

NEW YORK COURT OF APPEALS

Enjoy Realty Corp. v. Van Wagner Communications, LLC

22 N.Y.3d 413, 4 N.E.3d 336 (2013) · Decided November 26, 2013

SUMMARY

The New York Court of Appeals held that a commercial lease required the tenant to pay the full annual basic rent for 2007 on January 1, even though the tenant terminated the lease one week later. The court also held that the lease's no-oral-modification clause barred the tenant's claim that the parties had orally agreed to prorate rent, and affirmed judgment for the landlord.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Read, J.; Abdus-Salaam, J.; Graffeo, J.; Lippman, J.; Pigott, J.; Rivera, J.; Smith, J.
JURISDICTION	New York
DECIDED	November 26, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Landlord appealed as of right to the New York Court of Appeals from an Appellate Division order reversing Supreme Court's dismissal, granting landlord summary judgment for unpaid 2007 rent, and remanding for attorney's fees. The appeal was as of right because two Appellate Division Justices dissented.
STANDARD OF REVIEW	De novo review of the parties' lease and the summary-judgment record; preservation of legal issues was reviewed as a question of appellate jurisdiction.
PRECEDENTIAL VALUE	published precedential opinion of the New York Court of Appeals
PARTIES	Enjoy Realty Corp. v. Van Wagner Communications, LLC

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QUESTIONS PRESENTED

1. Whether the lease required Van Wagner to pay the full annual basic rent for 2007 when that rent became due on January 1, 2007, notwithstanding termination of the lease on January 8.
2. Whether the lease's no-oral-modification clause and General Obligations Law § 15-301 barred enforcement of Van Wagner's alleged oral agreement to prorate the 2007 rent.
3. Whether Van Wagner established partial performance or equitable estoppel sufficient to avoid the no-oral-modification provision.
4. Whether Eujoy's theory that the annual rent became due on January 1 was preserved for appellate review.

HOLDINGS

1. The lease required Van Wagner to pay the full \$96,243 annual basic rent for 2007 on January 1, 2007. Because Van Wagner remained in possession after that date and terminated under Article 53 rather than one of the specified apportionment provisions, it remained liable for the annual rent despite paying only a prorated amount.
2. Van Wagner could not enforce the alleged oral agreement to prorate rent because the lease contained a no-oral-modification clause and Van Wagner failed to show complete performance, partial performance unequivocally referable to the alleged modification, or equitable estoppel.
3. Eujoy preserved its theory that the lease made the full 2007 rent due on January 1, 2007, and the Court of Appeals had power to review the issue.

KEY QUOTATIONS

"In sum, Van Wagner accrued a debt for the annual basic rent under the terms of the lease when it remained in possession of the billboard after January 1, 2007, and there is nothing in the law or the language of the agreement that relieves it of that debt." (425)

"General Obligations Law § 15-301 becomes meaningless if a tenant's nonpayment of the rent required by a lease is sufficient to prove an oral modification of payment terms, or estop the landlord from recovering the shortfall." (427)

FACTUAL BACKGROUND

Eujoy leased Van Wagner a rooftop billboard for a 15-year term. The lease required Van Wagner to pay the annual basic rent for 2007, \$96,243, in advance on January 1, 2007, and provided that prepaid rent was not returnable upon termination except for specified casualty, condemnation, or illegality events. Van Wagner stopped payment on its rent check, terminated the lease effective January 8, 2007 under a separate obstruction-of-view provision, and sent Eujoy a prorated payment of \$2,109.43. Van Wagner claimed that the parties had orally agreed to prorate the rent, but Eujoy denied the alleged agreement.

PROCEDURAL HISTORY

Eujoy sued Van Wagner for the unpaid balance of annual 2007 basic rent and attorney's fees. Supreme Court denied Eujoy's summary-judgment motion and granted Van Wagner's cross-motion to dismiss. The Appellate Division, with two Justices dissenting, reversed, granted Eujoy summary judgment, denied Van Wagner's cross-motion, and remanded for attorney's fees. After judgment was entered pursuant to the parties' stipulation concerning attorney's fees, the Court of Appeals reviewed the Appellate Division order and affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Roth & Appel, 181 F. 667, 669 (2d Cir. 1910)
- Giles v. Comstock, 4 N.Y. 270, 272 (1850)
- Chemical Bank v. Evans & Hughes Realty, 205 A.D.2d 573, 574 (2d Dep't 1994)
- Fifty States Mgt. Corp. v. Pioneer Auto Parks, 46 N.Y.2d 573, 578 (1979)
- 1251 Ams. Assoc. II, L.P. v. Rock 49th Rest. Corp., 13 Misc. 3d 142(A), 2006 N.Y. Slip Op. 52282(U), *1 (App. Term 2006)
- Bernstein v. Englander, 25 N.Y.S.2d 319, 319 (App. Term 1941)
- Oppenheimer & Co. v. Oppenheim, Appel, Dixon & Co., 86 N.Y.2d 685, 695 (1995)
- Maxton Bldrs. v. Lo Galbo, 68 N.Y.2d 373, 382 (1986)
- Rose v. Spa Realty Assocs., 42 N.Y.2d 338, 343-344 (1977)
- Walter v. Hoffman, 267 N.Y. 365, 368 (1935)
- Messner Vetere Berger McNamee Schmetterer Euro RSCG v. Aegis Group, 93 N.Y.2d 229, 235, 237-238 (1999)
- Emperor Realty Co. v. Tull, 228 N.Y. 447, 456-457 (1920) (Cardozo, J., concurring)
- Joseph P. Day Realty Corp. v. Lawrence Assoc., 270 A.D.2d 140, 142 (1st Dep't 2000)
- Hecker v. State of New York, 20 N.Y.3d 1087, 1087 (2013)
- Lazar v. Nico Indus., 128 A.D.2d 408, 410 (1st Dep't 1987)
- Ritt v. Lenox Hill Hosp., 182 A.D.2d 560, 562 (1st Dep't 1992)
- Dannasch v. Bifulco, 184 A.D.2d 415 (1st Dep't 1992)
- Lumbers Mut. Cas. Co. v. Morse Shoe Co., 218 A.D.2d 624 (1st Dep't 1995)
- Azzopardi v. American Blower Corp., 192 A.D.2d 453, 453-454 (1st Dep't 1993)
- Matter of New York State Off. of Victim Servs. v. Raucci, 20 N.Y.3d 1049 (2013)