24-P-171 Appeals Court

HASSELTINE HOUSE, LLC, & another[1] vs. JEWISH FAMILY AND CHILDREN'S SERVICES, INC.

No. 24-P-171.

Middlesex. November 13, 2024. – September 10, 2025.

Present: Rubin, Shin, & Hodgens, JJ.

Landlord and Tenant, Termination of lease. Contract, Lease of real estate, Termination, Implied covenant of good faith and fair dealing. Notice. Practice, Civil, Summary judgment.

Civil action commenced in the Superior Court Department on December 17, 2018.

The case was heard by Shannon Frison, J., on motions for summary judgment.

Leonard M. Davidson for the plaintiff.
Lawrence G. Green (Dean A. Elwell also present) for the defendant.

HODGENS, J. The plaintiff, Hasseltine House, LLC (landlord), entered into a lease and a separate service

[1] Cedar House, LLC, which did not participate in this appeal.

agreement with the defendant, Jewish Family and Children's Services, Inc. (tenant), in connection with a residential facility. Both the lease and the service agreement contained a provision outlining special termination rights for the tenant. Weeks later, the landlord, the tenant, and Brookline Bank entered into a subrogation and non-disturbance agreement (SNDA) in connection with the facility. After almost five years of operations, the tenant invoked its special termination rights. Alleging in part that the tenant lacked any special termination rights without first obtaining approval from Brookline Bank under the SNDA, the landlord filed a complaint in the Superior Court claiming breach of two contracts, the lease and the service agreement, and seeking declaratory relief. On cross motions for summary judgment, a judge denied so much of the plaintiffs' motion as pertained to the landlord's claims and allowed the tenant's motion. The landlord appeals, and we affirm.

Background. On August 30, 2013, the parties executed a sixteen-year lease for property located in Newton at an annual rate of $392,280 (with monthly installments of $32,690). On the same date, in connection with the premises, the parties executed a service agreement that outlined the responsibilities of the parties regarding the operation of a residential facility designed for fourteen persons with intellectual and

developmental disabilities. The lease incorporated the service agreement by reference, and both the lease and the service agreement provided that the terms of the lease would control in the event of any conflict. Both the lease and the service agreement contained nearly identical special termination rights that allowed the tenant to terminate the lease when five residents indicated an intent to vacate the facility. Under the service agreement, the tenant agreed to conduct outreach and marketing to attract residents and to fill vacancies expeditiously through its best efforts, and the landlord agreed to work cooperatively with the tenant to market the facility and to maintain a list of persons interested in residing there. The service agreement also required the tenant to notify the landlord "promptly" if a resident provided notice of an intent to vacate the facility.

Weeks later, on September 10, 2013, the tenant, the landlord, and Brookline Bank executed an SNDA in anticipation of the landlord borrowing from the bank $2,625,000, secured by a mortgage, security agreement, and assignment of leases on the Newton facility. Under the SNDA, the tenant agreed to subordinate its lease to the mortgage, and Brookline Bank agreed not to disturb the tenant's rights under the lease. The SNDA also prohibited the tenant from cancelling or terminating the lease without Brookline Bank's "prior written consent," which

could not be "unreasonably withheld, conditioned or delayed." The SNDA did not reference the special termination provision in either the lease or the service agreement, and neither the lease nor the service agreement made any specific reference to the SNDA.

After operating the Newton facility for almost four years, in 2017 the tenant received a series of five "Resident Notices of Termination," dated May 30, July 3, July 7, July 30, and August 2. Through these letters, the residents provided formal notice of an intent to vacate the facility in one year. In August 2017, the tenant sent a letter to the landlord with an update on the situation and cautioned, "Combined with the four current vacancies, these five additional terminations, if none of these vacancies are filled, will lead to an occupancy of only 5 of 14 units by August 1, 2018." The tenant noted that the vacancies were "not an acceptable situation," and "other options" would have to be explored if the vacancies could not be filled.

On January 24, 2018, the tenant sent the landlord a letter (with a copy sent to Brookline Bank) regarding its intent to terminate the lease and the service agreement one year later. The letter referenced "five or more Resident Notices of Termination" and invoked the "special termination rights" in the lease and the service agreement that the tenant alleged

authorized it to terminate these agreements in light of the anticipated vacancies: "In accordance with the terms of the Lease and Service Agreement, the Lease and Service Agreement will then terminate on the later of January 31, 2019 or the date of the successful relocation of all residents."

