

COMMONWEALTH OF PENNSYLVANIA

PETER F. PELULLO AND : BEFORE THE BOARD OF CLAIMS
LOUISE R. PELULLO :
 :
 :
 VS. :
 :
 :
 COMMONWEALTH OF PENNSYLVANIA, :
 DEPARTMENT OF CORRECTIONS : DOCKET NO. 1875

FINDINGS OF FACT

1. Plaintiffs are Peter F. and Louise R. Pelullo, individuals, who jointly own 1221-1223 Bainbridge Street in Philadelphia, Pennsylvania. (Record)
2. Defendants are Commonwealth of Pennsylvania, Department of General Services and Commonwealth of Pennsylvania, Department of Corrections. (Record)
3. In 1987, the Department of Corrections forwarded a request for an expansion of Community Corrections Center #5 from 22 residents to 58 residents. (N.T. 140; D-7)
4. The Department of General Services prepared a packet of specifications that a landlord would have to comply with in order to enter into the lease. (N.T. 143)
5. The Department of General Services placed an advertisement in the Philadelphia Inquirer and also in the Pennsylvania Bulletin indicating that the Department of General Services needed to lease space. (N.T. 144)
6. The prospective landlords would then either call or write the Department of General Services and request a proposal packet with forms for the landlords to submit a proposal. (N.T. 144)
7. These forms are included in the proposal packet. (N.T. 144)
8. Peter Pelullo read the specifications that were sent out by Defendants. (N.T. 62)
9. Peter Pelullo knew that in order to obtain Defendants as tenants, he had to modify the building to meet the specifications. (N.T. 22, 81)
10. Plaintiffs submitted a bid proposal and the property was accepted by the Department of Corrections; thereafter, a lease was entered into between Plaintiffs and Department of General Services for the three (3) floors at 1221-1223 Bainbridge Street in Philadelphia. (N.T. 144-146)

11. Exhibit D paragraph 6(a) of the lease requires that the bathroom facilities are to accommodate 26 residents on the second and third floors. (N.T. 69; P-2)
12. Exhibit D paragraph 25 of the lease requires that the plumbing lines, valves and equipment shall be capable of providing trouble free service for 63 people. (N.T. 69; P-2)
13. Exhibit D paragraph 9 of the lease indicates that Plaintiff, Peter Pelullo, has agreed to comply with all local, state and national codes. (P-2)
14. Subsequently the lease agreement was modified to indicate a start date of March 1, 1990 for a five (5) year term concluding April 30, 1995. (N.T. 71)
15. Prior to tenancy by the Department of Corrections, 1221-1223 Bainbridge Street, Philadelphia, was leased by Plaintiff to Horizon House, for a homeless shelter. (N.T. 18)
16. The building housed 35 residents at the time it was utilized by Horizon House. (N.T. 18)
17. Plaintiffs had obtained a Use and Occupancy Permit for the housing of 35 people in 1989. (N.T. 18)
18. In 1993, apparently during a routine inspection, city officials determined that there were too many people occupying the residence for the existing fire protection system. (N.T. 25-26)
19. Plaintiff, Peter Pelullo, testified that he “got a violation” from the city; however, no exhibit or notice of violation was presented. (N.T. 26)
20. Regardless of the fact that there was no exhibit of any 1993 violation admitted, the Board will assume that there was such a violation from which the ensuing events resulted. (N.T. 26)
21. As a result of the above referenced violation, Plaintiff applied for the Use and Occupancy Permit in August of 1993 to cover the 52 persons now residing in the premises. (P-3b)
22. The city refused to grant the permit due to the fact that the property did not possess a sprinkler system. (N.T. 27)
23. The Plaintiffs appealed the city’s refusal to grant the Use and Occupancy Certificate and on March 23, 1994 the City issued a 48 month temporary certificate for 52 people with the requirement that various fire code renovations be made immediately and that a sprinkler system had to be installed at the conclusion of 48 months. (N.T. 28; P-4)

24. The renovations consisted of installing hallways through kitchens, removing glass in the hallways, installing fire walls, installing partitions and fire doors, installing wired glass, building a back stair, relighting the back stair and installing a new fire alarm system. (N.T. 28-29)

