

Doran v McNichols

2013 NY Slip Op 30974(U)

May 6, 2013

Sup Ct, Wayne County

Docket Number: 74434/2012

Judge: Daniel G. Barrett

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At a Term of the Supreme Court held in an for the County of Wayne at the Hall of Justice in the Village of Lyons, New York on the 27th day of February, 2013.

Present: Honorable Daniel G. Barrett
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

JOSEPHINE DORAN, JOHN VISALLI and
JAMES DORAN,

Plaintiffs,

-vs-

WALTER J. MCNICHOLS and
KATHLEEN L. MCNICHOLS,

Defendants

DECISION
Index No. 74434

2012

Appearances - Plaintiffs - Ross J. Cammarata, Esq.
Defendants - Douglas M. Jablonski, Esq.

The Court conducted a hearing regarding motions of summary judgment by both parties against the other. This involves a lease signed by the parties, Plaintiffs as landlords, Defendants as tenants. This is in regard to 6 Parkway, Williamson, New York. This is generally described as a cottage on Lake Ontario. Plaintiffs own the land and the Defendants own the structure located on said land.

The parties entered into an agreement on September 1, 2001 for the rental of the property. This is shown by Plaintiff's Exhibit 13. The parties are now in dispute as to the renewal of said lease which initial term was for ten years ending on August 31, 2011.

Written into the contract is the term: option to renew in ten years. The parties disagree regarding the meaning of said term. Plaintiffs' position is said term merely meant that they agreed to negotiate at the end of the ten year term. Defendants' position of said term bound Plaintiffs to another ten year term if Defendants exercised the option.

James Doran testified. He and his wife put a sign in the subject cottage that it was for sale in the summer of 2001. At some point Defendant, Walter McNichols contacted him and they began negotiations. At the time the cottage was basically uninhabitable. Plaintiffs were selling the cottage for \$500.00 and leasing the area around the cottage.

The parties eventually agreed to a ten year lease. Mr. Doran testified that they never had a conversation regarding option to renew the lease until the day of the signing of the lease. Defendants called Plaintiffs on Labor Day weekend 2001 advising they wanted to sign the lease. He came to their home.

Mr. Doran testified at the time of the signing of the lease that the Defendant wanted to make sure that his dog could be at the property and wanted the option to renew for ten years. This is the language Mr. McNichols wanted and Mr. Doran states he dictated it to his wife and she wrote in that language. There was no discussion about the renewal other than what was placed in the lease.

Mr. Doran testified that he and his wife's intent was that they would renegotiate after ten years. They had no intention of the lease automatically renewing for a ten year period.

Mr. Doran acknowledges that the Defendant has improved the property to a great extent and has installed a well.

He further states the Defendant wanted the yearly rate to stay at \$3,100.00 for ten years because of the investment he was going to have to make on the property. However, Mr. Doran states that the Plaintiffs had no intention of automatically renewing the lease and being locked in at the same rental rate.

Each tenant pays the taxes on the property. Plaintiffs get one bill and then Mrs. Doran computes the amount each owes and sends them a bill.

In August, 2011 Plaintiffs sent the Defendants a new lease with increases. Defendant, Mr. McNichols, wrote back stating he was exercising the option to renew the lease with the same terms. Mr. Doran states they had no discussions or negotiations regarding the renewal.

After the letter Mr. Doran met with Mr. McNichols and states that Mr. McNichols was willing to pay more money but he wanted another ten years and the Plaintiffs were not willing to do that. The parties are thus at an impasse.

Josephine Doran testified. She had no negotiations with the Defendant. Defendant appeared at her house on Labor Day weekend 2001.

As far as any negotiations regarding a renewal she states there was none. The Defendant wanted that language and she simply put it in and they both initialed it. She testifies it was her intention they would revisit the lease after ten years.

Defendant, Walter McNichols testified. He heard that the cottage was for sale. He called Mr. Doran. He states there was extensive negotiations beginning in July, 2001.

Mr. McNichols testifies there were two documents, one for the cottage and one for the lease and in fact there is a quit claim deed deeding him the property under the building known as 6 Parkway.

He did consult an attorney and he felt there were issues regarding the dogs being allowed on the property and the renewing of the lease.

Mr. McNichols testified that he did not dictate the language to Mrs. Doran. He believes it was Mr. Doran that actually initialed the lease.

He testified as to the amount of money he put into the property and all the improvements including the well.

