IN THE COURT OF COMMON PLEAS
OF THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

BARRY SANDROW d/b/a	:	
BARRY SANDROW REAL ESTATE	:	JULY 2000
	:	NO. 3933
v.	:	
	:	COMMERCE PROGRAM
RED BANDANA, CO. d/b/a	:	
ED LONDON WREATH COMPANY	:	

O P I N I O N

INTRODUCTION

Plaintiff Barry Sandrow, doing business as Barry Sandrow Real Estate ("Sandrow"), seeks a new trial because he asserts that this court improperly granted a nonsuit based on a letter agreement dated January 2, 2000 between plaintiff and defendant Red Bandana. He also requests the entry of judgment in his favor in the amount of $66,328.75.[1] For the reasons set forth below, this court denies plaintiff's motion for a new trial because the January 2, 2000 letter agreement at issue released Red Badana from any additional rental payments to Sandrow.

I. STATEMENT OF FACTS

The Parties

1. Plaintiff Barry Sandrow, d/b/a Barry Sandrow Real Estate, was the owner of property ("property") located at 1500 East Erie Avenue in Philadelphia throughout the relevant period. N.T. from 1/16/2002

1. See Plaintiff's Motion, ¶ 38 (requesting judgment of $66,323.75). In his Memorandum of Law, however, plaintiff seeks entry of a judgment in the amount of $69,079.42. See Plaintiff's Memorandum at 15.

Hearing ("hereinafter N.T.") at 17.

2. Defendant Red Bandana, d/b/a Ed London Wreath Company, became a tenant of this property after entering into a lease dated October 1, 1994 (the "October 1994 Lease"). N.T. 19 & P.-1. The lease was signed by Janet Barag, President of Red Bandana. N.T. at 56, P.-1, & P.-6.

3. Nathan Zinberg was the building manager for the property for the period between October 1994 until October 1998. He procured Red Bandana as a tenant. N.T. at 18, 44.

The Lease

4. The October 1994 lease was for a five year term from October 1, 1994 until the last day of September 1999. It provided for an initial minimum monthly rent of $1,410 with increments for each year, reaching a monthly rent of $1,735 for the fifth year. P.-1

5. A typed-in clause to the form lease provides that "Rent shall include heat, electric, water/sewer and all taxes." P.-1, October 1994 Lease, ¶ 4(b).

6. The lease also provided under "additional rent" for the payment of taxes by the tenant:

> Lessee further agrees to pay as rent in addition to the minimum rental herein reserved all taxes assessed or imposed upon the demised premises and/or building of which the demised premises is a part during the term of this lease, in excess of and over and above those assessed or imposed at the time of making this lease. The amount due hereunder on account of such taxes shall be apportioned for that part of the first and last calendar years covered by the term hereof. The same shall be paid by Lessee to Lessor on or before the first day of July of each and every year. P.-1, October 1994 Lease ¶ 6(b).

7. Although the lease was for first floor warehouse space of approximately 7500 square feet, it provided for an extension "to upper floor, so if Tenant rents any footage, rate shall be $l.60 per sq. ft. complete, increased 5 % per year." P.-1, October 1994 Lease, ¶ 4(e).

8. The lease also provided that the tenant had the right to use the upstairs space "anytime work is being done downstairs." P.-1, October 1994 Lease, ¶ 34.

The Condition of the Property and the Resulting "Swap Agreement"

9. Ms. Barag testified that "from the very beginning we had continual water problems. Continual. Rooms were flooded." N.T. at 58. About three years into the lease, part of the downstairs area of the premises became unusable due to leaks into the area the tenants referred to as the "waterfall room". N.T. at 60.

10. When informed of this problem, Nathan Zinberg approached Barry Sandrow for his consent to allow the tenants to use part of the upstairs for storage. N.T. at 20. It was Zinberg's understanding that the tenants would occupy an area in the upstairs directly proportional to the area from which they were displaced in the downstairs area. N.T. at 45-46.

