

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

O5 Arena LLC,
Appellant,

v.

Weston Property Management
LLC,
Appellee.

May 31, 2022

Court of Appeals Case No.
21A-PL-2901

Appeal from the Marion Superior
Court

The Honorable John M. T. Chavis,
II, Judge

Trial Court Cause No.
49D05-2104-PL-11859

Brown, Judge.

[1] O5 Arena LLC (“O5 Arena”) appeals the entry of partial summary judgment in favor of Weston Property Management LLC (“Weston”). O5 Arena claims the trial court erred in interpreting its lease agreement. We affirm.

Facts and Procedural History

[2] Weston, as landlord, and O5 Arena, as tenant, entered into a Retail Lease Agreement (the “Lease”) dated February 1, 2021, for the lease of 3,600 of rentable square feet in a shopping center in Indianapolis for a term of three years. Section 1.06 of the Lease provided: “Permitted Use: Lounge.” Appellant’s Appendix Volume V at 56. Article 7 of the Lease was titled “Occupancy and Use Requirements,” and Section 7.01 provided:

Use and Compliance with Laws: Tenant shall use the Leased Premises for the purpose specified in Article 1 and any other lawful retail use not in violation of any exclusive use restrictions in written leases between Landlord and other tenants as of the date of this Lease. Notwithstanding the foregoing, Tenant shall not use the Leased Premises for any use that is specifically disallowed pursuant to Exhibit “B” attached hereto.^[1] Tenant, its employees, agents, invitees and permittees shall at all times comply with the Rules and Regulations of the Center, attached hereto as Exhibit “C”. Tenant represents and warrants that it shall operate its business in compliance with all laws as they pertain to Tenant’s Permitted Use. . . .

¹ Exhibit B of the Lease, titled “Prohibited Uses,” is blank. Appellant’s Appendix Volume V at 81.

Id. at 61. Exhibit C to the Lease, titled “Rules and Regulations of the Center,” provided in part:

Use of the Premises. Tenant shall not permit or suffer any portion of the Premises to be used for the following:

* * * * *

(B) Any use which causes objectionable odors to emanate or be dispelled from the Premises.

* * * * *

(F) Any use which would in any way tend to: (i) create or permit waste or nuisance upon the Premises; (ii) disturb any other tenant in the Center or the occupants of neighboring property; or (iii) injure the reputation of the Center. The Premises shall not be used except in a manner consistent with the general high standards of merchandising in the Center and not in a disreputable or immoral manner or in violation of any Laws.

Id. at 82-83. Article 18 of the Lease provided that O5 Arena shall not, without the consent of Weston, sublet the premises or permit the use of the premises by parties other than O5 Arena.²

[3] Article 20 of the Lease was titled Default and Remedies, and Section 20.01 provided:

² Section 6.01 of the Lease provided “Tenant shall not make any structural additions, changes or alterations to the Leased Premises without the prior written consent of Landlord, which consent may be withheld or granted in Landlord’s sole and absolute discretion” and “[n]otwithstanding the foregoing, Tenant may, at its own cost and expense, from time to time, make such non-structural alterations or changes in and to the Leased Premises as it deems necessary or suitable.” Appellant’s Appendix Volume V at 60-61.

Section 20.01 Default: Each of the following shall be considered to be an “Event of Default” by Tenant:

- (a) Tenant’s failure to pay rent as herein provided when due;
- (b) Tenant’s failure to perform or observe any other terms, conditions or covenants of this Lease to be performed or observed by Tenant;
- (c) Tenant’s vacation or abandonment of the Leased Premises or any failure to keep the Leased Premises open for business in the manner and during Regular Business Hours as provided in Article 7 above;
- (d) The sale of Tenant’s leasehold interest hereunder pursuant to execution;
- (e) The adjudication of Tenant as a bankrupt;
- (f) The making by Tenant of a general assignment for the benefit of its creditors;
- (g) The appointment of a receiver in equity for Tenant’s property if such appointment is not vacated or otherwise terminated within forty-five (45) days from the date of such appointment;
- (h) The appointment of a trustee, custodian or receiver for Tenant’s property in a reorganization, arrangement or other bankruptcy proceeding if such appointment is not vacated or set aside within forty-five (45) days from the date of such appointment;
- (i) Tenant’s filing of a voluntary petition in bankruptcy or for reorganization or arrangement;
- (j) Tenant’s filing of an answer admitting bankruptcy or agreeing to reorganize or arrangement; or

(k) Dissolution or if Tenant is a corporation, other termination of Tenant's corporate charter.

