

2001

James D. Nielsen v. Gold's Gym and Troy Peterson and Associates : Brief of Appellee

Utah Supreme Court

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Recommended Citation

Brief of Appellee, *James D. Nielsen v. Gold's Gym and Troy Peterson and Associates*, No. 20010510.00 (Utah Supreme Court, 2001).
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IN THE SUPREME COURT
OF THE STATE OF UTAH

JAMES D. NIELSEN,)	
)	
Plaintiff-Appellant,)	
)	
vs.)	
)	
GOLD'S GYM and TROY PETERSON)	Case No. 20010510-SC
& ASSOCIATES)	
)	
Defendants-Appellees.)	

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FILED
UTAH SUPREME COURT

MAY 05 2002

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BRIEF OF DEFENDANT/APPELLEE

JURISDICTION

The Utah Supreme Court has jurisdiction of this appeal pursuant to Utah Code Annotated §78-2-2(3)(j) (1996).

ISSUES PRESENTED

Was a "commercial lease" unenforceable for lack of mutual assent as to the nature, extent, and boundary of the property to be leased, and the failure of the lease to assign the duty to pay for interior improvements (\$168,000.00) to either party.

STANDARD OF REVIEW

The standard of review of a trial court's interpretation of a contract is "correctness" or "correction of error". Seashores, Inc. v. Hancey, 738 P.2d 645, 647 (Utah Ct. App. 1987).

If the contract is ambiguous and the trial court received extrinsic evidence, the standard of review would be the more deferential "clearly-erroneous" standard. (Barnes v. Wood, 750 P.2d 1226, 1229 (Utah App. 1988)).

Finally, if a party challenges the trial court's interpretation of an ambiguous contract, that party must marshal all relevant evidence presented at trial which tends to support the findings and demonstrate why the findings are clearly erroneous. (Bell v. Elder, 782 P.2d 545, 547, (Utah App. 1989)).

DETERMINATIVE PROVISIONS

Appellee knows of no constitutional provisions, statutes, ordinances, rules, or regulations which are determinative of this appeal.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

In this case, the trial court found that Plaintiff/Appellant, hereinafter referred to as "Nielsen" failed to sustain his burden of proof that there was a "meeting of the minds" as to essential, material terms of a lease agreement, namely what was the nature, extent, and boundary of the property to be leased, and which party was to pay for improvements to the subject property.

The trial court found the lease agreement unenforceable for lack of mutual assent and Nielsen filed this appeal.

B. COURSE OF THE PROCEEDINGS

Nielsen filed a Verified Complaint on August 25, 1998, in Utah County, State of Utah. [R. 8].

Defendant/Appellee, hereinafter referred to as "Peterson", filed his Answer on September 14, 1998. [R. 15].

Trial was held on December 12, 2000, and a Ruling was issued on January 24, 2001. [R. 120].

Nielsen filed his Objection to the proposed Findings of Fact, Conclusions of Law, and Judgment of Dismissal. [R. 128].

The trial court considered the objections of Nielsen, denied

the same, and executed the Findings of Fact, Conclusions of Law, and Judgment of Dismissal. [R. 142].

The Findings of Fact, Conclusions of Law, and Judgment of Dismissal were entered on May 11, 2001. [R. 148, 151].

Nielsen appealed the trial court's Judgment of Dismissal on June 11, 2001. [R. 156].

C. DISPOSITION IN THE TRIAL COURT

The trial court considered the evidence presented by the parties, considered the argument of counsel and applicable cases, and issued its final ruling that Nielsen did not sustain his burden of proof and that his Complaint should be dismissed.

D. STATEMENT OF THE FACTS

1. On August 18, 1997, Nielsen and Peterson signed a "commercial lease" which referred to "premises" described as a strip mall at 1341 E. Center, Spanish Fork, Utah, 84660. [R. 3].

2. The lease was prepared by Nielsen. [R. 161, ¶ 33, L. 12-13; P. 35, L. 20].

3. At the time of the signing, the mall was under construction. [R. 119, ¶ 2].

4. At the time of the signing, the property was not zoned for the operation of a health club. [R. 119].

5. The lease was presented to Spanish Fork City's zoning commission which granted a zoning change to accommodate the operation of a health club. [R. 119, ¶ 4].

6. The "premises" were not ready for occupancy on August 18, 1997, nor on November 1, 1997. [R. 161, P. 37, L. 2-6; L. 17-21].

