COURT OF APPEALS OF THE STATE OF NEW YORK

TAG 380, LLC v. ComMet 380, Inc.

10 N.Y.3d 507, 890 N.E.2d 195, 860 N.Y.S.2d 433 (2008) · Decided June 3, 2008

SUMMARY

The New York Court of Appeals held that a ground-lease provision requiring insurance against specified named perils required coverage for losses caused by terrorism when terrorism resulted in one of those perils. The tenant breached the lease by obtaining a policy expressly excluding terrorism and by failing to timely disclose additional terrorism coverage. The court reinstated the trial court's judgment awarding the landlord damages and attorneys' fees.

CASE DETAILS

COURT	Court of Appeals of the State of New York
WRITING FOR THE COURT	Ciparick, J.; Chief Judge Kaye; Judge Graffeo; Judge Read; Judge Smith; Judge Pigott; Judge Jones
JURISDICTION	New York
DECIDED	June 3, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	ComMet appealed from an Appellate Division order that had declared TAG had no duty under the lease to maintain terrorism insurance and had reversed awards of damages and attorneys' fees. The Court of Appeals modified the Appellate Division order by reinstating the Supreme Court judgment and affirmed as modified.
STANDARD OF REVIEW	Review of the interpretation of the lease and insurance obligations as questions of law; summary judgment was appropriate where the relevant facts were undisputed.
PRECEDENTIAL VALUE	Published Court of Appeals opinion; binding New York precedent.
PARTIES	ComMet 380, Inc. v. TAG 380, LLC

TOPICS

breach of contract · landlord tenant · insurance coverage · contract interpretation · damages

PRACTICE AREAS

contract law | landlord-tenant law | insurance law | commercial litigation | remedies

QUESTIONS PRESENTED

1. Whether the lease required TAG to maintain insurance covering the specified named perils when the loss resulted from a terrorist act.
2. Whether TAG breached the lease by procuring insurance that expressly excluded terrorism and by failing to timely disclose additional terrorism coverage.
3. Whether ComMet was entitled to recover reasonable damages incurred in procuring replacement coverage and attorneys' fees under the lease.

HOLDINGS

1. The lease required TAG to procure coverage for fire and the other named perils identified in the New York Standard Fire Insurance Policy and Extended Coverage Endorsement, without excluding those perils merely because the loss was caused by terrorism.
2. TAG breached the lease by purchasing insurance that excluded all losses caused by terrorism, including losses resulting from the lease's named perils, and by failing to timely furnish proof of adequate insurance.
3. ComMet was entitled to reimbursement for reasonable damages incurred as a result of TAG's breach, including reasonable costs of procuring coverage to remedy the default.
4. ComMet was entitled to attorneys' fees because section 12.01 of the lease expressly authorized recovery of reasonable attorneys' fees incurred in enforcing rights under or in connection with the lease.

KEY QUOTATIONS

> *"when parties set down their agreement in a clear, complete document, their writing should . . . be enforced according to its terms"* (512)

> *""Terrorism" is commonly defined as "[t]he use or threat of violence to intimidate or cause panic, [especially] as a means of affecting political conduct""* (515)

> *"generally, in a breach of contract case, a prevailing party may not collect attorneys' fees from the nonprevailing party unless such award is authorized by agreement between the parties, statute or court rule"* (516)

FACTUAL BACKGROUND

TAG leased a commercial building at 380 Madison Avenue under a 25-year master ground lease requiring it to maintain insurance against fire and other named perils covered by the New York Standard Fire Insurance Policy and Extended Coverage Endorsement. After TAG's prior all-loss policy expired in June 2002, it obtained an all-risk policy that expressly excluded terrorism, although it later obtained separate terrorism coverage and did not timely disclose that coverage to ComMet. ComMet issued a default notice, procured coverage itself, and sought damages and attorneys' fees under the lease.

PROCEDURAL HISTORY

TAG commenced an action seeking declaratory relief and a Yellowstone injunction after ComMet issued a notice of default based on TAG's failure to maintain required insurance. Supreme Court granted the injunction, later granted ComMet summary judgment on its counterclaims, declared that TAG was required to obtain insurance that did not exclude terrorism, and awarded damages and attorneys' fees. The Appellate Division modified by declaring that TAG had no duty to maintain terrorism insurance and reversing the damages and attorneys' fees awards. The Court of Appeals reinstated the Supreme Court judgment.

DISPOSITION

affirmed

CASES CITED

- First Natl. Stores v. Yellowstone Shopping Ctr., 21 N.Y.2d 630 (1968)
- Newin Corp. v. Hartford Acc. & Indem. Co., 62 N.Y.2d 916, 919 (1984)
- Hartford Acc. & Indem. Co. v. Wesolowski, 33 N.Y.2d 169, 172 (1973)
- Vermont Teddy Bear Co. v. 538 Madison Realty Co., 1 N.Y.3d 470, 475 (2004)
- W.W.W. Assoc. v. Giancontieri, 77 N.Y.2d 157, 162 (1990)
- Reiss v. Financial Performance Corp., 97 N.Y.2d 195, 198 (2001)
- Matter of Wallace v. 600 Partners Co., 86 N.Y.2d 543, 548 (1995)
- Parks Real Estate Purch. Group v. St. Paul Fire & Mar. Ins. Co., 472 F.3d 33, 41 (2d Cir. 2006)
- Lane v. Security Mut. Ins. Co., 96 N.Y.2d 1 (2001)
- 1303 Webster Ave. Realty Corp. v. Great Am. Surplus Lines Ins. Co., 63 N.Y.2d 227, 231 (1984)
- Hooper Assoc. v. AGS Computers, 74 N.Y.2d 487, 491 (1989)
- Pan Am. World Airways, Inc. v. Aetna Cas. & Sur. Co., 505 F.2d 989 (2d Cir. 1974)
- Younis Bros. & Co. v. CIGNA Worldwide Ins. Co., 899 F. Supp. 1385 (E.D. Pa. 1995), aff'd, 91 F.3d 13 (3d Cir. 1996)