

SUPREME COURT OF DELAWARE

Rehoboth Mall Ltd. Partnership v. NPC International, Inc.

953 A.2d 702 (Del. 2008) · Decided July 2, 2008

SUMMARY

The Delaware Supreme Court held that a landlord waived a tenant’s prior lease defaults by accepting the tenant’s first renewal and rent payments without objection. A no-waiver provision operated prospectively and did not permit the landlord to rely on those previously waived defaults to deny a subsequent renewal option.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Berger, Justice; Berger; Holland; Steele
JURISDICTION	Delaware
DECIDED	July 2, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from summary judgment entered for the tenant on cross motions for summary judgment in a declaratory judgment action concerning the tenant's right to exercise a second lease-renewal option.
STANDARD OF REVIEW	De novo review of the parties' contractual rights and interpretation of the lease.
PRECEDENTIAL VALUE	Published Delaware Supreme Court opinion; precedential
PARTIES	Rehoboth Mall Limited Partnership v. NPC International, Inc.

TOPICS

- landlord tenant
- commercial
- contract interpretation
- waiver of breach
- contracts

PRACTICE AREAS

- commercial real estate
- landlord-tenant law
- contract law

QUESTIONS PRESENTED

- Whether the first renewal period constituted a new lease or an extension of the original lease.

2. Whether the lease's no-waiver provision permitted RMLP to rely on defaults that occurred during the original term after RMLP had accepted the first renewal and allowed NPC to remain in possession without objection.
3. Whether RMLP's conduct constituted a waiver of the lease's no-default requirement as a matter of law.

HOLDINGS

1. The renewal provision extended the original lease rather than creating a new lease because it continued the original lease's rights and obligations, modified only the rental price, and operated automatically without execution of a new lease.
2. A no-waiver provision stating that a failure to insist on strict performance shall not constitute a waiver for the future operates prospectively and does not permit a landlord to revive or enforce past defaults that it waived.
3. RMLP's acceptance of NPC's first renewal, acceptance of rent, and allowance of NPC's continued possession for five years without objection constituted a waiver of the no-default requirement as a matter of law.

KEY QUOTATIONS

“Delaware courts do not give any particular significance to the use of the words “renew” or “extend” in deciding whether a new lease has been created.” (at 704)

“Generally, no waiver provisions “give a contracting party some assurance that its failure to require the other party’s strict adherence to a contract term ... will not result in a complete and unintended loss of its contract rights if it later decides that strict performance is desirable.”” (at 704-705)

“But the no waiver provision, by its terms, operates prospectively: “[f]ailure of the Landlord to insist upon the strict performance ... shall not be construed as a waiver for the future of any such provision, rule or option....”” (at 705)

“We are satisfied that RMLP’s conduct over this extended period of time constitutes a waiver of the no default requirement, as a matter of law.” (at 705)

FACTUAL BACKGROUND

NPC's predecessor entered into a ground lease granting seven successive five-year renewal options, and NPC later acquired the tenant's interest. NPC made four late rent payments in 1998 and was involved in a propane leak in 2000, both of which constituted defaults under the lease. RMLP accepted NPC's exercise of the first renewal option and accepted rent while NPC remained in possession during the entire first renewal term without objection; NPC committed no defaults during that period. RMLP then refused NPC's exercise of a second renewal option based in part on the earlier defaults.

PROCEDURAL HISTORY

NPC filed a declaratory judgment action seeking a determination of its rights under the ground lease after RMLP refused to permit a second renewal based on defaults during the original lease term. The Superior Court ruled for

NPC on cross motions for summary judgment, concluding that the first renewal constituted a new lease and that RMLP could not rely on the earlier defaults. The Supreme Court of Delaware affirmed, although it rejected the trial court's reasoning that the renewal created a new lease.

DISPOSITION

affirmed

CASES CITED

- Klair v. Reese, 531 A.2d 219 (Del. 1987)
- Seaford Associates Ltd. Partnership v. Subway Real Estate Corp., 2003 WL 21254847 (Del. Ch.)
- H.H. Rosin Co. v. Chavin, 257 A.2d 228, 230 (Del. 1969)
- Ardito v. Howell, 51 A.2d 859, 861 (Del. Ch. 1947)
- Demetree v. Commonwealth Trust Co., 1996 WL 494910 (Del. Ch.)
- Viking Pump, Inc. v. Liberty Mutual Insurance Co., 2007 WL 2752912, at *26 (Del. Ch.)
- AeroGlobal Capital Management, LLC v. Cirrus Industries, Inc., 871 A.2d 428, 444 (Del. 2005)
- Carr-Gottstein Foods Co. v. Wasilla, LLC, 182 P.3d 1131 (Alaska 2008)
- Lott v. Douglas Oil Purchasing Co., 501 So. 2d 1195 (Ala. 1986)
- Entrepreneur Ltd. v. Yasuna, 498 A.2d 1151 (D.C. Ct. App. 1985)