Section 20.02 Remedies: In the event of any default as provided in Section 20.01 of this Article 20, and the continuance of such default for a period of five (5) days after due ("Monetary Default"), or in the event of any default of the other terms and conditions of this Lease ("Non-Monetary Default") and the continuance of such default after thirty (30) days written notice from Landlord to Tenant; or in the event of any other default provided for in this Article 20 without any demand or notice, Landlord, in addition to any other rights or remedies at law or equity, may:

(a) elect to terminate this Lease;

* * * * *

To secure the full and complete observance of the obligations and covenants to be observed and performed by Tenant under this Lease, Tenant hereby grants to Landlord a security interest in and to all fixtures, equipment, inventory and all other personal property, tangible or intangible of the Tenant brought or located in or upon the Leased Premises. . . .

Id. at 68-69.

[4] On March 22, 2021, Liz Ayala, a representative of Weston, sent an email to Bolaji Lanahun, the member/manager of O5 Arena, which stated: "It has been brought to our attention from several other tenants complaining that there is overwhelming unpleasant possibly toxic odors coming from your rental suite. Please be advised to correct this issue immediately." Appellant's Appendix Volume IV at 44. Lanahun sent a reply to Ayala stating: "Thank you for informing me. Someone had a party last night. I don't really [sic] what

happened.” *Id.* Ayala sent another message to Lanihun stating “I would like to also mention that reports have been received since Saturday. I would like to be clear and specific, it is prohibited for the use and consumption of any type of smoking in the rental suit[e] or its surroundings.” *Id.* Lanihun sent a reply to Ayala stating: “This is a lounge I do know and I do not allow them to smoke inside but they can go outside to smoke because it’s a lounge.” *Id.*

[5] Isrrael Gonzalez, a representative of Weston, sent a letter dated March 27, 2021, and titled “Lease Termination Notice” to O5 Arena which provided:

This letter is a written lease termination for the following:

EXHIBIT “C” – RULES AND REGIULATIONS OF THE CENTER

(5) Use of the Premises: Tenant shall not permit or suffer any portion of the Premises to be used for the following:

(B) Any use which causes objectionable odors to emanate of[sic] be dispelled from the premises.

(F) Any use which would in any way tend to:

(II) Disturb any other tenant in the Center or the occupants of neighboring property

(III) Injure the reputation of the center.

The premises shall not be used except in a manner consistent with the general high standards of merchandising in the center and not in a disreputable or immoral manner or in violation of any laws.

Tenant(s) and all others in possession of the premises cannot use the property anymore as of this notification, and they have 48 hours to

leave the property and sent [sic] us the key to the following address from the dates of the lease termination notice.

Id. at 45.

- [6] On April 8, 2021, O5 Arena filed a complaint against Weston alleging that Weston declared the Lease was terminated, locked it out of the premises, and reentered the premises and seized control of its personal property located within the premises. The complaint alleged counts of breach of contract, civil trespass, conversion of personal property, and pecuniary loss due to a property offense.
- [7] In July 2021, O5 Arena filed a motion for partial summary judgment with respect to Weston's liability for breach of contract, civil trespass, and conversion. In support of its motion, O5 Arena designated evidence including a Declaration of Bolaji Lanahun, the Lease, the March 22, 2021 notice, and the March 27, 2021 notice of termination. In his declaration, Lanahun stated that he intended to use the property as a night club and a private event center; he had applied in March 2021 for a liquor license; and that, while awaiting action on his liquor license application, he rented out the property four times for private events to persons who had their own liquor license. He further stated that, a few days after receiving the March 22 notice, he attempted to enter the premises but was unable to do so because Weston had changed the locks and, as a result, he was forced to withdraw his application for a liquor license.
- [8] In August 2021, Weston filed a Cross Motion for Summary Judgment arguing the language of the Lease allowed it to terminate the Lease without any notice

or demand. It argued that, alternatively, the Lease was void due to O5 Arena's misrepresentation regarding the intended use of the property. It also argued it did not commit trespass or conversion. Weston's designated evidence included the affidavit of Carla Flores, the Lease, an affidavit for probable cause, and the affidavit of Austin Smith.

