DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

KRG OLDSMAR PROJECT COMPANY, LLC,

Appellant,

v.

CWI, INC., and CWGS GROUP, LLC,

Appellees.

No. 2D21-1731

March 22, 2023

Appeal from the Circuit Court for Hillsborough County; Jennifer X. Gabbard, Judge.

Hal R. Morris and Christopher S. Naveja of Saul Ewing Arnstein & Lehr LLP, Chicago, Illinois; Ashley H. Saul of Saul Ewing Arnstein & Lehr LLP, Miami; and Gary S. Salzman and Erin J. O'Leary of Garganese, Weiss, D'Agresta & Salzman, P.A., Orlando, for Appellant.

Eric S. Adams and Alyssa L. Cory of Shutts & Bowen LLP, Tampa, for Appellees.

KELLY, Judge.

This appeal requires us to interpret a lease executed by CWI, Inc. and KRG Oldsmar Project Company, LLC. CWI was a tenant in a shopping center operated by KRG. The trial court found that the parties' lease permitted CWI to close its store within the first year of operation

without it constituting a default. We disagree with the trial court's interpretation of the lease and reverse.

CWI entered into a ten-year lease under which it was to operate a Gander Outdoors store in a retail shopping center. KRG is the landlord of the shopping center. CWI opened the store as planned but closed the store after only six months. The store's closing led to this litigation. Both parties filed motions for summary judgment asking the trial court to interpret the provisions of the lease that governed CWI's obligation to operate a Gander Outdoors store at the leased premises and KRG's remedy should CWI fail to do so. The trial court agreed with CWI's interpretation of the lease and entered summary judgment in its favor.[1]

Contract interpretation is a question of law subject to de novo review. *See Bethany Trace Owners' Ass'n v. Whispering Lakes I, LLC,* 155 So. 3d 1188, 1191 (Fla. 2d DCA 2014). Likewise, the grant of summary judgment is reviewed de novo. *See Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000). Summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(a) (2021).[2]

---

[1] The trial court also rendered an order dismissing counts I, II, and III of CWI's amended complaint without prejudice to CWI's right to refile these counts should this court rule in KRG's favor and reverse and remand for further proceedings.

[2] Florida Rule of Civil Procedure 1.510 was recently amended to conform with the federal summary judgment standard. *See In re Amends. to Fla. R. Civ. P. 1.510*, 317 So. 3d 72, 74 (Fla. 2021); *In re Amends. to Fla. R. Civ. P. 1.510*, 309 So. 3d 192, 192 (Fla. 2020). The amended rule applies to all cases pending at the time the rule became effective. *See Lloyd S. Meisels, P.A. v. Dobrofsky,* 341 So. 3d 1131, 1134 (Fla. 4th DCA 2022). The parties' motions for summary judgment were

Section 8 of the lease governs the tenant's use of the premises. The provisions at issue state as follows:

> **8.2 <u>Operations; Recapture</u>**. Tenant shall, subject to Force Majeure, open for business on the Premises (with a level of fixtures and staff typical of other Gander Outdoors stores of like size) within one hundred twenty (120) days following the Delivery Date (the "Opening Date") *and shall (subject to Permitted Cessations) continuously operate on the Premises for a period of one (1) year thereafter. Thereafter, nothing in this Lease shall be deemed to impose any further obligations upon Tenant to operate in the Premises or any portion thereof during any portion of the Term.* The duration and manner of Tenant's business operations, if any, shall be determined by Tenant in its sole and absolute discretion; provided that Tenant's business hours shall be consistent with (but shall not be required to be exactly the same as) other Tenant stores in the southeastern part of the United States (provided, further, that this sentence shall not be deemed to impose a covenant of continuous operation on Tenant after the foregoing period). Tenant may change its trade name at any time in Tenant's sole discretion so long as such trade name includes (a) Gander Outdoors, (b) Camping World, or (c) other trade name used in a majority of Tenant's stores, so long as such other trade name is used in no less than twenty (20) such stores.
>
> > **8.2.1** A "Business Cessation" shall have occurred if Tenant elects to, or otherwise shall, cease its business operations in more than fifty percent (50%) of the Premises on substantially a full time basis. *A Business Cessation shall not be deemed to be an event of default hereunder.* However, if there is a Business Cessation for a period of one hundred twenty (120) consecutive days or more (provided that periods of a Permitted Cessation (as defined in this Section) shall be excluded in such determination), Landlord may, but is not obligated to, as its sole and exclusive remedy, terminate this Lease (and Tenant shall surrender possession of the

---

decided after May 1, 2021, the effective date of the amendment, and therefore the amended rule applies to this case.

