

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL**

WINDSOR ASSOCIATES LIMITED	:	April Term 2009
PARTNERSHIP,	:	
	:	
Plaintiff,	:	No. 1431
	:	
v.	:	
CENTRAL PARKING SYSTEM OF	:	COMMERCE PROGRAM
PENNSYLVANIA, INC.,	:	
	:	
Defendant.	:	Control Number 10121816

ORDER

AND NOW, this 13TH day of June 2011, upon consideration of Plaintiff Windsor Associates Limited Partnership's Partial Motion for Summary Judgment on the issue of contractual liability and Defendant Central Parking System of Pennsylvania, Inc.'s response in opposition and after oral argument, it hereby is **ORDERED** that the Motion for Summary Judgment is **Denied**.

BY THE COURT,

MARK I. BERNSTEIN, J.

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WINDSOR ASSOCIATES LIMITED PARTNERSHIP,	:	April Term 2009
	:	
Plaintiff,	:	No. 1431
v.	:	
CENTRAL PARKING SYSTEM OF PENNSYLVANIA, INC.,	:	COMMERCE PROGRAM
	:	
Defendant.	:	Control Number 10121816

OPINION

This is an action for breach of a lease agreement. The parties to the lease are plaintiff Windsor Associates Limited Partnership (“Windsor”), the landlord, and defendant Central Parking System of Pennsylvania, Inc. (“Central”), the tenant.¹ The lease is for a parking garage at the Winsor Hotel located at 17th and Benjamin Franklin Parkway, Philadelphia, Pa. The original lease was entered into on November 29, 1989 and provides for the repair and maintenance obligations of the respective parties. The lease provides in part as follows:

6.2 Repairs and Maintenance. The obligation of Landlord and Tenant for the maintenance and repair of the Leased Premises shall be borne as follows:

- (a) Landlords Responsibility (sic) Landlord shall repair and maintain, at Landlord’s sole cost and expense, the structural integrity of the garage structure, and the building of which the Leased Premises is a part. The structural items which Landlord shall so repair and maintain shall include defects in or deterioration of the component parts, but not the painting or other cosmetic appearance of, the garage structure and its façade, foundation, roof, walls, columns, floors and ceilings, as well as any defects in architectural or engineering plans or designs or in the construction of the Leased Premises. Tenant shall have no obligation for any of the above.

- (b) Tenant’s Responsibilities (sic) Tenant shall maintain, repair and preform (sic) all of the following matters, at its sole cost and expense, and Landlord shall have no obligation therefor. The verbs “maintain”, “repair”, and “perform” as used in this section 6.2(b) shall mean routine and preventive maintenance, repair and replacement.

¹ Central is the successor by merger to Pennsylvania Parking, Inc. and assumed the instant lease and amendments with Windsor.

(4.) Anything in this section 6.2 to contrary notwithstanding, Landlord and Tenant hereby expressly agree that for whatever reasons, the cracking and spalling of the garage ramp and garage floor pavement has come about over time through no fault of Tenant, of Tenant's agents, employees or invitees, and under absolutely no circumstances will Tenant be required to repair or arrest or except any bodily or property damage liability resulting from said cracking and spaudling (sic) now, during or after the term of this Lease.

The November 1989 lease was amended on two occasions, the 1991 Amendment and the November 1997 Third Lease Amendment. The Third Lease Amendment extended the lease term to November 30, 2007. The Third Lease Amendment, Section V, provides as follows:

That a new Section is hereby added to the Lease to read as follows:

“Commencing on or about August ____, 1997 and proceeding expeditiously through to completion, Tenant shall perform certain repairs to the Leased Premises as described in Exhibit “A” attached hereto and made a part hereof. After the completion of the repairs set forth in Exhibit “A” attached hereto, Tenant shall maintain the parking decks and ramps of the Leased Premises in good condition and repair, free from deterioration and spalling and free from leaks into the building space below the Leased Premises. Upon termination of this lease, the Leased Premises shall be returned to Landlord in the same condition as they existed immediately following the completion of the repairs set forth in Exhibit “A” attached herein, normal wear and tear and casually excepted(sic).”

According to Windsor, neither party to the litigation has been able to locate Exhibit “A”. Central however claims to have produced Exhibit “A” which is a letter dated May 27, 1997 defining the scope of repairs to be performed by Central. Exhibit “A” described the following areas for spot repair:

3,000 S.F. Level I, 15000 S.F. 20% Delaminated
3,000 S.F. Level II, 15000 S.F. 20% Delaminated
3,000 S.F. Level II, 15000 S.F. 20% Delaminated
10,500 S.F. Slab Repair
16,500 S.F. Membrane Removal and Replacement
2,000 S.F. Shotcrete overhead 4% Delamination.