When he got the new lease in August, 2011 he testified he called Mr. Doran. He questioned why a new lease was needed since the originally lease was renewable. Mr. Doran advised the Defendant they were not bound by the original lease. Defendant testified he simply sent a letter back to the Dorans telling them he was renewing the lease.

The Defendant claims that Mrs. Doran at the time the lease was signed told him that the option to renew meant the same thing as renewable. Defendant believes he could sign the lease and the lease would be renewable for life for anybody he assigned it to.

The Defendant does admit during the negotiations in 2011 he agreed to pay the higher rent but not the new term. He believes that even if there was more money to pay he wouldn't have to sign a new agreement.

Plaintiffs admitted Exhibits 1 through 12 which were pictures of the property. Exhibit 13 is a copy of the original lease and Exhibit 14 was the proposed new lease.

Defendant admitted into evidence Exhibits A, B, D and F which are pictures of the property. Also Exhibit I which is a copy of the letter Defendant sent to Plaintiffs on or about August 18, 2011 with his check for \$775.00 stating he was renewing the original ten year lease.

The Court reminds the parties that the hearing is not a trial. The hearing was on the issue of summary judgment. The party seeking summary judgment must demonstrate the absence of any triable issues of fact, Vega v. Restaini Construction Corp., 18 N.Y. 3d 499. The party demonstrates summary judgment by affirmatively showing, through evidence in admissible form the merits of its cause of action or defense, Velasquez v. Gomez, 44 A.D. 3d 649, Smalls v. Hall Industrial, Inc., 10 N.Y. 3d 733.

The first issue is whether any testimony regarding the lease itself or the meaning thereof is admissible. Under the parol evidence rule where a contract is unambiguous, evidence outside the four corners of the document as to what was really intended but unstated or misstated is generally inadmissible to add to or vary the writing; that is, extrinsic and parol evidence is not admissible to create an ambiguity in a written agreement which is complete and clear and unambiguous upon its face.

The Court finds preliminarily that the lease due to the term regarding the renewal and the parties disagreement as to the insertion of that term and what that term meant is ambiguous and therefore the Court will allow testimony and evidence regarding the intention of the parties.

The parties disagree pursuant to their testimony as to how the language was devised regarding the term renewal, how that language was inserted in the lease and who actually initialed the change. All parties testify having knowledge there was no language in the agreement regarding how or when the option to renew would be exercised and what the terms of said renewal would be.

The Court has literally reviewed dozens of cases. Depending on how the term option to renew is interpreted, case law supports both the Plaintiff's and Defendant's position. The key is what did the parties intend and what does the term option to renew actually mean under the circumstances of this case.

Defendant also testified that there were other documents utilized during the negotiations and that were executed in addition to the lease, apparently a bill of sale and a quit claim deed. The Court notes it was not provided copies of said documents.

Both Plaintiffs and Defendants agree that the Defendant was willing to pay more for the rental of the property but they all agree that they could not determine the length of the renewal term. Plaintiffs were offering five years and the Defendant insists that the lease would be renewed for another ten year period.

Thus in determining the obligations of the parties to a contract, the court must determine, as a matter of law, whether provisions of the contract are ambiguous, possess the lack of definite precise meaning to provide a reasonable basis for a difference of opinion, Stevens v. Niagara Mohawk, 49 A.D. 3d 1011.

While the doctrine of definiteness provides that a court cannot enforce a contract if it cannot determine to what the parties have agreed, the doctrine has not been applied rigidly, and an imperfect expression of terms should not be used to defeat the underlying expectations of the parties where they have otherwise manifested an intent to be bound, Subcarrier v Satra, supra.

The Court denies the motion for summary judgment and the cross motion for summary judgment.

The Court will await the filing of a Note of Issue.

The Court is cognizant of the fact that the parties have expended time and expense with regard to this matter and that the trial itself may involve similar testimony and proof, however, based upon rules for summary judgment there are in fact questions of fact that would have to be determined at trial.

The Court continues to encourage the parties to resolve this matter. The parties that do not prevail at trial will be obviously in a difficult position.

This constitutes the Decision of the Court. Counsel for Plaintiff to provide the appropriate Order.

Dated : May 6, 2013
Lyons, New York



Daniel G. Barrett
Acting Supreme Court Justice

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WAYNE COUNTY
SUPREME AND COUNTY COURT