmed.