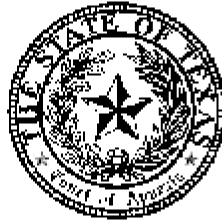
Affirmed and Opinion filed July 19, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00066-CV

WELLS FARGO BANK (TEXAS), N.A., Appellant

V.

METROPOLITAN LIFE INSURANCE COMPANY AND METROPOLITAN TOWER REALTY COMPANY, INC., Appellees

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On Appeal from the 234th District Court
Harris County Texas
Trial Court Cause No. 99-13548

O P I N I O N

This case involves the interpretation of a contractual clause defining a tenant's parking rights as set-out in a lease for the rental of office space. Appellant, Wells Fargo Bank ("Wells Fargo"), brings this appeal challenging a summary judgment in favor of appellees, Metropolitan Life Insurance Company and Metropolitan Tower Realty Company, Inc. (collectively, "MetLife"). We affirm.

Background

In July 1982, Allied Bank of Texas ("Allied") entered into a written agreement with Block 144 Joint Venture ("Block 144") to lease certain office space currently known as the Wells Fargo Plaza (the "Plaza"). Allied is Wells Fargo's predecessor-in-interest. Block 144 is MetLife's predecessor-in-interest. Pursuant to paragraph 24A of the lease agreement, Allied had use of 100 parking spaces in the Plaza's parking garage. Paragraph 24C of the same agreement provided an additional parking permit for each 2000 square feet of rentable area leased by Allied. Based on its lease of approximately 135,000 square feet of space, Allied received 67 additional parking spaces. Block 144 designated the 67 spaces to be located in the Plaza's parking garage at the inception of the lease.

On April 6, 1998, Wells Fargo and MetLife signed a fourth amendment to the original 1982 lease executed by their predecessors-in-interest. The effect of this amendment was to reduce the 100 parking spaces provided in paragraph 24A to 71 spaces. The provision for additional parking under paragraph 24C remained in full force and effect. The following January, MetLife notified Wells Fargo that it was redesignating 35 of the 67 paragraph 24C parking spaces currently located in the Plaza parking garage to another facility. Wells Fargo responded by filing suit, seeking a declaratory judgment regarding parking rights under the lease. The trial court granted MetLife's motion for summary judgment.

Standards of Review

A defendant moving for summary judgment has the burden of establishing that no genuine issue of material fact exists as to one or more essential elements of the plaintiff's cause of action and that the defendant is entitled to judgment as a matter of law. *Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 548-49 (Tex. 1985). Where, as here, the trial court does not state the grounds for granting the motion, and several grounds are provided, the reviewing court must determine if any of the grounds would support the judgment. *Rogers v. Ricane Enterprises, Inc.*, 772 S.W.2d 76, 79 (Tex. 1994). Finally, because the propriety of a summary judgment is a matter of law, we review the trial court's decision de novo. *Nativdad*

v. Alexsis, Inc., 875 S.W.2d 695, 699 (Tex. 1994).

Having examined the standard for summary judgments, we now turn to the standard of review governing contract construction. When a contract contains an ambiguity, the granting of a motion for summary judgment is improper because the interpretation of the instrument becomes a fact issue. *Harris v. Rowe*, 593 S.W.2d 303, 306 (Tex. 1979). Whether a contract is ambiguous is a question of law that the court decides by looking at the contract as a whole in light of the circumstances present when the contract was entered. *R & P Enterprises*, 596 S.W.2d at 518-19. If a written instrument is so worded that it can be given a certain or definite legal meaning or interpretation, then it is not ambiguous and the court will construe the contract as a matter of law. *R & P Enterprises v. LaGuarta, Gavrel & Kirk, Inc.*, 596 S.W.2d 517, 518-19 (Tex. 1980). A contract, however, is ambiguous when its meaning is uncertain or doubtful or it is reasonably susceptible to more than one meaning. *Skelly Oil Co. v. Archer*, 163 Tex. 336, 356 S.W.2d 774, 778 (1962). The ambiguity must become apparent when the contract is read in the context of surrounding circumstances, not after parol evidence of intent is admitted to create an ambiguity. *National Union Fire Ins. Co. v. CBI Indus., Inc.*, 907 S.W.2d 517, 521 (Tex. 1995).