The total cost to perform the repairs was \$264,000.00.²

In November, 2007, the lease terminated. Windsor filed suit against Central alleging breach of the lease for failing to maintain all decks and ramps in good condition and repair free from deterioration and spalling and free from leaks and for failing to return the leased premises in the same condition as existed immediately following the completion of repairs set forth in Exhibit “A”. Presently before the court is Windsor’s motion for partial summary judgment on contractual liability.

Discussion

The interpretation of a contract is a question of law.³ The intent of the parties to a written contract is to be regarded as being embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement. It speaks for itself and a meaning cannot be given to it other than that expressed. Where the intention of the parties is clear, there is no need to resort to extrinsic aids or evidence.⁴

According to Windsor, the Third Lease Amendment significantly changed the 1989 Lease insofar as the repair and maintenance obligations of Central. Windsor claims the Third Lease Amendment heightened Central’s duties with respect to maintenance and repair of the garage decks and ramps by imposing an immediate duty on Central to repair the garage decks and ramps. In support thereof, Windsor relies upon the second sentence in Section V which provides:

² A question of fact exists as to whether the May 27, 1997 is the Exhibit “A” referenced in the Third Lease Agreement.

³ Halpin v. LaSalle University, 432 Pa. Super. 476, 481, 639 A.2d 37, 39 (1994), *allo. denied*, 542 Pa. 670, 668 A.2d 1133 (1995).

⁴ Temple Univ. of the Commonwealth Sys. of Higher Educ. v. Allegheny Health Educ. & Research Found., 690 A.2d 712, 714-715 (Pa. Super. 1997).

...After, the completion of the repairs set forth in Exhibit "A" attached hereto, Tenant shall maintain the parking decks and ramps of the Leased Premises in good condition and repair, free from deterioration and spalling and free from leaks into the building space below the Leased Premises...⁵

However, this middle sentence must be read in conjunction with the sentence preceding and the sentence subsequent. These sentences form the entirety of Section V in the Third Lease Amendment. Construing Section V as a whole and reading each sentence in context with the whole section, it is clear that the parties intended Central's duty of maintenance to be limited to the repairs made by Central and described in Exhibit "A". Central's maintenance obligation, set forth in the second sentence of Section V, arises solely as a result of the repairs described in Exhibit "A".

The first sentence of Section V reads:

Commencing on or about August ____, 1997 and proceeding expeditiously through to completion, Tenant shall perform certain repairs to the Leased Premises as described in Exhibit "A" attached hereto and made a part hereof.

This requires Central to make the repairs described in Exhibit "A". The third sentence of Section V,

Upon termination of the lease, the Leased Premises shall be returned to Landlord in the same condition as they existed immediately following the completion of the repairs set forth in Exhibit "A" attached hereto, normal wear and tear and casually excepted.

This requires Central to return the Leased Premises in the same condition as existed immediately following the completion of the repairs identified in Exhibit "A". Since Central was required to return the leased premises in the same condition as existed immediately following the

⁵ Central claims partial summary judgment should be granted because defendants own testimony demonstrates that the 1997 repairs removed all deterioration and spalling from the garage. This statement of fact is contested. Mr. Gallo, Regional Vice President for Allrightand Central Parking, testified that twenty percent of the delaminated concrete was removed and repaired. (Exhibit "G" to Central Parking's response to Windsor's motion for summary judgment - deposition of Richard Gallo p. 69-72).

completion of the repairs described in Exhibit “A”, the parties must necessarily have intended Central’s maintenance obligation concerning the conditions of the parking decks and ramps to be limited to the conditions repaired and described in Exhibit “A”. Although Section V does impose upon Central a duty to repair and maintain the decks and ramps, Central’s duty is limited in scope to repairs identified in Exhibit “A”. The parties could not have intended to impose upon Central any additional duty to maintain those parking decks and ramps greater than their condition after repaired as identified in Exhibit “A”. The parties limited Central’s duty to maintain the parking decks and ramps repaired to that condition described in Exhibit “A”.

CONCLUSION

For the foregoing reasons, Windsor’s motion for partial summary judgment is denied. Genuine issues of material fact exist as to whether Central maintained the repairs described in Exhibit “A” and whether the leased premises were returned in the same condition as existed immediately after the repairs described in Exhibit “A” were performed.

BY THE COURT,

MARK I. BERNSTEIN, J.

Dated: June 13, 2011