[9] In her affidavit, Carla Flores stated that she was a manager for Weston and that, if O5 Arena rented the property for use as a private event center, spent money to improve the property, or rented out the property four times for private events to other persons, it did so without Weston's consent. She stated that, on or around March 20, 2021, Weston began receiving complaints from O5 Arena's neighboring tenants that the property smelled of marijuana, it also received those complaints from general contractors hired to perform work at the property, and the contractors refused to perform work because the marijuana smell was so overpowering. She stated, "[f]ollowing the shooting on March 27, 2021, we reviewed the terms of the Lease and discussed internally what would be the safest, most appropriate, reasonable next steps to take" and "[w]e elected to immediately terminate the lease and believed the express language in the Lease allowed it." Appellant's Appendix Volume V at 30. She also stated that, since March 2021, Lanihun had not contacted Weston's office to request to collect any personal property left behind. The affidavit also stated that photographs which were taken before O5 Arena moved into the property and after it was instructed to leave the property were attached, and a number of

photographs were attached to the affidavit showing the condition of the premises.

[10] The designated probable cause affidavit stated in part:

On 3/27/21 . . . , Detective Kevin Russell [] of the Indianapolis Metropolitan Police Department spoke with Sgt. Kevin Kendall [] of the Indianapolis Metropolitan Police Department. Sgt. Kendall stated as he was en-route to Northwest Metro roll call located at . . . , his fully marked police vehicle was struck by a bullet round in the rear passenger door. Sgt. Kendall stated he was not hit and the bullet is still lodge[d] inside the rear passenger door. Sgt. Kendall stated he heard approximately 100 shots fired in the area and observed approximately 100 vehicles in the parking lot just south of 38th Street and on Commercial Drive driving erratically.

. . . . Officer Crowe stated there is an un-named after hour club located at [the premises] where the people and vehicles were leaving from. Officer Crowe stated there were numerous shell casings of different calibers on the parking lot in front of the strip mall

* * * * *

. . . . On 3/27/2021 at 1:00 pm, Detective Russell retrieved a copy of the video from [a neighboring business] showing approximately 6 black males shooting firearms toward northbound from the un-named club toward 38th Street and Commercial Drive.

* * * * *

After reviewing the video that was retrieved . . . Officer Danielle Lanigro . . . identif[ied] one of the black males that was shooting from [the premises] . . . as Alonzo Smith.

. . . . Mr. Smith was convicted of felon in possession of firearms in 2016 and is currently on federal probation. Mr. Smith has a pending

case of Criminal Recklessness with a weapon Mr. Smith was convicted of Carrying a Handgun without license on 4/7/2015

Detective Russell conducted a recording statement with the leasing tenant of [the premises], Bolaji Lanihun and his wife Mr. Lanihun stated that he rented the facility to “Alonzo” for March 19th and 20th and 26th from 10pm to 3 am but told “Alonzo” he could not use the facility on the 27th, because he received a termination of lease from the property management company. Mr. Lanihun stated he heard shots fired on the morning of the 27th and called “Alonzo” but “Alonzo” told him that it was shots fired by the police and people at the intersection of 38th Street. . . .

Id. at 88-89.