11. Barry Sandrow acknowledged that Zinberg had told him that the building had a water problem. N.T. at 20. Sandrow testified that he agreed to allow the tenants to use "whatever space that they had to replace" as a "swap." N.T. 20. He stated that this arrangement seemed to work although he did not have direct contact with Red Bandana until 1998 when Zinberg was terminated as building manager. N.T. 21-24.

December 1998 Agreement

12. Sandrow testified that after taking control of the management of the building, he subsequently discovered in October 1998 that Red Bandana was using "quite a bit of space" upstairs which he estimated as 80% of the space or approximately 23,000 square feet. N.T. at 23-24.

13. Upon discovering that Red Bandana was using this additional space in the upstairs area, Sandrow consulted with Janet Barag who offered to pay $500 in additional rent. Sandrow testified that he accepted

this offer. N.T. at 25.

14. Sandrow testified that this agreement by Red Bandana to pay additional rent for the upstairs space for the period between November 1998 and October 1999 was accurately reflected in a letter dated 12/1/98 ("December 1998 Agreement") that was signed by Barag as President of Red Bandana. N.T. at 26, P.-2

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15. The December 1998 agreement provides:

> This shall serve as an agreement to pay $500.00 per month for the use of approximately 5000 sq. ft. of space on the upper floor of 1500 E.Erie Ave. Commencing on November 1st 1998 and running concurrent with the terms of the original lease dated October 1, 1994. P.-2.

Use and Property Tax Assessment

16. Sandrow testified that he received a notice from the Department of Revenue from the City of Philadelphia stating that he owed unpaid Use and Occupancy taxes for the period between 1995 through April 1998 on the Erie Avenue property of $9,361. N.T. at 28, P.-3. He testified that he appealed this assessment and the amount due was reduced to "$6,600 or something like that." N.T. at 29.

17. Sandrow stated that he showed this tax bill to Janet Barag. He testified that she stated that she had paid a deposit of $1,500 to Zinberg, and "that she would pay the bill if I would take that 1500 dollars off the bill." N.T. at 30.

18. Janet Barag testified to a recollection of this Use and Property Tax Assessment. She stated that Sandrow had brought this to her attention when discussing that "[h]e had a lot of financial problems." N.T. at 65. When asked whether she agreed to pay that tax bill, she stated:

> We agreed to make a settlement at the end. This is after we had vacated the building, that we would make a settlement. We just wanted to go forward with our business. N.T. at 65.

January 2, 2000 Letter

19. Sandrow testified that "about the time" that Red Bandana vacated the premises, a handwritten letter agreement dated January 2, 2000 on the letterhead of "Ed London Wreath Company" was drafted. N.T. at 34. That letter provides:

> Payment of the enclosed check for $6635.47 minus $1500 security deposit = $5135.47. This represents payment in full for all taxes, expenses and charges both past and future pertaining to 1500 E. Erie Ave. The exception being our portion of gas, electric and cleaning for 10-1-99 thru 12-31-99.
> The intent of this agreement is understood.
> This agreement corresponds to the terms of the lease from 10-94 to 10-99.
> Janet Barag Pres. Red Bandana Co.
> 1/4/00
> B Sandrow Real Estate
> P.-6.

20. In his initial testimony about this letter, Sandrow was asked "was it your understanding that this letter released Red Bandana from paying any additional rents to you as a result of their use of additional space." He responded: "Yes. Except the fact that this sentence here, this agreement corresponds to the terms of the lease from 10/94 to 10/99. I don't remember that being on this letter." N.T. at 32.

21. Sandrow subsequently testified that the letter was intended to release the tenants just from the tax payments. N.T. at 33.

22. Barag testified that her understanding was that the January 2, 2000 letter "was a total release. This was the letter that was basically severing our ties." N.T. at 66. She stated that she wrote the letter but that Sandrow had asked her to add the last line that this agreement corresponds to the terms of the lease. N.T. at 67.

