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

BL PARTNERS GROUP, L.P., Plaintiff,	:	May Term 2015
v.	:	No. 2432
INTERBROAD, LLC, Defendant.	:	Commerce Program
	:	465 EDA 2016
	:	Control Nos. 15072495/15080464

Djerassi, J. June 3, 2016

OPINION

This opinion is submitted following defendant Interbroad, LLC's appeal of a Court Order dated January 7, 2016 granting judgment on the pleadings in favor of plaintiff BL Partners Group, L.P.'s declaratory judgment claim. BL Partners Group, L.P. ("BL Partners Group") purchased a commercial property at the southeast corner of Broad and Locust streets in Philadelphia from controlling owners which included the Estate of Samuel Rappaport and the Samuel Rappaport Limited Partnership. The transfer of this property at 231 S. Broad Street to BL Partners Group occurred on March 17, 2015.

In a lease dated January 1, 2000, the Estate of Samuel Rappaport ("the Rappaport Estate"), the lessor, gave Interbroad, LLC ("Interbroad"), the lessee, the right to use the rooftop of 231 S. Broad Street, Philadelphia, Pa. ("Corner Property") for a billboard/outdoor advertising sign. The lease term commenced on January 1, 2000 and is scheduled to terminate on April 11, 2094. The lease gave the Rappaport Estate the following termination rights at Section 7:

> "In the event that Lessor's building is damaged by fire or other casualty and Lessor elects not to restore such building, or Lessor elects to demolish the building, Lessor may terminate the Lease

> upon not less than 60 days notice to Lessee upon paying Lessee ten (10) times the net operating income earned by Lessee from the Advertising Structures or the Premises for the immediately preceding twelve (12) month period."

When BL Partners Group acquired the corner property, the building was subject to the lease with Interbroad. On April 7, 2015, BL Partners Group sent a letter to Interbroad stating that it had taken assignment of the lease, had elected to demolish the corner property and was terminating the lease effective sixty (60) days from that date. In the termination notice, BL Partners Group acknowledged its obligation, upon terminating the Lease, to pay Interbroad ten (10) times the net operating income earned by Interbroad during the immediately preceding twelve (12) month period. Despite demand, Interbroad refused to provide its Net Operating Income for the immediately preceding twelve (12) month period prior to the Termination Notice or any supporting documentation.

In a letter dated May 8, 2015, Interbroad responded to the Termination Notice and disagreed with BL Partners Group's interpretation of the lease. Interbroad took the position that Interbroad "had the right to quiet enjoyment of the rooftop of the building located at 231 South Broad Street...to the completion of the Lease on April 1, 2094." On May 21, 2015, BL Partners Group initiated the instant action seeking declaration that it has the right to terminate the lease. In addition to its claim for declaratory judgment, BL Partners Group also asserts a claim for breach of contract based on Interbroad's refusal to recognize BL Partners Group's termination of the lease. On June 18, 2015, Interbroad answered BL Partners Group's complaint and filed a counterclaim for its own declaratory judgment. Interbroad claims that under the lease, BL Partners Group does not have the right to terminate. On July 2, 2015, BL Partners Group filed a reply to Interbroad's new matter and counterclaim. On August 4, 2015, Interbroad filed a motion

for judgment on the pleadings. On August 25, 2016, BL Partners Group filed a cross motion for judgment on the pleadings.

On November 9, 2015, after oral argument, we granted BL Partners Group's motion for judgment on the pleadings and denied Interbroad's cross motion. On November 19, 2015, Interbroad filed a motion seeking clarification of this court's November 9, 2015 Order. On December 9, 2015, the Order of November 9, 2015 was vacated and a new hearing was scheduled. On January 7, 2016, the court entered a new Order granting BL Partners Group's motion for judgment on the pleadings and denying Interbroad's motion for judgment on the pleadings. We specifically declared that the January 1, 2000 lease agreement allowed BL Partners Group to terminate the lease if BL Partners Group elects to demolish the building on the property located at 231 S. Broad Street for any reason. Plaintiff's breach of contract was permitted to proceed. On February 3, 2016, Interbroad appealed.

For the reasons discussed below, the Court Order dated January 7, 2016 should be affirmed.

DISCUSSION

The sole issue is whether error mars our interpretation of Section 7 of the lease. Generally, a motion for judgment on the pleadings is granted only in cases which are so free from doubt that a trial would be pointless. Such motions are in the nature of a demurrer; all of the opposing party's well pleaded allegations are viewed as true and only those facts specifically admitted by the opposing party may be considered.[1] A judgment on the pleadings may not be

[1] *Karns v. Tony Vitale Fireworks Corporation*, 259 A.2d 687, 688 (Pa. 1969); *Bata v. Central-Penn National Bank of Philadelphia*, 224 A.2d 174 (Pa. 1966).

entered when there are unknown or disputed issues of fact.[2] Courts confine review to pleadings and incorporated documents. No depositions are reviewed.[3] Construction of a written agreement can, in appropriate cases, resolve a motion for judgment on the pleadings.[4]

Lease agreements in Pennsylvania are governed by general contract law principles. When the language of a lease is clear, its meaning will be determined by its contents, meaning both words and context.[5] As leases are construed according to contract law, a primary objective on review is to determine the intention of the parties.[6] Accordingly, when the words of a contract are clear and unambiguous, the court considers the express language of the agreement and may review the surrounding circumstances, the situation of the parties, their objectives and the subject-matter of their agreement.[7]

Here, the particular language at issue of Section 7 of the lease is unambiguous and provides again in pertinent part:

> "In the event that Lessor's building is damaged by fire or other casualty and Lessor elects not to restore such building, or Lessor elects to demolish the building, Lessor may terminate the Lease upon not less than 60 days notice to Lessee upon paying Lessee ten (10) times the net operating income earned by Lessee from the

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[2] *North Star Coal Company v. Waverly Oil Works, Co.,* 288 A.2d 768, 771 (Pa. 1972); *Sun Oil Company v. Bellone,* 437 A.2d 415, 415 (Pa. Super. 1981).