Premises to Landlord) upon at least sixty (60) days (but no more than ninety (90) days) prior written notice by Landlord to Tenant. Upon such termination, Tenant and Landlord shall be relieved of and from any and all further future liability or obligation to the other under this Lease. The prior sentence may not be construed as a release of Tenant's or Landlord's liability or obligations which arise prior to such termination or which by their terms survive termination or expiration of this Lease. Notwithstanding the foregoing, Tenant may void such termination by resuming business operations in at least fifty percent (50%) of the Premises on a full time basis as aforesaid prior to the expiration of the notice period. No provision of this Section or otherwise in this Lease may be deemed to extend a recapture right to Landlord solely due to an assignment or subleasing hereof, provided there is otherwise not a Business Cessation that would trigger this Section.

8.2.2 For purposes of this Lease, "Permitted Cessation" shall mean Tenant's inability to operate due to (a) damage or destruction of the Premises, including without limitation events of the type described in Section 14 regarding damage, destruction and restoration; (b) redecoration, remodeling and/or refurbishing of the Premises; (c) events described in Section 15 regarding eminent domain or Section 25.9 regarding Force Majeure, (d) Landlord's default in the performance of its obligations hereunder, which default has a materially adverse effect on Tenant's ability to operate business in the Premises; (e) events resulting from the inaccuracy of any representation or warranty made hereunder by Landlord, which inaccuracy has a materially adverse effect on Tenant's ability to operate business in the Premises; or (f) an exclusive, prohibited use or other restriction not specifically and expressly stated herein, which exclusive, prohibited use or other restriction has a materially adverse effect on Tenant's ability to operate business in the Premises.

(Emphasis added.) In addition, section 16.1 of the lease lists the matters that constitute an event of default by the tenant. Item (3) states that the tenant's failure to perform any of the terms prescribed under the lease would allow the landlord any one or more of the remedies in subsections 16.1.1-16.1.4.

In interpreting these provisions, the trial court correctly recognized that section 8.2 required CWI to continuously operate for a period of one year after opening and that *thereafter* CWI had no further obligation to remain open. In other words, the cessation of business *after* the first year of the lease was not a default. However, the court agreed with CWI's argument that under section 8.2.1, the tenant's cessation of business in the first year was also not a default that would allow the landlord to seek remedies under section 16. Rather, the court found that "KRG's exclusive and sole remedy" against CWI for ceasing to do business in the first year was termination of the lease and recapture of the premises as described in section 8.2.1.

KRG argues that the trial court erred in applying the remedies in section 8.2.1 for "Business Cessation" to CWI's breach of the lease in the first year. It contends that the plain language of section 8.2 contains only one exception to the one-year requirement of continuous operation—"Permitted Cessations"—and that CWI did not allege that its reason for closing the store after six months was one of the permitted cessations listed in section 8.2.2. Thus, CWI's closure was a breach of section 8.2, entitling KRG to the remedies for default in section 16.

We agree with KRG's interpretation of the lease. Such a reading harmonizes and gives meaning to each of the provisions in section 8. *See City of Homestead v. Johnson*, 760 So. 2d 80, 84 (Fla. 2000) (stating

that courts are required to "to read provisions of a contract harmoniously in order to give effect to all portions thereof").

In contrast, CWI's and the trial court's interpretation of section 8.2 renders the one-year continuous operation requirement completely meaningless. In interpreting section 8.2, the trial court ignored the express "Permitted Cessation" exception and effectively inserted an additional exception for "Business Cessation" described in section 8.2.1. This interpretation rewrites the lease to remove any difference between cessation in the first year, which is *not* permitted under section 8.2 without a listed reason, and cessation in subsequent years of the lease, which *is* permitted under section 8.2.1. Under this logic, CWI could violate the one-year requirement without a permitted cessation and not be in default. This position runs afoul of the plain language of the lease and is contrary to Florida law. *See Moore v. State Farm Mut. Auto. Ins. Co.*, 916 So. 2d 871, 877 (Fla. 2d DCA 2005) ("[Courts] will not interpret a contract in such a way as to render provisions meaningless when there is a reasonable interpretation that does not do so."); *see also Publix Super Markets, Inc. v. Wilder Corp. of Del.*, 876 So. 2d 652, 654 (Fla. 2d DCA 2004) (holding that courts must construe contracts in such a way as to give reasonable meaning to all provisions). "When a contract is clear and unambiguous, the court's role is to enforce the contract as written, not to rewrite the contract to make it more reasonable for one of the parties." *Snyder v. Fla. Prepaid Coll. Bd.*, 269 So. 3d 586, 592 (Fla. 1st DCA 2019).

Accordingly, we reverse the final summary judgment in favor of CWI and remand for further proceedings consistent with this opinion.

Reversed and remanded.

VILLANTI, J., and STEVENSON, W. MATTHEW, ASSOCIATE SENIOR JUDGE, Concur.

Opinion subject to revision prior to official publication.