Removal of the Heaters

23. After Red Bandana vacated the property, Sandrow discovered that some heaters had been removed and that the sprinkler system and pipes had frozen. N.T. at 34.

24. Barag admitted that Red Bandana had removed three heaters which she claimed they owned. N.T. at 68. She stated that the heaters had been suspended from the ceiling. N.T. at 78. No heaters, however, had been placed in the loading docking area. N.T. at 83. Zinberg, likewise, testified that the loading dock area had been unheated. N.T. at 90

25. Barag testified that when confronted by Sandrow about the missing heaters she agreed to return the heaters and hired a "heating guy" to replace them. N.T. at 68-69. She conceded that under the terms of the lease, any alterations or equipment installed at the property by Red Bandana had to remain at the property. N.T. at 85-86.

26. Sandrow stated that he called repairmen for the sprinkler system and had temporary heating placed in the area. N.T. at 35.

27. He presented invoices for the sprinkler repairs totaling $2,400, (P.-8), an invoice of $428 for installation of temporary heating for the loading dock area (p.-7) and an invoice of $376 (P.-9) for replacement of thermostats. N.T. at 35-37.

28. After plaintiff presented his case, defendant presented a motion for a nonsuit. The Court granted the nonsuit as to plaintiff's demand for additional rent. The nonsuit was denied, however, as to the damages sought by plaintiff for removal of the heaters, and the resulting water and ice damage. N.T. at 74.

29 Based on testimony and evidence presented as to the damages caused by defendant's removal of the heaters, the Court found in favor of the plaintiff in the amount of $2,776 as a result of damages incurred due to the removal of the heater based on invoices P.-8 and P-.9. N.T. at 104.

30. The claim for $428 (P.-7) was excluded because it referenced heater installation in the loading dock area while testimony did not support that there had previously been any heat in that area. N.T. at 104-05.

DISCUSSION

Plaintiff has filed a motion for post trial relief seeking, inter alia, a new trial. He argues that it was error to grant defendant's motion for a nonsuit based on this court's conclusion that the January 2, 2000 letter constituted a release of all claims for rent due by plaintiff. Plaintiff also seeks the entry of a judgment of $66,328 in his favor based on plaintiff's testimony that the Philadelphia Tax Review Board had found that defendant utilized one-third of the usable space at the property throughout the lease term.[2]

The standards for ordering a new trial are well established. A motion for a new trial should be granted if the "trial court committed an error of law which controlled the outcome of the case or committed an abuse in discretion." Cangemi v. Cone, 774 A.2d 1262, 1265 (Pa. Super. 2001). An order denying a new trial will be reversed if the trial court "clearly and palpably abused it discretion or committed an error of law which affected the outcome of the case." Brinich v. Jencka, 2000 Pa. Super. 209, 757 A.2d 388, 395 (2000), app. denied, 565 Pa. 634, 771 A.2d 1276 (Pa. 2001), quoting Whyte v. Robinson, 421 Pa. Super. 33, 617 A.2d 380 (1992).

A key issue raised in plaintiff's motion is whether a nonsuit was properly entered as to his claim for additional rent. A nonsuit may be entered "only in clear cases." Friedman v. Schoolman, 483 Pa. 614, 634, 398 A.2d 615, 625 (1979). In determining whether to enter a nonsuit, the plaintiff must be given "the

2. See Plaintiff's Motion for a New Trial, ¶¶ 28-38.

benefit of every fact and reasonable inference arising from the evidence." Berman Properties, Inc. v. Delaware County Bd. of Assessment and Appeals, 658 A.2d 492, 494 (Pa. Cmwlth. 1995). The Pennsylvania Superior Court recently outlined the general standards for entering a nonsuit:

> A motion for compulsory non-suit allows a defendant to test the sufficiency of a plaintiffs' (sic) evidence and may be entered only in cases where it is clear that the plaintiff has not established a cause of action; in making this determination, the plaintiff must be given the benefit of all reasonable inferences arising from the evidence. When so viewed, a non-suit is properly entered if the plaintiff has not introduced sufficient evidence to establish the necessary elements to maintain a cause of action; it is the duty of the trial court to make this determination prior to the submission of the case to the jury. Hong v. Pelagatti, 765 A.2d 1117, 1121 (Pa. Super. 2001)(citations omitted).