[3] *DiAndrea v. Reliance Savings and Loan Association,* 456 A.2d 1066, 1069 (Pa. Super. 1983); *Del Quadro v. City of Philadelphia,* 437 A.2d 1262, 1263 (Pa. Super. 1981); *SN, Inc. v. Long,* 220 A.2d 357, 259 (Pa. Super. 1966).

[4] *DiAndrea*, 456 A.2d at 1070.

[5] *Lehn's Court Management LLC v. My Mouna Inc.*, 837 A.2d 504, 509 (Pa. Super. 2003).

[6] *Id.*

[7] *Giant Food Stores, LLC v. THF Silver Spring Dev., L.P.,* 959 A.2d 438, 448 (Pa. Super. 2008) citing *In re Estate of Quick,* 905 A.2d 471, 474–475 (Pa. 2006).

> Advertising Structures or the Premises for the immediately preceding twelve (12) month period."

This language gives lessor BL Partners Group two independent ways to terminate the lease.

First, BL Partners Group may terminate the lease when the building is damaged by fire or other casualty---and it elects not to restore such building. This covers situations where a property owner loses use of a building but may not have decided to go ahead right away with actual demolition for reasons relating to cost or other factors.

Second, BL Partners Group may terminate the lease if BL Partners Group elects to demolish the building for any reason.

This two-fold interpretation is consistent with rules of English punctuation and grammar concerning commas relating to the word "or." The phrase "Lessor elects to demolish the building" is an independent clause. This is due to the drafter's placement of a comma before the word "or" and the meaning of the conjunctive word "or". In English grammar, the placement of a comma before "or," joins independent clauses.[8] By placing a comma before the word "or," the lease drafter intended to create two independent scenarios for the lessor to terminate the lease. Again, these are 1) when the building is damaged by fire or other casualty and lessor elects not to restore such building, or 2) when the lessor elects to demolish the building.[9]

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[8] John E. Warriner, *English Grammar and Composition* (10 ed. 1965.) at p. 445.

[9] Interbroad argues "or Lessor elects to demolish the building" is a nonrestrictive clause. The court does not agree. The placement of the comma before the "or" and the "or" makes "or Lessor elects to demolish the building" an independent clause. The "or" creates an alternative scenario for termination which is essential and may not be omitted without changing the meaning of the sentence.

Although punctuation in a legal text will rarely change the meaning of a particular word, it often determines whether a modifying phrase or clause applies to all that preceded it or not.[10] Here, the introductory phrase "In the event that Lessor's building is damaged by fire or other casualty" is a dependent clause connected to another dependent clause by the word "and". This other connecting clause is the phrase, "Lessor elects not to restore such building." By using the word "and," the drafter means that damage by fire or other casualty is a condition precedent to terminating the lease if the Lessor elects not to restore.

On the other hand, the initial dependent clause, "In the event that Lessor's building is damaged by fire or other casualty," is not a condition precedent to the subsequent independent clause, "Lessor elects to demolish the building." They are separate from each other in meaning and context.

This interpretation comports with common usage of the word "or." Merriam Webster's Eleventh Collegiate Dictionary (2005) defines "or" as a function word used to indicate an alternative. In *Frenchak v. Sunbeam Coal Corp*, the Superior Court used this definition in interpreting a lease and noted that the "pertinent dictionary definition of 'or' is a "choice between alternative things, states, or courses."[11] In the statutory interpretation context, the Pennsylvania Supreme Court has also held that the word 'or' is a conjunction used to connect words, phrases or clauses representing alternatives. [12]

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[10] Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012), Canon 23, p. 161.

[11] 495 A.2d 1385, 1387 (Pa. Super. 1985), disapproved by *Hutchinson v. Sunbeam Coal Corp.*, 519 A.2d 385 (Pa. Super. 1986) on other grounds.

[12] *Meyer v. CUNA Mutual Insurance Society*, 648 F. 3d 154, 164 (3d Cir. 2011) quoting *In re Paulmier*, 937 A.2d 364, 373 (Pa. 2007).

Moreover, this grammatical determination makes sense when construing the lease as a whole. Context is also a determinant of meaning.[13] Taking the whole lease into consideration, it is difficult to fathom that a party would deprive itself of the right to transfer real property for fifty years for $1.00 consideration. More symmetrically, the independent clause, "Lessor elects to demolish the building" gives the lessor a similar opportunity to terminate the lease as the lessee who has the right to terminate upon 30 days prior written notice. See Section 8 of the Lease. Interbroad's suggested interpretation proposes unreasonable and unwarranted restrictions on BL Partners Group's property rights through 2094.[14]

Even if this asymmetry were somehow enforceable, the grammatical language is clear this was not what was intended. The unambiguous interpretation of Section 7 of the lease is that BL Partners Group may terminate the lease with Interbroad upon 60 days' notice without regard to fire or other casualty upon its own election to demolish the building.

For the forgoing reasons, the Order of January 7, 2016, should respectfully be affirmed.

BY THE COURT,

RAMY I. DJERASSI, J.

[13] Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012), Canon 24 p. 167.
[14] *See Clearfield Volunteer Fire Dep't v. BP Oil, Inc.*, 602 A.2d 877, 880 (Pa. Super. 1992).