

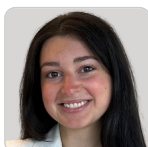
Waiting for the Sun

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Bartelby the Scrivener Strikes Again



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In a recent decision by the Supreme Court of the State of New York (the “**Court**”), Big City Outdoor, LLC (“**Plaintiff**”) was denied summary judgment in a contract dispute arising from a 2017 lease agreement for advertising window space at 35 Wall Street (the “**Agreement**”) with CS Wall Street LLC (“**Defendant**”). Plaintiff argued the Agreement provided for a six-year term with a unilateral option to renew and that performance was only temporarily suspended while scaffolding obstructed the windows. Plaintiff claimed that once the obstruction was removed, Defendants wrongfully denied access to the advertising space and allowed third parties to use the same, despite Plaintiff’s continuing contractual rights. Defendant argued that the Agreement either terminated when the premises was leased to JTRE 23 WS (DEL) LLC (“**Co-Defendant**” and together with Defendant, “**Defendants**”) or expired on December 31, 2023 and further contended that the renewal provision was unenforceable because it lacked essential terms of a valid contract.

Under CPLR 3212, a motion of summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law. The movant must first establish a prima facie case through admissible evidence, after which the burden shifts to the opposing party to demonstrate the existence of triable factual issues. Importantly, the court’s role in a motion for summary judgement is issue finding, as opposed to issue determination, meaning the motion must be denied if any material factual dispute exists.

Here, Plaintiff sought summary judgment declaring the Agreement valid and properly renewed, dismissing Defendants counterclaims and confirming Plaintiff’s right to continue using the advertised space. Defendants opposed and cross-moved for summary judgement, arguing the Agreement terminated upon the lease of the premises to Co-Defendant, or, at the latest, December 31, 2023, spoiling Plaintiff’s argument for summary judgement.

The core dispute in this case centered on a typographical error in the Agreement’s termination clause, which stated that the “Lessee” had the right to terminate the Agreement if the premises were leased or sold. Plaintiff argued this language was intentional and enforceable as written and interpreted the provision literally. Defendants, however, maintained that “Lessee” was a scrivener’s error and should have read “Lessor,” consistent with the parties’ prior 2013 and 2014 agreements. The Court agreed, finding Plaintiff’s interpretation commercially unreasonable, as it would allow a limited signage tenant to control termination rights affecting the entire property.

Relying on principles of contract interpretation and commercial reasonableness, the Court held that Defendants established by clear and convincing evidence that the Agreement did not reflect the parties’ actual intent. The Court reformed the Agreement by substituting “Lessor” for “Lessee” in the disputed provision, consistent with the parties’ prior course of dealing and ordinary commercial expectations. The Court also held that Plaintiff’s purported renewal option was unenforceable because it failed to include essential material terms, including rent, renewal duration and procedures for exercising the option. As a result, Plaintiff’s motion for summary judgment was denied in its entirety,

while Defendants' cross-motion was granted in part, including dismissal of Plaintiff's claims and a declaration that no valid renewal occurred after December 31, 2023.

Big City Outdoor, LLC v. JTRE 23 WS LLC illustrates the Court's unwillingness to enforce contractual language literally where doing so would produce absurd or commercially unreasonable results inconsistent with the parties' prior agreements and course of dealing. The decision reinforces key principles involving contract ambiguity, scrivener's error, commercial reasonableness and the limits of summary judgment in contract disputes.