Plaintiff Sandrow contends that a nonsuit should not have been entered in this case because the letter dated January 2, 2000 did not constitute a release of all of plaintiff's claims for rent due from the defendant Red Bandana.[3] Plaintiff is correct that a release must be strictly construed "so as to discharge only those rights intended to be relinquished." Vaughn v. Didizian, 436 Pa. Super. 436, 439, 648 A.2d 38, 40 (1994). A release, like a contract, should be construed to determine the intention of the parties. Brown v. Cooke, 707 A.2d 231, 232 (Pa. Super. 1998), quoting Flatley v. Penman, 429 Pa. Super. 517, 632 A.2d 1342 (1993).

The scope of a release "must be determined from the ordinary meaning of its language" and where releases "involve clear and unambiguous terms, the court need only examine the writing itself to give effect to the parties' understanding." Seasor v. Covington, 447 Pa. Super. 543, 547, 670 A.2d 157, 159 (1996). It may also be necessary, however, to go beyond the ordinary words of the release. In Vaughn v. Didizian, for instance, the Superior Court held that the trial court erred in failing to interpret a general

3. See Plaintiff's Motion for New Trial, ¶¶ 3, 6, 9, 22.

release "in light of the conditions and circumstances surrounding its execution." Vaughn v. Didizian, 436 Pa. Super. 436, 437, 648 A.2d 38, 39 (1994). The Vaughn court thus concluded:

> In construing this general release, a court cannot merely read the instrument. Instead, it is crucial that a court interpret a release so as to discharge only those rights intended to be relinquished. The intent of the parties must be sought from a reading of the entire instrument, as well as from the surrounding conditions and circumstances. Thus, the trial court erred in failing to construe the language of this general release in light of the conditions and circumstances surrounding its execution. Vaughn v. Didizian, 436 Pa. Super. at 439, 648 A.2d at 40.

Consequently, " a release ordinarily covers only such matters as can fairly be said to have been within the contemplation of the parties when the release was given." Estate of Bodnar, 472 Pa. 383, 387, 372 A.2d 746, 748 (1977).

The January 2, 2000 letter agreement that is at the center of the parties' dispute was handwritten on the plaintiff's letterhead (Ed London Wreath Company). It provides:

> 1/2/2000
>
> Payment of the enclosed check for $6635.47 minus $1500.00 security deposit = $5135.47. This represents payment in full for all the taxes, expenses and charges both past and future pertaining to 1500 E. Erie Ave. The exception being our portion of gas, electric and cleaning for 10-1-99 thru 12-31-99.
>
> The intent of this agreement is understood.
>
> The agreement corresponds to the terms of the lease from 10-94 to 10-99.
>
> Janet Barag, Pres. Red Bandana
>
> 1/4/00
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> B. Sandrow Real Estate
>
> P.-6.

The "ordinary language" of this agreement thus states that $6635.47 minus a security deposit of $1500 "represents payment in full for all the taxes, expenses and charges both past and future pertaining to 1500 E.Erie Ave." P.-6 (emphasis added). The agreement also explicitly excludes the following three items or services from this release: "gas, electric and cleaning." The agreement finally provides that it

corresponds to the lease in existence from October 1994 to October, 1999. Id.

The check tendered under this agreement thus constituted payment in full "for all taxes, expenses and charges" "pertaining to 1500 E. Erie Ave." The explicit exclusions applied unambiguously and narrowly only to "gas, electric and cleaning." Rent clearly was not excluded from this agreement. Logically, therefore, rent is encompassed within the agreement's reference to all "expenses or charges." This conclusion is buttressed by the January 2, 2000 agreement's reference to the October 1994 lease.

