DISTRICT OF COLUMBIA COURT OF APPEALS

Sanders v. Molla

985 A.2d 439 (D.C. 2009) · No. No. 08-CV-522 · Decided December 24, 2009

SUMMARY

The District of Columbia Court of Appeals held that an ambiguous lease-renewal provision could reasonably be interpreted to require the landlord and tenant to agree to renewal, and it affirmed the trial court's ruling based on extrinsic evidence. The court dismissed the tenant's challenge to Rule 11 sanctions for lack of jurisdiction because the sanctions order was nonfinal, while noting that the trial court had imposed the sanctions without the required prior show-cause order.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Newman, Senior Judge; Kern, Senior Judge; Farrell, Senior Judge
JURISDICTION	District of Columbia
DECIDED	December 24, 2009
DOCKET	No. 08-CV-522
DISPOSITION	other
PROCEDURAL POSTURE	Tenant appealed a trial court ruling interpreting a lease-renewal provision and imposing Rule 11 monetary sanctions without a prior show-cause order.
STANDARD OF REVIEW	The court reviewed the existence of contractual ambiguity de novo. After extrinsic evidence created a factual dispute concerning the parties' intent, it reviewed the trial court's contract interpretation for clear error. The nonfinal sanctions order was reviewed for appellate jurisdiction.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Donna Sanders v. Berhanu Molla

TOPICS

contract interpretation · landlord tenant · sanctions · appellate jurisdiction · appellate procedure

PRACTICE AREAS

contracts · real estate · civil procedure · appellate procedure · remedies

QUESTIONS PRESENTED

1. Whether the lease provision stating that the landlord and tenant had the option to renew was ambiguous and, if so, whether the trial court properly interpreted it as requiring both parties' consent.
2. Whether the Court of Appeals had jurisdiction to review the trial court's Rule 11 sanctions order awarding the cost of the plaintiff's expert before the amount of the award was determined.
3. Whether the trial court erred by imposing Rule 11 monetary sanctions without first issuing a show-cause order.

HOLDINGS

1. The lease-renewal provision was ambiguous because the conjunctive term "and" conflicted with the term "option," which ordinarily suggests a right exercisable by one or either party. After extrinsic evidence was considered, the trial court did not clearly err in interpreting the provision as requiring both parties' consent to renewal.
2. The court lacked jurisdiction to review the sanctions order because an order entitling a party to Rule 11 costs and attorney's fees in an amount yet to be determined is nonfinal and not otherwise appealable by statute.
3. The trial court erred by imposing a sua sponte monetary Rule 11 sanction without first issuing a show-cause order, and the error was not harmless.

KEY QUOTATIONS

> *“Because of this tension between "and" and "option," and especially in light of the possible disjunctive sense of "and," the plain language bears more than one reasonable interpretation, and extrinsic evidence was properly admitted.”* (442)

> *“However, "an order entitling a party to a Rule 11 award of costs and attorney's fees in an amount yet to be determined is a nonfinal order ... that is not otherwise appealable by statute."”* (443)

FACTUAL BACKGROUND

Molla purchased a building at foreclosure and later notified tenant Donna Sanders that he would not renew her lease, would increase her monthly rent from $450 to $1,650, and would shift utility costs to her. Sanders invoked a lease provision stating that the landlord and tenant would have the option to renew for a second five-year term with a 10 percent annual increase, but did not pay the increased rent. The trial court interpreted the ambiguous provision, based principally on testimony concerning the original landlord's refusal to grant a twelve-year lease, as requiring both parties' consent to renewal.

PROCEDURAL HISTORY

Molla sued Sanders for possession based on nonpayment after Sanders refused to pay a substantial rent increase and asserted a contractual right to renew the lease. Both parties moved for summary judgment. The trial court found the renewal provision ambiguous, considered extrinsic evidence, ruled that Molla's consent was required for renewal, and later imposed Rule 11 sanctions against Sanders's counsel. The Court of Appeals affirmed the lease interpretation, dismissed the sanctions challenge for lack of jurisdiction because the sanctions order was nonfinal, and noted that the sanctions procedure was erroneous.

DISPOSITION

other

REMAND INSTRUCTIONS

No express remand was ordered. The sanctions issue was dismissed for lack of jurisdiction; the court stated that any further Rule 11 proceedings should comply with the required show-cause procedure.

