

COURT OF APPEALS OF MARYLAND

Diamond Point Plaza Ltd. Partnership v. Wells Fargo Bank, N.A.,
400 Md. 718

929 A.2d 932 (2007) · No. Nos. 126, 128, Sept. Term, 2006 · Decided August 23, 2007

SUMMARY

The Maryland Court of Appeals considered consolidated appeals arising from a mortgage default involving a shopping center, lease restrictions, diverted rents, and alleged misrepresentations concerning a major tenant's planned departure. The court affirmed the judgments against the Diamond Point and Konover defendants, vacated part of the judgment involving the Wal-Mart defendants concerning a lease radius restriction, and remanded for reconsideration of attorneys' fees. The opinion was issued after reconsideration and replaced an earlier opinion filed July 26, 2007.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Wilner, J.; Bell, C.J.; Raker, J.; Cathell, J.; Harrell, J.; Battaglia, J.; Greene, J.; Alan M. Wilner, J., retired, specially assigned
JURISDICTION	Maryland
DECIDED	August 23, 2007
DOCKET	Nos. 126, 128, Sept. Term, 2006
DISPOSITION	remanded
PROCEDURAL POSTURE	Cross-petitions for certiorari following the Court of Special Appeals' affirmance of judgments against the Konover defendants, vacation of the judgment concerning the Golden Ring Mall radius restriction, and remand for further proceedings concerning that restriction and attorneys' fees.
STANDARD OF REVIEW	Contract interpretation and determination of contractual ambiguity are reviewed de novo. Factual findings following a nonjury trial are reviewed for clear error. The sufficiency of evidence supporting contractual attorneys' fees is reviewed under the applicable burden of proof.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Diamond Point Plaza Limited Partnership and related Konover defendants, Wal-Mart Stores, Inc. and Sam's PW, Inc. v. Wells Fargo Bank, N.A.

TOPICS

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QUESTIONS PRESENTED

1. Whether the Konover defendants were personally liable under the non-recourse loan's carve-out for fraud or intentional misrepresentation in failing to disclose Sam's Club's planned departure.
2. Whether the false borrower certifications proximately caused Wells Fargo's losses.
3. Whether the transfer of \$633,000 in rents after default violated the mortgage and assignment of rents and triggered personal liability.
4. Whether the Sam's Club lease radius restriction was ambiguous and prohibited the Golden Ring Mall store when the Diamond Point store and Golden Ring store were not simultaneously operating.
5. Whether Wells Fargo was entitled to reconsideration of its claim for attorneys' fees without a line-by-line allocation of fees among claims and defendants.

HOLDINGS

1. The Konover defendants were personally liable under the non-recourse loan's carve-out because Diamond Point knowingly and fraudulently represented that it had no knowledge of any tenant's intention to vacate, despite knowing of Sam's Club's planned departure.
2. The evidence was sufficient to establish that Diamond Point's fraudulent certifications proximately caused Wells Fargo's losses.
3. The transfer of \$633,000 after the loan default constituted a misapplication or conversion of rents and independently triggered personal liability under the mortgage's recourse carve-out.
4. The radius restriction was unambiguous and prohibited Sam's Club from operating a similar store within seven miles only while a similar store was then being conducted at the leased Diamond Point premises. Because the Diamond Point store closed before the Golden Ring store opened, the Golden Ring store did not violate the restriction.
5. A precise line-by-line allocation of attorneys' fees is not an absolute prerequisite to recovery when such allocation is impracticable, although the claimant must still prove entitlement and the reasonable amount of fees by a preponderance of the evidence.

KEY QUOTATIONS

“A contract is ambiguous if, when read by a reasonably prudent person, it is susceptible of more than one meaning.” (929 A.2d at 952)

“Because such a precise delineation may not always be practicable, however, we do not regard it as a sine qua non of the right to recover, for to conclude otherwise would, in many cases, deny all recovery where some recovery is clearly warranted.” (929 A.2d at 957-58)

FACTUAL BACKGROUND

Diamond Point owned a Baltimore County shopping center financed by a non-recourse mortgage loan later assigned to Wells Fargo. Before the loan closed, Diamond Point knew that Sam's Club intended to vacate its principal store but certified that it had no knowledge of any tenant's intention to vacate; the store later relocated, substantially reducing the property's value. After Diamond Point defaulted, it transferred \$633,000 in collected rents to an affiliated entity or Michael Konover, despite an assignment of rents and a contractual provision making post-default misapplication of rents a recourse obligation. Sam's Club also opened a replacement store within seven miles of the shopping center one day after closing the original store, raising the interpretation of a lease radius restriction.

PROCEDURAL HISTORY

After a nonjury trial and partial summary judgment in favor of the Wal-Mart defendants, the Circuit Court for Baltimore County entered judgments against the Konover defendants for mortgage-loan losses and diverted rents and against the Wal-Mart defendants for lease violations. The Court of Special Appeals affirmed the judgments against the Konover defendants but held the radius restriction ambiguous, vacated the related judgment against the Wal-Mart defendants, and remanded, including for attorneys' fees. The Court of Appeals granted cross-petitions, affirmed the substantive judgments against the Konover defendants, reinstated the Golden Ring partial summary judgment for Wal-Mart, and remanded only the attorneys' fee issue.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The judgment of the Court of Special Appeals was vacated. That court was instructed to remand to the Circuit Court for Baltimore County for further proceedings concerning Wells Fargo's attorneys' fees in accordance with the opinion, while otherwise affirming the Circuit Court's judgments. Costs were assessed one-quarter against Wells Fargo, one-quarter against the Wal-Mart defendants jointly and severally, and one-half against the Konover defendants jointly and severally.

CASES CITED

- Wells Fargo v. Diamond Point, 171 Md. App. 70, 908 A.2d 684 (2006)
- Sempione v. Provident Bank of Maryland, 75 F.3d 951, 962-63 (4th Cir. 1996)
- Superior Bank, F.S.B. v. Tandem National Mortgage, Inc., 197 F. Supp. 2d 298 (D. Md. 2000)

- Ernst & Young v. Pacific Mutual Life Insurance Co., 51 S.W.3d 573 (Tex. 2001)
- Reisman v. KPMG Peat Marwick, 57 Mass. App. Ct. 100, 787 N.E.2d 1060 (2003)
- Walpert v. Katz, 361 Md. 645, 762 A.2d 582 (2000)
- United Services v. Riley, 393 Md. 55, 899 A.2d 819 (2006)
- Calomiris v. Woods, 353 Md. 425, 727 A.2d 358 (1999)
- Cochran v. Norkunas, 398 Md. 1, 919 A.2d 700 (2007)
- Sagner v. Glenangus Farms, 234 Md. 156, 198 A.2d 277 (1964)
- Bankers & Ship. Ins. v. Electro Enter., 287 Md. 641, 415 A.2d 278 (1980)
- American Weekly, Inc. v. Patterson, 179 Md. 109, 16 A.2d 912 (1940)
- Tawney v. Mutual System of Maryland, 186 Md. 508, 47 A.2d 372 (1946)
- Snyder's Drug Stores v. Sheehy Properties, Inc., 266 N.W.2d 882 (Minn. 1978)
- Huddleston v. Mariotti, 143 W. Va. 419, 102 S.E.2d 527 (1958)
- Winrock Enterprises, Inc. v. House of Fabrics of New Mexico, Inc., 91 N.M. 661, 579 P.2d 787 (N.M. 1978)

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