In determining whether an agreement is ambiguous, courts should examine and consider the entire writing in an effort to harmonize and give effect to all the provisions of the contract so that none will be rendered meaningless. *Universal C.I.T. Credit Corp. v. Daniel*, 150 Tex. 513, 243 S.W.2d 154, 158 (1951); *Hycarbex, Inc. v. Anglo-Suisse, Inc.*, 927 S.W.2d 103, 108 (Tex. App.—Houston [14th Dist.] 1996, no writ). No single provision will control; rather, all the provisions must be considered with reference to the whole instrument. *Myers v. Gulf Coast Minerals Management Corp.*, 361 S.W.2d 193, 196 (Tex.1962). However, an ambiguity does not arise merely because the parties advance conflicting interpretations. *Kelley-Coppedge, Inc. v. Highlands Ins. Co.*, 980 S.W.2d 462, 464 (Tex. 1998).

Paragraph 24C

The first ground raised in MetLife's motion for summary judgment is its contention that

the lease agreement unambiguously allows redesignation of parking facilities to accommodate the 67 spaces alloted Wells Fargo under paragraph 24C. Conversely, Wells Fargo contends that the terms of the lease permit only a single designation of the paragraph 24C parking spaces, and that the previous designation by MetLife's predecessor-in-interest is final.

After considering all provisions of the contract relevant to our inquiry, we conclude that the agreement unambiguously permits MetLife to redesignate the parking facilities for purposes of the paragraph 24C parking permits. Paragraph 24C of the lease agreement between Wells Fargo and MetLife provides, in pertinent part:

> [l]andlord shall also make available to Tenant one (1) monthly parking permit for each 2000 square feet of Rentable Area leased by Tenant in the Building during the Original Term, and any Extension Period. The holder of each such permit will be entitled to entry into a parking garage which Landlord leases or owns for Building tenants and the non-exclusive use . . . of the parking areas ***designated by Landlord***, ***which designation*** of parking areas shall be made on a fair, reasonable and non-discriminatory basis . . . . Such Building parking garage will be a first class parking facility located within a four (4) block radius of the Building and such garage (as well as the building) will on the commencement Date be connected to the Houston underground tunnel system, subject to, and in accordance with the terms and provisions of the Ordinances of the City of Houston and the various tunnel agreements relating thereto.
>
> (emphasis added).

Standing alone, the above provision is not dispositive of either a finding of ambiguity or a lack thereof regarding the redesignation issue. When read with reference to the parking provision of paragraph 24A, however, an intent to allow redesignation of paragraph 24C parking becomes clear. Specifically, paragraph 24A provides:

> [l]andlord, during the Original Term and any Extension Period shall ***designate and cause to continue to exist*** (subject to the terms and provisions of this Lease) the B2 level of the basement of the [Plaza] as outlined on the Plans and Specifications identified on Exhibit "B" attached hereto which shall contain one hundred (100) parking spaces for use by Tenant, its officers, clients, employees, and invitees. (emphasis added).

The "designate and cause to continue to exist" language in paragraph 24A clearly creates permanent parking rights in the basement of the Plaza. Because paragraph 24C does not

contain the same or similar language, this strongly militates in favor of a finding of intent to permit redesignation of parking under paragraph 24C.

Finally, the fourth amendment to the lease contract, executed by both Wells Fargo and MetLife in April 1998, contains a preamble clause stating that "the Lease provides Tenant with one hundred (100) parking spaces ("Spaces") in the [Plaza] garage ("Basement Garage"), and sixty-seven (67) spaces ("Additional Spaces") in a garage within a four (4) block radius of the [Plaza], which are ***currently*** parked in the Basement Garage." (emphasis added). This language demonstrates each side's understanding that paragraph 24C contemplated more than a single designation of the sixty-seven parking permits created thereunder. Moreover, we disagree with Wells Fargo's claim that the parol evidence rule bars consideration of this preamble clause to fourth amendment of the lease. Under the parol evidence rule, extrinsic evidence is ordinarily not admissible to add to, vary, or contradict the terms of a written contract that is clear on its face. *National Union Fire Ins. Co. v.. CBI Indus., Inc.*, 907 S.W.2d 517, 521 (Tex. 1995). However, the preamble clause provided in the fourth amendment to the lease is not extrinsic evidence. Rather, it is evidence contained within and arising from the contract itself. Indeed, Paragraph five in the fourth lease amendment provides, in part: "[t]his Fourth Amendment and the Lease shall be construed as one instrument."

After our plain reading of the entire lease, including paragraphs 24A, 24C, and the Fourth Amendment, we hold that the language of paragraph 24C unambiguously permits MetLife to redesignate the location of the sixty-seven additional parking spaces. *See Hycarbex*, 927 S.W.2d at 108. We are guided by a fundamental maxim of contract construction: harmonizing all provisions of the lease so that none will be rendered meaningless. *Id*. Having found that the trial court properly granted MetLife's motion for summary judgment, we do not reach appellant's second issue for review. Accordingly, the judgment of the trial court is affirmed.

/s/ Charles W. Seymore
Justice

Judgment rendered and Opinion filed July 19, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

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