[11] In his affidavit, Austin Smith stated that he was the head of security for Weston, “[o]ne of my employees was on patrol when he heard the shots fired” at the property on March 27, 2021, “[u]pon investigation, we discovered an officer with the Indianapolis Metropolitan Police Department (‘IMPD’) in his fully marked police vehicle was hit by a bullet,” “[w]e also discovered there had been an illegal, unlicensed party at the Property,” “[i]t was clear there was alcohol present on the Property, but there were no liquor licenses or permits posted anywhere,” “[t]here was also no security hired to check identifications or ensure maximum capacity was not breached,” “[g]iven the seriousness of the situation, IMPD asked to meet with me and other representatives from Weston,” “IMPD shared its concern that Mr. Lanihun would be so careless to rent the Property to a convicted firearms felon for illegal parties, which resulted in one officer almost being shot,” and “[f]ollowing the meeting, we reviewed

the terms of the Lease and discussed internally what would be the safest, most appropriate, reasonable next steps to take with O5 Arena.” *Id.* at 92-93.

[12] O5 Arena filed a memorandum in response to Weston’s cross motion for summary judgment together with a supplemental designation of evidence consisting of a Second Declaration of Lanihun. Lanihun stated that, on April 2, 2021, he met Gonzalez at the premises in an effort to collect his property, Gonzalez refused to give him access to his property until he signed a Mutual Release of Lease Agreement, when he returned on April 6 with a detective he found that Weston had changed the locks, he never told Weston that he intended to use the premises exclusively as a lounge and Weston was well aware he intended to use the premises as a private event center and a lounge, and before signing the Lease he walked through the premises with Gonzalez and discussed all of the alterations which he subsequently made and Gonzalez had agreed to all of those alterations.

[13] On November 1, 2021, the trial court held a summary judgment hearing, on November 30, 2021, it issued an Order on Plaintiff’s Motion for Partial Summary Judgment and Defendant’s Cross Motion for Summary Judgment which provided:

The Court now finds that O5 Arena’s Motion for Partial Summary Judgment should be DENIED in its entirety.

The Court now finds that Weston’s Cross Motion for Summary Judgment should be GRANTED, in part and DENIED, in part. The Court finds that O5 Arena breached its Lease with Weston and therefore, Weston had the right to terminate the Lease without

notice. Because the Court finds that Weston had a right to terminate the Lease without notice, Weston then had the right to enter the premises pursuant to the Lease. Therefore, Weston did not commit trespass against O5 Arena as alleged in Count 2: Civil Trespass. The Court denies Weston's Cross Motion for Summary Judgment to the extent that it claims that it is entitled to judgment as a matter of law because O5 Arena's alleged mistake of material fact renders the lease voidable. The Court denies Weston's Cross Motion for Summary Judgment as to Count 3: Conversion. The conversion claim should be resolved by the trier of fact and, if resolved in O5 Arena's favor, the amount of damages to which O5 Arena is entitled pursuant to Ind. Code § 34-24-3-1.^{3]}

Weston has requested a hearing to determine damages for O5 Arena's breach The Court has determined that O5 Arena breached its Lease with Weston and therefore Weston is entitled to damages for O5 Arena's default. However, because O5 Arena's claim for conversion against Weston remains viable, the Court shall take the damages issue under advisement until the resolution of the conversion claim.

Appellant's Appendix Volume II at 11.

Discussion

[14] Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Stewart v. TT Com. One, LLC*, 911 N.E.2d 51, 55 (Ind. Ct. App. 2009) (citing Ind. Trial Rule 56(C); *Mangold ex rel. Mangold v. Ind. Dep't of Natural Res.*, 756

³ Ind. Code § 34-24-3-1 provides in part that, if a person suffers a pecuniary loss as a result of certain violations, including conversion, the person may bring a civil action against the person who caused the loss and recover certain damages and attorney fees.

N.E.2d 970, 973 (Ind. 2001)), *trans. denied*. All facts and reasonable inferences drawn from those facts are construed in favor of the nonmovant. *Id.* The moving party bears the initial burden of making a prima facie showing there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Manley v. Sherer*, 992 N.E.2d 670, 673 (Ind. 2013). Summary judgment is improper if the moving party fails to carry its burden, but if it succeeds, then the nonmoving party must come forward with evidence establishing the existence of a genuine issue of material fact. *Id.* A trial court's grant of summary judgment is clothed with a presumption of validity. *Lowrey v. SCI Funeral Servs., Inc.*, 163 N.E.3d 857, 860 (Ind. Ct. App. 2021), *trans. denied*. The fact that the parties made cross-motions for summary judgment does not alter our standard of review. *Stewart*, 911 N.E.2d at 55. Instead, we must consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law. *Id.*