The January 2, 2000 Agreement specifically provides that it "corresponds to the terms of the lease from 10-94 to 10-99." P.-6. That lease stated that "Rent shall include heat, electric, water/sewer and all taxes." P.-1, para. 4(b). Under the lease, therefore, rent was an inclusive term. Reading these two documents together as required by the January 2, 2000 agreement underscores that under the typed in provisions to the October 1994 lease, rent was broadly defined as including such expenses as "heat, electric, water/sewer and all taxes." The subsequent January 2, 2000 agreement thus encompasses the rent, taxes and other expenses set forth in the October 1994 lease while explicitly excluding the "electric" that had been included as rent under the October 1994 lease.

Interpreting these ordinary words within the surrounding circumstances and conditions supports this conclusion that the January 2, 2000 letter agreement included all rents due at the time the agreement was executed. Barry Sandrow testified that this agreement had been drafted "about" the time Red Bandana vacated the premises. Finding of Fact 19; N.T. at 33-34. Ms. Barag was more explicit in timing the drafting of the January 2, 2000 letter:

> We agreed to make a settlement at the end. This is after we had vacated the building, that we would make a settlement. We just wanted to go forward with our business. It was a very rough experience being in that building. We wanted to basically wash our hands and go forward. N.T.

at 65.

Ms. Barag stated that she wrote most of the letter but that Barry had suggested adding the last sentence that this agreement corresponds with the terms of the lease. N.T. at 67. Mr. Sandrow, however, had no recollection of that sentence. N.T. at 32. The practical point, however, is that both parties agree that the letter was drafted at the end of their relationship and at a point when Red Bandana had either vacated the premises or was close to doing so. This supports an interpretation of the January 2, 2000 agreement as a comprehensive, global settlement, or, as Ms. Barag testified, "[t]his was the letter that was basically severing our ties." N.T. at 66.

It must be noted that Barry Sandrow presented conflicting testimony as to the effect of the release. While he at first agreed that the January 2, 2000 letter agreement released Red Bandana from paying additional rent, he then retreated from that position and stated that it applied only to taxes. N.T. at 32-33. However, Sandrow's insistence that January 2, 2000 letter agreement encompassed just the Use and Occupancy tax[4] is defied by the clear, unambiguous "ordinary words" of the agreement that it applies to "all taxes, expenses and charges both past and future pertaining to 1500 E.Erie Ave." P.-6 (emphasis added). Under principles of contract interpretation, when the words of an agreement are clear and unambiguous the intent is discerned only from the agreement's express language. Musko v. Musko, 548 Pa. 378, 381, 697 A.2d 255, 256 (1997), quoting Steuart v. McChesney, 498 Pa. 45, 444 A.2d 659(1982) See also Seasor v. Covington, 447 Pa. Super. 543, 547, 670 A.2d 157, 159 (1996). The agreement provides for a release not only of "taxes" but for "expenses and charges." Consequently, even

4. N.T. at 33.

if Sandrow's conflicting testimony is interpreted in his favor, as it must be when considering a nonsuit,[5] that testimony is trumped by the unambiguous words of the January 2, 2000 agreement. That agreement released Red Bandana from any additional rental obligations to plaintiff.

Request for Entry of Judgment for Plaintiff in the Amount of $66,328.75

In his post trial motion, plaintiff also seeks entry of a judgment of $66,328.75 based on Red Bandana's occupancy of approximately 9,000 square feet more space than was permitted under the October 1994 lease. Plaintiff's Motion, ¶¶ 32 & 38. Plaintiff presents calculations of additional damages due for each of the five years of the October 1994 lease. Id., ¶ 35. Plaintiff appears to rely on the assessment by the Department of Revenue for the occupancy tax as a basis for calculating the additional rent of $65,875.42 for the 5 year period spanned by the 1994 October lease.[6] He also relies on Janet Barag's failure to dispute the findings of the Tax Review Board. Plaintiff's Motion, ¶ 33. From this, he makes the leap that Red Bandana owed rent for an additional 9,000 square feet for the entire five year period of the October 1994 lease. Plaintiff's Motion, ¶ 35. This claim is unsupportable based on the record presented. It ignores the legal implications not only of the swap agreement but also of the December 1998 agreement and the January 2, 2000 letter agreement.

