

IN THE SUPREME COURT OF THE STATE OF NEVADA

TJA MARKETING, LLC, A NEVADA
LIMITED LIABILITY COMPANY;
ALLEN ABOLAFIA; JOSEPH
MILANOWSKI; THOMAS HANTGES,
Appellants,

vs.

LAS VEGAS HELICOPTERS, INC., A
NEVADA CORPORATION,
Respondent.

No. 45750

FILED

JUL 19 2007

BY Vanette M. Bloom
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE AND REMAND

This is an appeal from a district court judgment in a commercial sublease dispute. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court.¹

Appellants TJA Marketing, LLC, Allen Abolafia, Joseph Milanowski, and Thomas Hantges argue on appeal that the district court erred in granting summary judgment to respondent Las Vegas Helicopters, Inc. The appellants argue that because the respondent conveyed a greater interest to them in the subject property than it possessed, the respondent could not enforce the sublease agreement for a

¹Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (citing Caughlin Homeowners Ass'n v. Caughlin Club, 109 Nev. 264, 266, 849 P.2d 310, 311 (1993)).

greater interest than it held under the master lease. In support of their argument, the appellants cite to 52 C.J.S. Landlord & Tenant § 61 (2003), which states in pertinent part that “[i]n general, the rights of a subtenant are measured by those of his or her sublessor; the subtenant is charged with notice of the terms of the original sublease, and anything which defeats the estate of the original tenant destroys that of the subtenant.”

While citing to International Indus. v. United Mtg. Co.,² the respondent argues that it could enforce the sublease agreement as long as the master lease had not expired or been terminated and as long as it was in the lawful possession of the shopping center under the master lease.

We conclude that the respondent did not convey a larger estate to the appellants than it had possessed and that the district court did not err in granting partial summary judgment to the respondent.

Even though the appellants are correct in asserting that their rights as subtenants are measured by the limitations imposed upon the respondent as the lessee under the master lease, we conclude that the third amendment’s tenancy-for-years provision does not defeat the master lease’s month-to-month tenancy provision because the respondent could have terminated the appellants’ sublease with written notice. Because section 3(b) of the sublease agreement allowed the respondent to terminate its sublease with the appellants “for any reason in its sole and unfettered discretion,” the month-to-month tenancy in the master lease

²96 Nev. 150, 155, 606 P.2d 163, 166 (1980) (“A lessor is free to lease to a former sublessee or to anyone else after a lease is terminated, because the sublease falls with the main lease.”) overruled on other grounds by, Sandy Valley Assocs. v. Sky Ranch Estates, 117 Nev. 948, 35 P.3d 964 (2001).

did not destroy the third amendment's provision providing for a two-year sublease.³

Therefore, because the respondent did not convey a greater interest to the appellants than it possessed, we conclude that the district court did not err in determining that the appellants were bound by the two-year term in the third amendment to the sublease agreement when it granted partial summary judgment to the respondent.

As to the appellants' remaining contentions on appeal, we conclude that they are without merit or that they do not amount to plain error.⁴ Accordingly, we order the judgment of the district court affirmed.

In addition to its arguments on appeal, the respondent contends that it should be entitled to attorney fees and costs on appeal pursuant to the terms of the sublease and pursuant to NRAP 39(a).⁵ We

³We note that even if the Bellagio (the original lessor) had terminated its master lease with the respondent with thirty days notice, as provided in the master lease, the respondent could have terminated its sublease with the appellants with mere written notice. Consequently, by placing a two-year fixed term in the third amendment to the sublease, the respondent did not violate or breach its master lease with the Bellagio because the respondent retained an at-will right to terminate the sublease. See 49 Am. Jur. 2d Landlord § 1001 (2007) ("Since a subtenant holds the premises subject to the performance of the terms and conditions impressed upon the estate by the provisions of the original lease, the subtenant's rights are generally terminated when the original lessor declares a forfeiture of the original lessee's term based upon the lessee's failure to perform obligations imposed by the underlying lease.").

⁴See Lioce v. Cohen, 122 Nev. ___, ___, 149 P.3d 916, 927 (2006) (holding that plain error requires a party to show that no other reasonable explanation for the verdict exists).

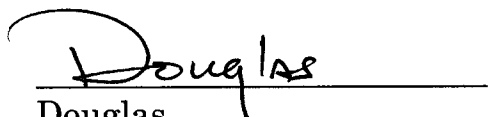
⁵NRAP 39(a) provides that:

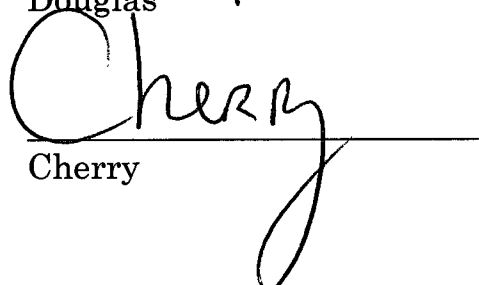
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conclude that the respondent is not entitled to attorney fees for this appeal. Nevertheless, we conclude that the respondent is entitled to its costs on appeal. Therefore, costs shall be taxed against the appellants and awarded to the respondent. Accordingly, we order this matter remanded to the district court to determine the respondent's award of costs for this appeal.⁶

It is so ORDERED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

... continued

Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the respondent unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court.

⁶See Musso v. Binick, 104 Nev. 613, 614-15, 764 P.2d 477, 477-78 (1988).

cc: Hon. Sally L. Loehrer, District Judge
Brice Buehler, Settlement Judge
Coleman Law Associates
Jones Vargas/Las Vegas
Eighth District Court Clerk