[15] O5 Arena asserts that Weston violated the Lease when it failed to provide a thirty-day opportunity to cure. O5 Arena argues that Section 20.02 of the Lease addressing remedies contains three clauses: the first clause refers to monetary defaults and corresponds to subsection (a) of Section 20.01, the second clause refers to non-monetary defaults and corresponds to subsection (b) of Section 20.01, and the third clause corresponds to the default events listed in subsections (c) through (k) of Section 20.01. It argues that Weston's termination notice quoted from Exhibit C to the Lease, not to events of default under subsections (c) through (k) of Section 20.01, and thus Weston was

required to give it thirty days to cure. O5 Arena also asserts that, as Weston did not have a right to terminate the Lease, it committed trespass when it entered the property.

[16] Weston maintains it had the right to terminate the Lease without notice. Weston agrees that Section 20.02 of the Lease contained three remedies clauses and argues that the first clause related to monetary default, the third clause related to a non-monetary violation of Article 20 and provided for termination without demand or notice, and O5 Arena violated a non-monetary provision in Article 20, specifically, Section 20.01(b). It argues the second clause, which provided for an opportunity to cure, also related to non-monetary defaults and was broader than the third clause because the second clause referred to any default whereas the third clause referred to a default under Article 20. Weston argues that it terminated the Lease due to O5 Arena's creation of a nuisance and it had the right to do so under Section 20.02, and that it did not commit trespass.

[17] Indiana courts have recognized the contractual nature of leases and the applicability of the law of contracts to leases. *Stewart*, 911 N.E.2d at 55. The construction of a written contract is generally a question of law for the court, making summary judgment particularly appropriate in contract disputes. *Id.* When interpreting a contract, our paramount goal is to ascertain and effectuate the intent of the parties. *Id.* at 56. This requires the contract to be read as a whole, and the language construed so as not to render any words, phrases, or terms ineffective or meaningless. *Id.* Courts should interpret a contract so as to

harmonize its provisions, rather than place them in conflict. *Dunn v. Meridian Mut. Ins. Co.*, 836 N.E.2d 249, 252 (Ind. 2005). When interpreting a contract, specific terms control over general terms. *Ryan v. Laws. Title Ins. Corp.*, 959 N.E.2d 870, 875 (Ind. Ct. App. 2011).

[18] Section 7.01 of the Lease required O5 Arena and its invitees to comply with certain Rules and Regulations related to the use of the leased premises. The failure to comply with the Rules and Regulations constituted an event of default under subsection (b) of Section 20.01 of Article 20. Weston designated evidence, including the affidavits of Flores, the manager for Weston, and Smith, the head of security for Weston, as well as the probable cause affidavit, establishing a prima facie showing that O5 Arena violated these provisions, and O5 Arena did not designate evidence which rebutted that showing. The court did not err in finding that O5 Arena did not comply with the Lease terms. The parties agree that Section 20.02 included three clauses related to Weston’s remedies and that the first clause related to monetary default and was not applicable. We agree that, while both the second and third clauses related to non-monetary defaults, the third clause was more specific because it related to “any other default provided for *in this Article 20.*” Appellant’s Appendix Volume V at 69 (emphasis added). As O5 Arena’s violations constituted non-monetary default “provided for in this Article 20,” the Lease permitted Weston, “without any demand or notice,” and “in addition to any other rights or remedies at law or equity,” to “elect to terminate [the] Lease” *Id.* The language of Section 20.02 supports the

conclusion that the parties intended that a default for creating or permitting waste or nuisance upon the premises as described by the designated evidence would permit Weston to terminate the Lease without providing a thirty-day period to cure. Also, as O5 Arena's trespass claim was based on its argument that Weston did not have a right to terminate the Lease, we find its argument without merit. We cannot conclude the trial court's entry of summary judgment was improper.

[19] For the foregoing reasons, we affirm the trial court's November 30, 2021 order.

[20] Affirmed.

Mathias, J., and Molter, J., concur.