CASES CITED

- Capital City Mortgage v. Habana Vill. Art & Folklore, 747 A.2d 564, 567-68 (D.C. 2000)
- Sisters of Good Shepherd v. District of Columbia, 746 A.2d 310, 313 (D.C. 2000)
- May v. Continental Cas. Co., 936 A.2d 747, 751 (D.C. 2007)
- Delacruz v. Harris, 780 A.2d 262, 265 n. 5 (D.C. 2001)
- Francis v. Recycling Solutions, 695 A.2d 63, 80 (D.C. 1997)
- Camalier & Buckley v. Sandoz & Lamberton, 667 A.2d 822, 833 (D.C. 1995)
- Lenkin ex rel. 14th & Eye Sts. Assocs. v. Beckman, 575 A.2d 273, 274 (D.C. 1990)
- Funger v. Maizels, 377 A.2d 70, 72 (D.C. 1977)
- Carter v. Cathedral Ave. Co-op., 658 A.2d 1047, 1048 n. 1 (D.C. 1995)
- Chang v. Louis & Alexander, 645 A.2d 1110, 1112 (D.C. 1994)
- Business Guides, Inc. v. Chromatic Communications Enters., Inc., 498 U.S. 533, 111 S. Ct. 922, 112 L. Ed. 2d 1140 (1991)
- Weaver v. Grafio, 595 A.2d 983 (D.C. 1991)

OPINION

NEWMAN, J.

985 A.2d 439 (2009) Donna SANDERS, Appellant, v. Berhanu MOLLA, Appellee. No. 08-CV-522. District of Columbia Court of Appeals. Submitted November 24, 2009. Decided December 24, 2009. *441 Hughie D. Hunt, was on the brief, for appellant. Timothy P. Cole, was on the brief, for appellee.

Before NEWMAN, KERN, and FARRELL, Senior Judges. NEWMAN, Senior Judge: Tenant Donna Sanders appeals the trial court's ruling that both parties' consent was required to renew a real-property lease and its imposition of Rule 11 sanctions on her without a prior show-cause order.

We affirm the court's ruling on the renewal issue based on its reasonable interpretation of an ambiguous provision to which the parties agreed. We lack jurisdiction to rule on the trial court's erroneous, nonfinal sanctions order but are confident that the trial court will comply with Rule 11 if it issues a final order with respect to sanctions.

I. Appellee-landlord Berhanu Molla in 2005 lost a suit for possession of an apartment inhabited by appellant-tenant Donna Sanders in a building Molla had bought at foreclosure. Molla later informed Sanders that he would not renew the lease, would raise her monthly rent from $450 to $1650, and would shift to her the responsibility for utility bills. Sanders notified Molla that she was exercising her right to renew for a second five-year term under a lease provision at issue here, and did not pay the increase, whereupon Molla sued for possession based on nonpayment.

In January 2008, both parties moved for summary judgment, with Sanders contending that the renewal provision gave her an absolute right to renew unilaterally and Molla arguing that both parties' consent was needed. The trial court found that the provision was ambiguous, and, as such, considered extrinsic evidence, i.e., principally, testimony by Sanders, and ruled that the renewal provision did not prohibit Molla from raising the rent as he did.

The court reasoned that the original landlord, while discussing with Sanders the original lease, expressly refused a term of twelve years, instead agreeing to a five-year lease, and that as such he would not have granted Sanders the right unilaterally to renew for a second five-year term.

On March 19, 2008, the trial court sua sponte awarded sanctions under Super. Ct. Civ. R. 11 against Sanders' counsel for "tactics which seem designed to drag out this litigation,"[1] awarding Molla his costs for retention of an expert on market value. II. When interpreting real-property leases, we apply the objective law of contracts. Capital City Mortgage v. Habana Vill.

Art & Folklore, 747 A.2d 564, 567 (D.C.2000). We honor the "plain," "ordinary *442 and usual meaning" of the language and turn to extrinsic evidence only when faced with ambiguity, i.e., with terms that will bear more than one reasonable interpretation. Id. (internal citations omitted).

We review de novo the question whether language was in fact ambiguous in the first instance. Id. at 567-68. Here, the trial court deemed ambiguous the provision that "[l]andlord and tenant shall have the option to renew this lease with a 10% increase per year." Any ambiguity in this provision stems from the combination of "and," which usually bears a conjunctive meaning,[2] and "option," which usually signifies a right exercisable by one, or either, party, not by both acting in concert.

As the trial court said, "[T]he word [']option['] doesn't really make sense in here if you have [']landlord and tenant['] [']Landlord and tenant['] doesn't necessarily make sense." Sanders argues that the intended meaning was disjunctive"landlord or tenant shall have," or "landlord and tenant each shall have"and thus that neither party held a veto right that would render any "option" meaningless.

