

SUPREME COURT OF VERMONT

B & C Management Vermont, Inc. v. John

199 Vt. 202 (2015) · Decided April 10, 2015

SUMMARY

The Vermont Supreme Court considered a dispute over the interpretation of a commercial lease’s cost-of-living rent-adjustment provision. The court held that the provision was ambiguous when read as a whole and that the parties’ course of performance was relevant to determining their intent. The court affirmed summary judgment for the landlords and upheld the rent-calculation method used by the parties during the lease term.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Skoglund, J.; Dooley; Eaton; Reiber; Robinson; Skoglund
JURISDICTION	Vermont
DECIDED	April 10, 2015
DISPOSITION	affirmed
PROCEDURAL POSTURE	Tenant appealed an order granting summary judgment to the defendant landlords in a dispute over the interpretation and application of a commercial lease's rent-increase provision.
STANDARD OF REVIEW	Summary judgment and contract interpretation are reviewed de novo. Summary judgment is appropriate when no material facts are disputed and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	B & C Management Vermont, Inc. v. John

TOPICS

- contract interpretation
- landlord tenant
- summary judgment
- standard of review
- appellate procedure

PRACTICE AREAS

- contract law
- commercial leasing
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the lease's rent-increase provision was ambiguous when read as a whole and in light of the surrounding circumstances.
2. Whether the court properly considered the parties' subsequent performance under the lease as extrinsic evidence of their intent to interpret the ambiguous rent-increase provision.
3. Whether summary judgment for the landlords was proper under the interpretation based on the parties' prior method of calculating rent increases.
4. Whether the landlords could seek a different, higher rent calculation on appeal without filing a cross-appeal.

HOLDINGS

1. The rent-increase provision was ambiguous because its provisions were inconsistent about whether annual increases were calculated from the basic rent or the previous year's rent, and because the lease did not clearly identify what variable was subject to the four-percent cap.
2. Once the lease provision was found ambiguous, the court properly considered the parties' performance under the contract, including their mutual acquiescence in the prior rent-calculation method, as evidence of their intent.
3. The landlords could not seek to alter the trial court's order to obtain their proposed higher rent calculation because they did not file a cross-appeal.

KEY QUOTATIONS

“Paragraph E cannot be excised from the rest of the contractual language on the calculation of the rent increase because the contract “must be viewed in its entirety.”” (at 208)

“The lease language contains inconsistencies about how the yearly increase should be computed ■ — ■ from the basic rent or the previous year’s rent — and it is unclear how to apply the 4% cap.” (at 208)

“That evidence shows that both sides acquiesced for many years in calculating the rental increase using the increased basic rent.” (at 209)

FACTUAL BACKGROUND

The parties were bound by a thirty-year commercial lease executed in 1987 that established a \$26,500 annual basic rent and provided for cost-of-living increases based on the Consumer Price Index, subject to a four-percent annual cap. After tenant assumed the lease in 2007, the landlords calculated rent increases by applying the annual CPI percentage change to the prior year's rent, and tenant paid the resulting rent from 2008 through 2012 without objection. In 2013, tenant challenged the landlords' calculation of the annual rent increase and sought a lower rent based on a different interpretation of the lease.

PROCEDURAL HISTORY

Tenant, the successor lessee, sued for a declaration that its interpretation of the lease was correct and for damages based on alleged overpaid rent. Both sides moved for summary judgment. The trial court found the rent-increase provision highly ambiguous, considered the parties' performance under the lease, adopted the

calculation method used by the parties in prior years, and granted summary judgment to the landlords. The Supreme Court of Vermont affirmed.

DISPOSITION

affirmed

CASES CITED

- Handverger v. City of Winooski, 2011 VT 134, ¶ 7, 191 Vt. 84, 38 A.3d 1158
- Dep't of Corr. v. Matrix Health Sys., P.C., 2008 VT 32, ¶ 11, 183 Vt. 348, 950 A.2d 1201
- R&G Props., Inc. v. Column Fin., Inc., 2008 VT 113, ¶ 17, 184 Vt. 494, 968 A.2d 286
- Cate v. City of Burlington, 2013 VT 64, ¶ 15, 194 Vt. 265, 79 A.3d 854
- Isbrandtsen v. N. Branch Corp., 150 Vt. 575, 579-80, 556 A.2d 81, 84-85 (1988)
- In re Estate of Price, 2006 VT 62, ¶ 10, 180 Vt. 548, 904 A.2d 1196 (mem.)
- Bissonnette v. Wylie, 166 Vt. 364, 371-72, 693 A.2d 1050, 1055 (1997)
- Howard v. Maple Leaf Farm Assocs., 151 Vt. 555, 557, 563 A.2d 996, 997 (1989)
- Huddleston v. Univ. of Vt., 168 Vt. 249, 255, 719 A.2d 415, 419 (1998)