25. Plaintiff contracted for the above-referenced renovations at a cost of \$17,572.86. (P-6)

26. The cost to install the fire alarm was \$5,395.00. (N.T. 41; P-6-7)

27. Except for the fire alarm system, companies owned or controlled by Plaintiff, Peter Pelullo, performed the required renovations. (N.T. 35-41)

28. Plaintiff also made additional repairs to the building at this time in the amount of \$4,191.00 (N.T. 46; Exhibit H of Claim)

29. Plaintiff requested payment from the Department of Corrections however none was forthcoming. (N.T. 30)

CONCLUSIONS OF LAW

1. A lease is a contract and is to be interpreted according to contract principles.
2. Determining the intentions of the parties is a paramount consideration in the interpretation of any contract.
3. The intent of the parties is to be ascertained from the document itself when the terms are clear and unambiguous.
4. When an ambiguity exists, parole evidence is admissible to explain or clarify the ambiguity.
5. A contract will be determined to be ambiguous if it is reasonably susceptible to different constructions and is capable of being understood in more than one sense.
6. The lease in question is ambiguous with regard to the number of persons permitted to reside at the premises.
7. Parole evidence is admissible to clarify or resolve this ambiguity.
8. The parties intended to house more than 35 persons at the demised premises.
9. Plaintiffs, under the lease, were required to adhere to all local, state and national codes.

10. Plaintiffs were also responsible for providing a fire alarm and excavation system that was in full compliance with all local and state codes.

11. The costs associated with making the premises compliant with all local, state and national codes is the responsibility of Plaintiffs.

12. Plaintiffs did not sustain their burden of proof.

OPINION

This matter was called to hearing before the Central Panel, composed of Frederick D. Giles, Attorney Member, and Conrad E. Kambic, Engineer Member. The Panel Report has been submitted and reviewed. Plaintiff is seeking damages in the above referenced matter alleging that the Defendant violated the lease by allowing more than 35 persons to reside at the demised premises.

The Pennsylvania Supreme Court has held that:

“A lease is a contract and is to be interpreted according to contract principles. Determining the intentions of the parties is a paramount consideration in the interpretation of any contract. The intent of the parties is to be ascertained from the document itself when the terms are clear and unambiguous. However, as this court has stated in Herr Estate, 400 Pa. 90, 161 A.2d 32 (1960) ‘When an ambiguity exists, parole evidence is admissible to explain or clarify or resolve the ambiguity, irrespective of whether the ambiguity is created by the language of the instrument or by extrinsic or collateral circumstances’.”

Hutchinson v. Sunbeam Coal Corporation, 513 Pa. 192; 519 A.2d 385 (1986) citations omitted. The Board must first analyze the lease to determine whether an ambiguity exists requiring the use of extrinsic evidence. Hutchinson v. Sunbeam Coal Corp., 513 Pa. 200, 519 A.2d 389 (1986). The contract will be determined to be ambiguous if it is reasonably susceptible to different constructions and is capable of being understood in more than one sense. Mayflower Square Condominium Association v. KMALM, Inc., 724 A.2d 389 (1999). The Board, as a matter of law,

will determine the existence of an ambiguity in the contract and will subsequently interpret the contract. Id.

Much of the testimony in this matter focused on the meaning of clauses in Exhibit D to the lease. A review of that portion of the lease is therefore required. Exhibit D, paragraph 6 of the lease states “Bathroom facilities are to accommodate 26 residents on the second and third floors.” (P-2)¹ Exhibit D, paragraph 9 of the lease states “Peter Pelullo has agreed to the following: Compliance with local, state and national codes and standards shall be adhered to in all respects, and the most restrictive and applicable code shall govern. Building and sewer permits, etc. shall be secured prior to any construction as required by the local governing authority”. (P-2) Exhibit D paragraph 25 of the lease says that “All new plumbing lines, valves and equipment shall be high grade institutional quality capable of providing trouble free service for sixty-three (63) people”. (P-2) In applying the above referenced law to the case at bar, it is clear to the Board as a matter of law that the contract is ambiguous with regard to the number of persons residing at the demised premises; therefore parole evidence is admissible to explain, clarify and resolve the ambiguity.