7. The responsibility for paying the cost of improvements was not addressed in the lease. [R. 161, P. 37-38, L. 3].

8. The utilities were always in the name of Nielsen. [R. 161, P. 38, L. 4-11].

9. Nielsen never gave Peterson written notice that he could take possession of the "premises". [R. 161, P. 39, L. 6-10].

10. Nielsen failed to fill in the blanks on paragraph number nine (9) which allowed the tenant to terminate the lease if possession of the "premises" were not delivered [R. 3, ¶ 9]; paragraph number fourteen (14) regarding notice, [R. 3, ¶ 14]; paragraph number twenty-two (22) regarding the rental amount upon exercise of an option to renew [R. 3, ¶ 22]; and paragraph number twenty-four (24) regarding radon gas in the buildings [R. 3, ¶ 24].

11. The addendum to the lease was not signed by either party. [R. 1].

12. Peterson obtained architectural plans and an estimate for improvements. [R. 119, P. 6-7].

13. Nielsen and Peterson disagreed as to who would pay the cost of improvements (\$168,000.00). [R. 119, 118, ¶ 8].

14. Gold's Gym never moved into the premises. [R. 118, ¶ 9].

15. On February 3, 1998, Nielsen gave Peterson written notice terminating the lease. [Exhibit 5].

16. One day later, on February 4, 1998, Nielsen entered into a lease agreement with World's Gym (Jimmy Zufelt) for the premises. [Exhibit 17].

17. The trial court found that mutual assent regarding price, duration, and the extent and boundary of the property was required [R. 117, 145], that the lease was "utterly silent" on who was to pay for improvements (\$168,000.00) [R. 116], and that Nielsen had failed to show a meeting of the minds on each material term. [R. 116, 115, 114].

18. In addition, the trial court found that improvements were not even discussed until weeks after the lease was signed [R. 115], and that while Nielsen argued "industry standard", no evidence was presented whatsoever to support his contention [R. 115].

19. Finally, the trial court found that Nielsen himself

told KBR Construction (Buck Robinson) that no agreement had yet been reached with respect to interior improvements. [R. 114].

SUMMARY OF ARGUMENTS

The commercial lease was ambiguous and incomplete on its face by failing to define the nature, extent, and boundary of the lease property and by failing to assign the duty to pay for interior improvements (\$168,000.00) to either party.

There was no mutual assent or meeting of the minds as to essential, material terms of the agreement and therefore the lease was unenforceable.

ARGUMENT

I. The "commercial lease" was ambiguous and incomplete on its face by failing to define the nature, extent, and boundary of the lease property, and by failing to assign the duty to pay for interior improvements (\$168,000.00) to either party.

In finding the lease in the instant case unenforceable, the trial court carefully considered conditions precedent to the

enforcement of a contract and the requirement of mutual assent to all material terms.

In the case of Candland v. Oldroyd 248 P. 1101, 1102 (Utah 1926), the court stated in part, as follows:

Mutual assent is fundamental to every enforceable contract. It means that each party has "a definite, understandable, and unequivocal meeting of the minds upon the terms of the contract"; that is to say, each party must agree without reservation to what he is required to do and to what the other party is required and expected to do.

In the instant case, neither party understood who was to pay for interior improvements and in fact had not discussed the matter prior to execution of the lease. [R. 161, P. 37-38, L.3]. The cost of the interior improvements was \$168,000.00. [R. 119, P. 6-7]. Nielsen and Peterson disagreed as to who was responsible to pay these costs and the lease was silent on the matter. [R. 119, 118, P. 8].

In the case of Commercial Union Associates, 863 P.2d 29, 36-37 (Utah App. 1993), the court stated in part, as follows:

A condition precedent to the enforcement of any contract is that there be a meeting of the minds of the parties, which must be spelled out, either expressly or implicitly, with sufficient definiteness to be enforced.

In the instant case, the lease was completely silent

regarding the duty to install and pay for interior improvements and accordingly, no duty could be assigned or enforcement obtained regarding this material term.

Nielsen had the burden of proof to show "the parties' mutual assent as to all material terms and conditions." Cal Wadsworth Construction v. City of St. George 898 P.2d 1372, 1376 (Utah 1995).

In the instant case, Nielsen conceded that the duty to pay for improvements was not discussed prior to execution of the lease, but went on to argue that "industry custom" could establish the missing term. However, Nielsen failed to present any evidence that such an industry custom existed.

