

SUPREME COURT OF ALASKA

Carr-Gottstein Foods Co. and Safeway, Inc. v. Wasilla, LLC, d/b/a Wasilla Shopping Center, LLC

182 P.3d 1131 (Alaska 2008) · No. S-12010 · Decided May 16, 2008

SUMMARY

The Supreme Court of Alaska held that a landlord waived its right to claim that a supermarket tenant breached lease use and sublease provisions by relocating a liquor store onto the supermarket premises. The court concluded that the landlord had knowledge of and assisted with the relocation, failed to object for approximately six years, and engaged in conduct inconsistent with later asserting a breach. The judgment was reversed and the case remanded.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Matthews, Justice; Fabe, Chief Justice; Eastaugh, Justice; Carpeneti, Justice
JURISDICTION	Alaska
DECIDED	May 16, 2008
DOCKET	S-12010
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a superior court judgment awarding the landlord damages, prejudgment interest, attorney's fees, and other relief for alleged breaches of the supermarket lease's use and sublease clauses.
STANDARD OF REVIEW	The court reviewed the undisputed facts and the legal effect of the landlord's conduct for waiver as a matter of law; it also applied the clearly erroneous standard in discussing the trial court's factual findings.
PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion; precedential.
PARTIES	Carr-Gottstein Foods Co., Safeway, Inc. v. Wasilla, LLC, d/b/a Wasilla Shopping Center, LLC

TOPICS

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QUESTIONS PRESENTED

1. Whether the landlord waived its right to assert that relocating the liquor store breached the lease's use and sublease clauses.
2. Whether the lease's non-waiver clause prevented waiver of the landlord's claims concerning the completed relocation.
3. Whether the superior court's judgment awarding damages and attorney's fees should stand in light of the waiver ruling.

HOLDINGS

1. A landlord's knowledge of an alleged lease breach, assistance with and acquiescence in the tenant's conduct, failure to object for an extended period, and conduct indicating that no default existed constituted implied waiver as a matter of law of the right to claim that the relocation breached the use and sublease clauses.
2. The non-waiver clause preserved the landlord's right to insist on strict performance for future breaches but did not prevent waiver of the landlord's right to claim a default arising from the relocation that had already occurred.

KEY QUOTATIONS

"When a party to a contract is aware of conduct on the part of the other party that constitutes a breach and fails to protest the breach while continuing to perform the contract, that party may be held to have waived its right to rely on the breach in subsequent litigation." (1136)

"This combination of acquiescence and assistance in the relocation, consciously declining to declare a breach, even upon request, and prejudice is inconsistent with any conclusion other than that CG Properties waived its right to claim that the lease was breached." (1139)

"But nothing in the clause suggests that the waiver of these clauses as to the Oaken Keg move would be ineffective." (1140)

FACTUAL BACKGROUND

After Alaska liquor-law interpretations changed, Carr-Gottstein Foods moved its Oaken Keg liquor store from a separate satellite building into part of the supermarket premises in 1996 without obtaining the landlord's permission. The landlord knew of the move, assisted with electrical work, monitored and combined the liquor store's sales for percentage-rent purposes, and did not object for approximately six years. During that period, the landlord's general manager signed a sworn statement that the shopping-center leases were not in default and did not identify a default when Safeway sought information during its acquisition of Carr-Gottstein Foods.

PROCEDURAL HISTORY

Wasilla LLC sued Safeway, Carr-Gottstein Foods, and Oaken Keg Spirit Shops, alleging that relocating the liquor store onto the supermarket premises breached the lease. The superior court granted partial summary judgment on the sublease clause, found a breach of the use clause after a bench trial, rejected the jury's advisory estoppel finding, and entered judgment for \$270,365.78 plus prejudgment interest and approximately \$660,000 in attorney's fees. The Alaska Supreme Court reversed and remanded after concluding that the landlord had waived its right to assert both alleged breaches.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion after reversal of the judgment based on the landlord's waiver of its claims concerning the use and sublease clauses.

CASES CITED

- Milne v. Anderson, 576 P.2d 109 (Alaska 1978)
- Anchorage Chrysler Ctr., Inc. v. DaimlerChrysler Corp., 129 P.3d 905, 917 n. 35 (Alaska 2006)
- Wausau Ins. Cos. v. Van Biene, 847 P.2d 584, 589 (Alaska 1993)
- Altman v. Alaska Truss & Mfg. Co., 677 P.2d 1215, 1223 (Alaska 1983)
- Fun Prods. Distribs., Inc. v. Martens, 559 P.2d 1054, 1058 (Alaska 1977)
- Dillingham Commercial Co. v. Spears, 641 P.2d 1, 7-8 (Alaska 1982)
- Shooshanian v. Wagner, 672 P.2d 455, 462 (Alaska 1983)
- Prutch v. Ford Motor Co., 618 P.2d 657, 661 (Colo. 1980)
- Armco Steel Corp. v. Isaacson Structural Steel Co., 611 P.2d 507, 512 (Alaska 1980)
- Sol Apfel, Inc. v. Kocher, 61 N.Y.S.2d 508, 512 (N.Y. Sup. Ct. 1946)
- Malley v. Thalheimer, 44 Conn. 41, 1876 WL 1754, at *1-2 (Conn. 1876)