

Westlaw

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Supreme Court of Nevada.
 ANVUI, LLC, A Nevada Limited Liability Com-
 pany, Appellant,
 v.
 G.L. DRAGON, LLC, A Nevada Limited Liability
 Company, Respondent.
 No. 48467.

July 26, 2007.

Background: Commercial tenant brought action against landlord, asserting claims for breach of contract and declaratory and injunctive relief. Landlord filed motion for order to show cause why writ of restitution and ejectment should not be issued, or in the alternative, for summary eviction. The Eighth Judicial District Court, Clark County, Jessie Elizabeth Walsh, J., granted summary eviction and writ of restitution and ejectment. Tenant appealed.

Holdings: The Supreme Court, Gibbons, J., held that: (1) as a matter of first impression, an order granting summary eviction is reviewed de novo, and (2) ambiguity in lease, regarding landlord's remedies, was legal defense to summary eviction.

Reversed.

West Headnotes

[1] Landlord and Tenant 233 ¶315(3)

233 Landlord and Tenant
 233IX Re-Entry and Recovery of Possession by
 Landlord
 233k293 Summary Proceedings
 233k315 Appeal
 233k315(3) k. Trial of Cause Anew.

Most Cited Cases

An order granting summary eviction of a residential tenant, or of a commercial tenant under a lease providing for periodic rent reserved by the month

or any shorter period, should be reviewed on appeal based upon the standard of review for an order granting summary judgment, i.e., de novo review, because such proceedings are analogous. West's NRS 40.253(6); Rules Civ.Proc., Rule 56.

[2] Appeal and Error 30 ¶893(1)

30 Appeal and Error
 30XVI Review
 30XVI(F) Trial De Novo
 30k892 Trial De Novo
 30k893 Cases Triable in Appellate Court
 30k893(1) k. In General. Most

Cited Cases

The appellate court reviews orders granting summary judgment de novo, to determine whether the evidence properly before the district court demonstrates that no genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law. Rules Civ.Proc., Rule 56(c).

[3] Appeal and Error 30 ¶893(1)

30 Appeal and Error
 30XVI Review
 30XVI(F) Trial De Novo
 30k892 Trial De Novo
 30k893 Cases Triable in Appellate Court
 30k893(1) k. In General. Most

Cited Cases

Construction of a contractual term is a question of law, which is reviewed de novo.

[4] Contracts 95 ¶143(2)

95 Contracts
 95II Construction and Operation
 95II(A) General Rules of Construction
 95k143 Application to Contracts in Gen-
 eral
 95k143(2) k. Existence of Ambiguity.

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Most Cited Cases

A contract is "ambiguous" when it is subject to more than one reasonable interpretation.

[5] Contracts 95 ⇨ 155

95 Contracts

95II Construction and Operation

95II(A) General Rules of Construction

95k151 Language of Instrument

95k155 k. Construction Against Party

Using Words. Most Cited Cases

Any ambiguity in a contract should be construed against the drafter.

[6] Contracts 95 ⇨ 176(1)

95 Contracts

95II Construction and Operation

95II(A) General Rules of Construction

95k176 Questions for Jury

95k176(1) k. In General. Most Cited

Cases

The parties' intentions regarding a contractual provision present a question of fact.

[7] Landlord and Tenant 233 ⇨ 296(1)

233 Landlord and Tenant

233IX Re-Entry and Recovery of Possession by Landlord

233k293 Summary Proceedings

233k296 Grounds and Right to Maintain Proceedings

233k296(1) k. In General. Most Cited

Cases

Landlord and Tenant 233 ⇨ 298(1)

233 Landlord and Tenant

233IX Re-Entry and Recovery of Possession by Landlord

233k293 Summary Proceedings

233k298 Defenses and Grounds of Opposition

233k298(1) k. In General. Most Cited

Cases

Commercial lease providing for monthly rent, which lease authorized immediate sale of tenant's operations at highest and best price possible if tenant breached the lease, was ambiguous regarding whether such a sale was landlord's sole remedy for breach of lease, which ambiguity was a legal defense to landlord's summary eviction claim, and thus, landlord was required to pursue restitution of the premises, if at all, in non-summary proceedings. West's NRSA 40.253, 40.290 et seq.