She points out that "and" is at times used disjunctively. FARNSWORTH, CONTRACTS § 7.8 (3d ed.1999); see also Sisters of Good Shepherd v. District of Columbia, 746 A.2d 310, 313 (D.C. 2000) (noting that in interpreting statutes, this court has "had occasion to read `and' as `or'... to avoid an absurd result and `to follow the legislative intent'"). Indeed, although neither "or" nor "each" appears in the provision at issue, neither does "together," "both" or any such term to reinforce the usual conjunctive sense of "and."

Furthermore, although it is doubtless unusual to find ambiguity in "and," it would be similarly unusual to find that "option" requires the parties to reach mutual agreement. Because of this tension between "and" and "option," and especially in light of the possible disjunctive sense of "and," the plain language bears more than one reasonable interpretation, and extrinsic evidence was properly admitted.

The court based its interpretation of this "very strange clause" on testimony that the original landlord opposed a twelve-year lease and the inference therefrom that he would not have granted his tenant a unilateral renewal right for a second five-year lease.

Although we generally review contract interpretation de novo as a question of law, a contract-interpretation issue becomes a question of fact when, after extrinsic evidence is marshaled, there remains a genuine dispute over the meaning of the provision at issue. May v. Continental Cas. Co., 936 A.2d 747, 751 (D.C.2007). Such is the case here, and, as such, we review the trial court's ruling for clear error.

Noting the lack of clarity as to the parties' intent even when the extrinsic evidence is considered, and given our deferential standard of review, *443 we conclude, as we must, that the trial court did not err in this ruling. III.

We have no jurisdiction to rule on Sanders' challenge to the trial court's erroneous imposition of Rule 11 sanctions on her without a prior show-cause order. A trial court "may order an attorney, law firm, or party to show cause why conduct specifically described... has not violated [Superior Court Civil] Rule 11(b)" but may not sua sponte impose a monetary sanction without first issuing such a show-cause order.

Super. Ct. Civ. R. 11(c)(1)(B), (c)(2)(B). Here, the court issued a single order stating that it was "troubled by defense counsel's tactics," which "caused prejudice to the plaintiff," and awarding Molla his costs for obtaining an expert. This was error, and it was not harmless, see Delacruz v. Harris, 780 A.2d 262, 265 n. 5 (D.C.2001), because counsel for Sanders might otherwise have convinced the court of a valid reason for "tactics" the court said were designed "to drag out this litigation."

However, "an order entitling a party to a Rule 11 award of costs and attorney's fees in an amount yet to be determined is a nonfinal order... that is not otherwise appealable by statute." Francis v.

Recycling Solutions, 695 A.2d 63, 80 (D.C.1997) (finding no jurisdiction over award of "reasonable cost for the Defendant to respond to the action filed").

The trial court awarded "the cost of plaintiff's expert" and, as far as the record indicates, never ascertained the amount of that cost or issued a new order reflecting such an amount. We dismiss on this issue for want of jurisdiction.

We remain confident, moreover, that before further pursuing this matter, if it should choose to do so, the trial court will comply with Rule 11.[3] In light of the foregoing, we affirm. So ordered. NOTES [1] Sanders had argued for the first time following the court's ruling on the renewal provision that the rent increase was so high as to be retaliatory.

The judge ruled that $1650 was within the range of fair market rents. This contention is without merit. [2] See, e.g., Camalier & Buckley v. Sandoz & Lamberton, 667 A.2d 822, 833 (D.C.1995) ("Landlord and Tenant shall abide by the terms of the Lease...."); Lenkin ex rel. 14th & Eye Sts. Assocs. v. Beckman, 575 A.2d 273, 274 (D.C.1990) (lease may run from "such... date... as Landlord and Tenant shall agree"); Funger v. Maizels, 377 A.2d 70, 72 (D.C.1977) ("Landlord and Tenant shall each pay the fee of their own appraiser....").

Conversely, where a contract or statute confers an absolute right upon one or either party, "or" is typically used. See, e.g., Carter v. Cathedral Ave. Co-op., 658 A.2d 1047, 1048 n. 1 (D.C.1995) ("appointment shall be made on the application of either the Landlord or Tenant"); Chang v. Louis & Alexander, 645 A.2d 1110, 1112 (D.C.1994) ("in the event of any breach or threatened breach by either Landlord or Tenant, the prevailing party shall be entitled to recover....").

Unlike in this case, however, no one claimed the language quoted in the cases cited was ambiguous. [3] This ruling does not affect the appealability of the "lease judgment." See generally Business Guides, Inc. v. Chromatic Communications Enters., Inc. 498 U.S. 533, 111 S.Ct. 922, 112 L.Ed.2d 1140 (1991); Weaver v. Grafio, 595 A.2d 983 (D.C.1991).