Barry Sandrow testified, for instance, that when he was informed that portions of the leased property was uninhabitable due to leaks, he consented to the verbal swap agreement that his agent, Nathan

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5. Strother v. Binkele, 256 Pa. Super. 404, 414, 389 A.2d 1186, 1191 (1978).

6. See Plaintiff's Memorandum at 8 & 10, referencing P.-5. There is a discrepancy between the total rent computed in plaintiff's motion of $63,522.75 for the five year lease period and total rent computed in plaintiff's memorandum Compare Plaintiff's Motion, ¶ 35 ($63,522.75 for rent) with Plaintiff's Memorandum at 10 ($65,875.42 in rent).

Zinberg, entered into with Red Bandana. Finding of Fact, ¶¶ 10-11; N.T. at 20. Sandrow also testified that this arrangement seemed to work although "I really didn't have any contact with the Red Bandana, nor the building until '98 after I sold my business and looked after the building at Erie Avenue." N.T. at 21. The swap agreement, therefore, would encompass the rent due for the period prior to 1998 for the area Red Bandana occupied in the upstairs area proportional to the area it was entitled to occupy under the lease on the first floor. By December 1998, plaintiff had entered into the December 1998 agreement and accepted $500 for the use of an additional 5,000 square feet on the upper floor for the period after November 1, 1998 until the end of the lease. N.T. at 25-26; P.-2. Finally, to the extent any additional space occupied by Red Bandana might not have been encompassed by either the swap agreement or the December 1998 agreement, it would fall within the January 2, 2000 letter agreement executed at the cessation of the parties' landlord/tenant relationship which released Red Bandana from all claims for additional rent.

Damages for Removal of the Heaters

Based on testimony during the trial, this court found in favor of the plaintiff in the amount of $2,776 as a result of damages incurred because of the removal of three heaters. N.T. at 104. Pennsylvania law distinguishes between the trade fixture rule and general fixture principles. See Lehman v. Keller, 454 Pa. Super. 42, 48, 684 A.2d 618, 621 (1996). As the Superior Court observed in Lehman, "[u]nder Pennsylvania law, there is a strong presumption that trade fixtures installed by a *lessee* remain the lessee's property."[7] In the instant case, however, the 1994 October lease specifically required the lessor's written

7. Lehman v. Keller, 454 Pa. Super. at 48, 684 A.2d at 621. Under general fixture principles, chattels used in relation to real estate can fall into 3 categories:

consent prior to making "any additions to the demised premises." October 1994 Lease at page 2, second ¶. It further provided:

> All alterations, improvements, additions, or fixtures, whether installed before or after the execution of the lease, shall remain upon the premises at the expiration or sooner determination of this lease and become the property of the Lessor, unless Lessor shall, prior to the determination of this lease, have given written notice to Lessee to remove the same, in which event Lessee will remove such alterations, improvements and additions and restore the premises to the same good order and condition in which they now are. Should Lessee fail to do so, Lessor may do so, collecting at Lessor's option the cost and expense thereof from Lessee as additional rent. Lease, at page 2, second ¶.

Ms. Barag conceded that she had removed three heaters when vacating the premises. N.T. at 68. She explained that the defendant owned these heaters but agreed to return them when requested to do so by Barry Sandrow. N.T. at 68-69. She also agreed that under the lease any additions to the demised premises had to remain upon it. N.T. at 85-86. For these reasons, this court awarded damages to the plaintiff in the amount of $2,776 based on invoices P.-8 and P.-9. The claim for $428 (P.-7) for temporary heat installation in the loading dock area was excluded due to testimony that area had not been previously heated. See N.T. at 83 (testimony by Barag) & 90 (testimony by Zinberg).