***405** Snell & Wilmer, LLP, and John S. Delikanakis and Elizabeth R. Brennan, Las Vegas, for Appellant.

Reade & Associates and R. Christopher Reade and Andrew H. Pastwick, Las Vegas, for Respondent.

Before GIBBONS, DOUGLAS and CHERRY, JJ.

***406** OPINION

By the Court, GIBBONS, J.

In this appeal, we consider whether, in an NRS 40.253(6) summary eviction proceeding, appellant raised any legal defense to allegations of its unlawful detainer of the premises at issue, precluding its summary eviction. In order to reach that issue, and since this is a matter of first impression, we must first conclude that the standard for our review of a district court's order granting summary eviction is the same as our review of a district court's order granting summary judgment. We conclude that appellant raised a legal defense, precluding its eviction. Accordingly, we reverse the district court's order granting summary eviction and a writ of restitution and ejectment.

FACTUAL BACKGROUND

Appellant Anvui, LLC, leased a commercial building from respondent G.L. Dragon, LLC. The lease states that Dragon is entitled to receive basic rent "free and clear of any and all expenses, costs, impositions, taxes, assessments, liens or charges of

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any nature whatsoever.” The lease also requires Anvui to pay all operating costs, which are defined as “all expenses and disbursements ... that [Dragon] incurs in connection with the ownership, operation, and maintenance of the Premises.” Finally, Section 14 of the lease agreement states that “[s]hould [Anvui] fail to cure any monetary default within ninety (90) days after written notice has been provided, [Anvui] and [Dragon] agree to cooperate in immediate sale of [Anvui’s] operations at the highest and best price possible.”

Anvui and Dragon also entered into a separate “Agreement to Purchase Real Property and Capital Improvements” (purchase agreement). That agreement recites that Dragon paid significant sums of money for two types of costs: (1) “capital improvement out-of-pocket costs directly relating to the construction” of the premises and “the common area of the real property” and (2) operational out-of-pocket costs “directly relating to the operations of [Anvui’s business].” With respect to Dragon’s operational out-of-pocket costs, they took the form of (1) a \$746,000 loan to Anvui and its principal and (2) a \$450,000 credit line to provide cash, furniture, and equipment for Anvui’s business operations.

After Anvui took possession of the premises on September 1, 2005, it paid all invoiced amounts, including amounts for basic rent, taxes, insurance, common area maintenance fees, and interest on Dragon’s expenses for operational out-of-pocket costs as defined in the purchase agreement, through May 2006. Beginning in June 2006, however, Anvui began to fall behind in its payments. In September 2006, Anvui initially objected to being billed for the interest. Between June and November of that year, Dragon invoiced Anvui for a total of \$374,931. For that same period, Anvui made payments totaling only \$126,578.76.

Anticipating that Dragon would soon seek eviction and hoping to win a declaration that it was not in breach of the lease, Anvui filed a verified complaint for declaratory relief, breach of contract, and

injunctive relief. After Dragon served Anvui with a five-day notice to quit, Dragon responded to Anvui’s complaint by filing a motion for an order to show cause why a writ of restitution and ejectment should not be issued, or in the alternative, for summary eviction. Dragon requested an immediate hearing, which the district court set.

At the hearing, Anvui argued, among other things, that Section 14 of the lease precluded Dragon from seeking summary eviction and restitution of the premises because that section specifies that Dragon’s only remedy in the event of Anvui’s breach is to cooperate in the immediate sale of the business at the highest and best possible price. The district court considered the affidavits filed by the parties and determined that Anvui was in breach of the lease and guilty of unlawful detainer. The court granted Dragon’s request for summary eviction and accordingly entered an order for summary eviction and a writ of restitution and ejectment. This appeal followed, and we granted Anvui’s request for a stay of the district court’s order pending appeal.