It is noteworthy that Nielsen argued that the lease was fully integrated and that no extrinsic evidence should be considered. [R. 115, Note 7]. The trial court observed that Nielsen urged consideration of trade usage or custom to fill in the missing term. Such trade usage or custom would be "wholly dependent on extrinsic evidence". [R. 115, Note 8].

The trial court cited the case of Birdzell v. Utah Oil Refining Company, 242 P.2d 578, 580 (Utah 1952) for the following proposition:

. . . it may be stated as settled law that a memorandum of agreement for a lease which is required to be in writing, in order to

satisfy the statute of frauds, must contain all the essential and material parts of the lease which is to be executed thereafter according to its terms, and particularly must contain three (3) essentials in order to (sic) its validity under that statute of frauds. These are: First, a definite agreement as to the extent and boundary of the property to be leased; Second, a definite and agreed term; and Third, a definite and agreed rental and the time and manner of its payment.

In the instant case, the lease referred to "the premises" as "a strip mall at 1341 E. Center, Spanish Fork, Utah, 84660". [R. 3].

Exhibit 2, Attachment A, submitted at trial by Nielsen, refers to the premises containing 18,315 square feet [Exhibit 2]. The bid for interior improvements of \$168,000.00 refers to 11,032 square feet [Exhibit 14].

The lease fails to specify the square footage at all, and an addendum to the lease, not executed by either party, refers to "over 10,000 square feet" or "otherwise". [R. 3 and R. 1].

Finally, paragraph number three (3) of the lease imposes a duty on the lessee to maintain the premises "in as good condition as received". [R. 3]. The trial court noted that this provision appeared to impose the duty to complete the interior improvements on Nielsen. [R. 116, Note 5].

Nielsen argues that the lease was not ambiguous as to a

description of the "premises". The record however, reveals that the "premises" could be:

1. An entire strip mall; [R. 3]
2. 18,315 square feet; [Exhibit 2, Attachment A]
3. 11,032 square feet; [Exhibit 14]
4. Over 10,000 square feet; [R. 3 and R. 1]
5. Other than 10,000 square feet; [R.3 and R. 1]
6. A shell; [R. 116, Note 6]
7. A finished building. [R. 116, Note 6].

In the case of Whitehouse v. Whitehouse, 790 P.2d 57,60 (Utah App. 1990) the court stated, in part, as follows:

Language in a written document is ambiguous if the words used may be understood to support two or more plausible meanings.

In the instant case, the "premises" could be understood to support up to seven (7) plausible meanings. The lease is therefore ambiguous and incomplete and therefore unenforceable.

II. There was no mutual assent as to essential, material terms and therefore the lease is unenforceable.

The trial court found the lease deficient and incomplete because it did not assign which party was to pay for the interior improvements. Having found the lease to be insufficient, the

trial court looked to extrinsic evidence for clarification.

However, the trial court stated:

Nor does the extrinsic evidence establish the necessary assent. In this case each party conceded that improvements were not even discussed until well after the contract had been signed. This fact precludes the possibility that some oral understanding was reached at the time of contract execution as to payment for the improvements. [R. 115, P. 1].

Both parties conceded that the subject was not discussed until "well after" the lease was signed. Nielsen argued "industry custom" but provided no evidence of the same. [R. 115, P. 1].

In the case of West Valley City v. Majestic Ink Co., 818 P.2d 1311, 1313 (Utah App. 1991) the court stated in part as follows:

We review the trial court's construction based on extrinsic evidence under the more deferential clearly-erroneous standard. A party challenging the court's interpretation of ambiguous terms of a contract faces a substantial appellant burden. We affirm the trial court's findings if they are based on sufficient evidence, viewing the evidence in the light most favorable to the trial court's construction.

In the instant case, Nielsen did not challenge the findings of the trial court, did not marshal all relevant evidence to support the findings, and then demonstrate why the findings are

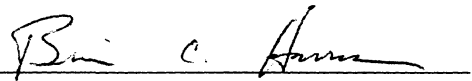
clearly erroneous, and therefore the trial court's finding that there was no meeting of the minds regarding an essential material term is unrebutted.

In the absence of mutual assent as to essential, material terms, the lease is unenforceable.

CONCLUSION

It is respectfully urged that the trial court's conclusion that the lease is unenforceable for lack of mutual assent should be affirmed.

DATED this 3 day of May, 2002.




Brian C. Harrison
Attorney for Defendant/Appellee

MAILING CERTIFICATE

I HEREBY CERTIFY that I personally mailed a true and correct copy of the foregoing on this 3rd day of May, 2002, by first-class U.S. mail, postage prepaid, to the following:

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