III. CONCLUSIONS OF LAW

1. A motion for a new trial should be granted if "the trial court committed an error of law which controlled the outcome of the case or committed an abuse of discretion." Cangemi v. Cone, 774 A.2d 1262, 1265 (Pa. Super. 2001), quoting Livelsberger v. Kreider, 743 A.2d 494 (Pa. Super. 1999).

> First, chattels that are not physically attached to realty are always personalty. Second, chattels which are annexed to realty in such a manner that they cannot be removed without materially damaging either the realty or the chattels are always fixtures. The third category consists of those chattels that are physically connected to the real estate but can be removed without material injury to either the land or the chattels. Id., 454 Pa. Super. at 49, 684 A.2d at 621.

2. A nonsuit should only be granted in clear cases. Friedman v. Schoolman, 483 Pa. 614, 634, 398 A.2d 615, 625 (1979). In determining whether a nonsuit should be granted, the plaintiff must be given "the benefit of every fact and reasonable inference arising from the evidence." Berman Properties Inc. v. Delaware County Bd. of Assessment and Appeals, 658 A.2d 492, 494 (Pa. Cmwlth. 1995).

3. A nonsuit was properly entered in this case because Sandrow failed to establish the necessary elements to maintain his cause of action to recover additional rents or the entry of a judgment in the amount of $66,328.75. See generally Hong v. Pelagatti, 765 A.2d 1117, 1121 (Pa. Super. 2001)(entry of nonsuit is appropriate where plaintiff fails to make out a prima facie case).

4. A release should be strictly construed "so as to discharge only those rights intended to be relinquished." Vaughn v. Didizian, 436 Pa. Super. 436, 439, 648 A.2d 38, 40 (1994).

5. A release, like a contract, should be construed to determine the intention of the parties. Brown v. Cooke, 707 A.2d 231, 232 (Pa. Super. 1998), quoting Flatley v. Penman, 429 Pa. Super. 517, 632 A.2d 1342 (1993).

6. The scope of a release "must be determined from the ordinary meaning of its language" and where releases "involve clear and unambiguous terms, the court need only examine the writing itself to give effect to the parties' understanding." Seasor v. Covington, 447 Pa. Super. 543, 547, 670 A.2d 157, 159 (1996), app. denied, 546 Pa. 647, 683 A.2d 884 (1996).

7. It may be necessary, however, to go beyond the ordinary words of the release to interpret it "in light of the conditions and circumstances surrounding its execution." Vaughn v. Didizian, 436 Pa. Super. 436, 437, 648 A.2d 38, 39 (1994).

8. The January 2, 2000 letter agreement constituted a release of any additional rental obligations by Red Bandana to Sandrow. The agreement accepted $6635.47 minus a security deposit of $1,500 as

payment in full for all "all taxes, expenses and charges both past and present" relating to the property with exclusions only for gas, electric and cleaning. P.-6.

9. Plaintiff's request for the entry of a judgment of $66,328.75 in his favor due to the plaintiff's occupancy of approximately 9,000 square feet more space than permitted under the October 1994 Lease (for a fiver year period) is denied because any amount due as to this occupancy is encompassed by the swap agreement, the December 1998 agreement and the January 2, 2000 agreement.

10. Under the October 1994 Lease, Red Bandana was required to obtain the landlord's written consent for making any additions to the premises. All additions must remain on the property unless the landlord gives written consent to its removal. October 1994 Lease, at page 2, second ¶.

11. Plaintiff is awarded $2,776 as a result of damages incurred by Red Bandana's removal of three heaters that were affixed to the ceiling of the premises because in so doing Red Bandana breached the October 1994 lease as admitted by testimony of its president, Janet Barag. See Lease, at page 2, second ¶; N.T.85-86; P.-8; P.-9.

12. The claim for $428 set forth in invoice marked as P.-7 is excluded because it referenced heater installation in the loading dock area while testimony did not support that there had previously been any heat in that area. N.T. at 104-05; 83 and 90.

Date: May 23, 2002

BY THE COURT:

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JOHN W. HERRON, J.