In essence, Plaintiff testified that it was his understanding that the premises would not house more than 35 people and to support that position he offered into evidence the Use and Occupancy Certificate from 1987 limiting the number of residents to 35 people. (P-1b) Unfortunately,

¹It is important to note that the word “floors” in Exhibit D, paragraph 6 is not used in the singular but is instead plural.

Mr. Pelullo's testimony does not support his position. He testified that although he may not have read the lease before he signed it, he did read the specifications that were sent out by the Defendant. (N.T. 62)² Mr. Pelullo testified that in order to obtain the Department of Corrections as a tenant, he had to modify the building to specifications that were provided in the lease. (N.T. 23) Further, the Notes of Testimony indicated the following exchange: "that Mr. Pelullo knew exactly what specifications he had to meet in order to get DGS as a tenant." (N.T. 81) It was Mr. Pelullo's understanding that the lease called for people to live on the second and third floor of the building. (N.T. 121) Mr. Pelullo further testified that under the lease and the specifications incorporated into the lease he had to provide plumbing, fixtures and toilet specifications capable of trouble free service for 63 people. (N.T. 69) Mr. Pelullo further acknowledged that he was responsible to provide bathroom facilities to accommodate 26 residents on the second and third floors. (N.T. 69; P-2) Lastly, Mr. Pelullo testified that he was at the building on a daily basis. (N.T. 119-120)

Plaintiffs attempted to utilize Exhibit D to the lease, paragraph 6b & c to support their contention that they were unaware that more than 35 people would be residing in the demised premises. Exhibit D, paragraph 6b & c states there has to be 1 toilet for every 10 residents and that, at a minimum, the second and third floor must contain 2 toilets each. Simple mathematical calculations will establish that Mr. Pelullo had to at least have contemplated there could be twenty people residing on the second floor and twenty people residing on the third floor. This exceeds the Use and Occupancy Permit that Plaintiffs' had for the premises and were attempting to argue is the

²Mr. John A. Hocker who is employed by the Department of General Services, Bureau of Real Estate testified that the request for space allocation from the Department of Corrections indicating expansion from 22 residents to 58 residents is generally included in the proposal packet sent out to perspective landlords. (N.T. 144; P-7)

determinative factor for the number of people intended to reside in the premises. It is the Board's conclusion that the parties intended to house more than 35 persons in the premises.

Having concluded that it was the intention of the parties to have more than 35 persons at the demised premises, we must now look to the lease in order to deal with Plaintiffs' claims. Exhibit D, paragraph 9 of the lease sets forth that Peter Pelullo has agreed to the following: "Compliance with local, state and national codes and standards shall be adhered to in all respects, the most restrictive applicable code shall govern. Building and sewer permits shall be secured prior to any construction as required by the local governing authority." (P-2) Furthermore, Mr. Pelullo testified that he was aware that paragraph 26 of the lease made him responsible for providing a fire alarm and evacuation system in the entire leased space which is in full compliance with all local and state codes and requirements. (N.T. 70-71) Paragraph 26 of the lease as well as Mr. Pelullo's acknowledgment and testimony, obligates Plaintiffs to bring the premises into compliance with local codes including the fire code. Based on the above, the Board rules in favor of Defendants, Commonwealth of Pennsylvania, Department of General Services and Department of Corrections and against the Plaintiffs, Peter and Louise Pelullo. The parties are to bear their own costs.

ORDER

AND NOW, to wit, this 5th day of January, 2000, after a panel hearing in the above-referenced matter, it is hereby **ORDERED** and **DECREED** that the Board of Claims rules in favor of the Defendant, Commonwealth of Pennsylvania, Department of Corrections, and against Plaintiffs, Peter F. Pelullo and Louise R. Pelullo. The parties are to bear their own costs.

BOARD OF CLAIMS

David C. Clipper
Chief Administrative Judge

Louis G. O'Brien
Engineer Member

James W. Harris
Citizen Member

Opinion Signed