*407 DISCUSSION

Standard of review

[1][2] As a matter of first impression, we conclude that an order granting summary eviction under NRS 40.253(6) should be reviewed on appeal based upon the standard for review of an order granting summary judgment under NRCP 56 because these proceedings are analogous. This court reviews orders granting summary judgment de novo to determine whether the evidence properly before the district court “demonstrate[s] that no ‘genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.’ ”^{FN1} Accordingly, our review of the district court’s order granting summary eviction is de novo.

FN1. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (quoting NRCP 56(c)).

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Anvui raised a legal defense as to the unlawful detainer

NRS 40.253(6) states that after a hearing “to determine the truthfulness and sufficiency of [the affidavits and notices filed, summary eviction will be granted] [i]f the court determines that there is no legal defense ... and the tenant is guilty of an unlawful detainer.” On appeal, Anvui contends that the district court erred in granting summary eviction because it raised a legal defense to its alleged unlawful detainer and that Dragon is required to follow the procedures set forth in NRS 40.290 to 40.420. We agree and conclude that the district court erroneously found in Dragon's favor following the hearing on Dragon's affidavit of complaint for summary eviction.

[3][4][5][6] “Construction of a contractual term is a question of law,”^{FN2} which we review de novo.^{FN3} In interpreting a contract, “ ‘the court shall effectuate the intent of the parties, which may be determined in light of the surrounding circumstances if not clear from the contract itself.’ ”^{FN4} A contract is ambiguous when it is subject to more than one reasonable interpretation.^{FN5} Any ambiguity, moreover, should be construed against the drafter.^{FN6} The parties' intentions regarding a contractual provision present a question of fact.^{FN7}

FN2. *NGA # 2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1158, 946 P.2d 163, 167 (1997).

FN3. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

FN4. *NGA # 2*, 113 Nev. at 1158, 946 P.2d at 167 (quoting *Davis v. Nevada National Bank*, 103 Nev. 220, 223, 737 P.2d 503, 505 (1987)).

FN5. *Shelton v. Shelton*, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003).

FN6. *Mullis v. Nevada National Bank*, 98 Nev. 510, 513, 654 P.2d 533, 535 (1982).

FN7. See, e.g., *Paradise Orchards v. Fearing*, 122 Wash.App. 507, 94 P.3d 372, 377 (2004).

[7] Here, the parties' lease agreement is ambiguous as to the action that Dragon may take in the event of a default. Specifically, Section 14 of the lease agreement states that “[s]hould [Anvui] fail to cure any monetary default within ninety (90) days after written notice has been provided, [Anvui] and [Dragon] agree to cooperate in immediate sale of [Anvui's] operations at the highest and best price possible.” That provision is ambiguous as to whether it precludes Dragon from initially seeking restitution of the premises. Under Anvui's interpretation, Dragon's only remedy is to sell Anvui's business. In contrast, Dragon contends that it can seek to sell Anvui's business while simultaneously seeking restitution of the premises. This ambiguity creates a genuine issue of material fact as to the parties' intent, which is a legal defense to a request for summary eviction.

CONCLUSION

We conclude that we review a district court order granting summary eviction based on the standard for review of an order granting summary judgment. We further conclude that summary eviction was not appropriate in this case because there is a legal defense based upon unresolved issues of material fact. Dragon must attempt to pursue restitution of the premises, if at all, under NRS 40.290 to 40.420. We have carefully *408 analyzed the parties' other arguments and conclude that they lack merit. Accordingly, we reverse the order of the district court.^{FN8}

FN8. In light of this opinion, we vacate the stay imposed by our February 7, 2007, order.

We concur: DOUGLAS and CHERRY, JJ.
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