Almost one year later, on December 17, 2018, the landlord filed its complaint in the Superior Court seeking damages for, among other things, breach of contract (under the lease and the service agreement) and seeking declaratory relief. The complaint alleged that the tenant lacked any right to terminate the lease because it failed to obtain written approval from Brookline Bank under the SNDA. As the landlord puts it here, the lease and the service agreement were governed by their terms and "also governed by" the SNDA executed by the landlord, the tenant, and the Bank. The complaint further alleged that the tenant failed to market the facility to appropriate clientele, to conduct outreach and attract residents, and to use its best efforts to fill vacancies. On appeal, the landlord contends that its motion for summary judgment should have been allowed, and the tenant's motion for summary judgment should have been denied.

Discussion. "We review a decision on a motion for summary judgment de novo." Conservation Comm'n of Norton v. Pesa, 488 Mass. 325, 330 (2021). Interpretation of contracts and leases

presents a "question of law for the court" (citation omitted). Cambridge St. Realty, LLC v. Stewart, 481 Mass. 121, 130 (2018). Summary judgment is proper where the record "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Mass. R. Civ. P. 56 (c), as amended, 436 Mass. 1404 (2002). "When both parties have moved for summary judgment, as they did here, we view the evidence in the light most favorable to the party against whom judgment was entered." Wortis v. Trustees of Tufts College, 493 Mass. 648, 662 (2024).

1. Special termination rights. The lease and the service agreement contain a special termination provision that is not included in the SNDA. Both the lease and the service agreement allow the tenant to terminate the lease and the service agreement if five residents have provided (and have not rescinded) a formal notice of an intent to vacate the facility. The SNDA does not contain any reference to special termination rights. Instead, the SNDA contains a provision that prohibited the tenant from terminating the lease "without [Brookline Bank's] prior written consent in each instance, which consent shall not be unreasonably withheld, conditioned, or delayed." On review of the three agreements at issue, we conclude that the absence of written consent from Brookline Bank did not preclude

the tenant from exercising its rights under the lease and the service agreement.

We first examine the lease and the service agreement to ascertain the intent of the landlord and the tenant. As indicated by the plain language of the lease and the service agreement (executed on the same day), the landlord and the tenant expressly agreed that the tenant would have special termination rights and thereby fixed an essential term of the tenancy. See Finn v. Peters, 340 Mass. 622, 625 (1960) (terms of tenancy are "fixed at its inception"). In the event of five vacancy notices out of fourteen residential units, the special termination rights limited the tenant's risk on its long-term lease, as well as the service agreement, by creating a hedge against declining residential rental income. While it contemplated a future SNDA, the lease carefully safeguarded the tenant's rights under the lease:

> "If any holder of a mortgage . . . subsequent to the date of this Lease . . . shall so elect, the interest of Tenant hereunder shall be subordinate to the rights of such holder, provided that such holder shall agree to recognize in writing the rights of Tenant under this Lease upon the terms and conditions set forth herein. . ."

Thus, the tenant's special termination rights logically presented as "a major inducement" for executing the lease and the service agreement and "should be taken as controlling." Chelsea Indus. v. Florence, 358 Mass. 50, 55 (1970).

There is nothing in the SNDA to suggest that weeks after signing the lease and the service agreement the tenant suddenly changed course and agreed to surrender its sole discretion to invoke its special termination rights. Indeed, to hold as the landlord argues that the SNDA abruptly dispensed with the tenant's special termination rights would "render illusory" the substantial rights secured by the tenant just weeks earlier under the lease and the service agreement. Chelsea Indus., 358 Mass. at 55-56 (employment contract provision protecting employee controlled transaction though stock purchase agreement lacked provision). Cf. Skilton v. R.H. Long Cadillac La Salle Co., 265 Mass. 595, 596-597 (1929) (sales contract provision including automobile trade-in controlled transaction though lease and promissory note lacked provision); Chase Commercial Corp. v. Owen, 32 Mass. App. Ct. 248, 251 (1992) (loan agreement and security agreement provisions waiving jury trial controlled transaction though guaranty agreement lacked provision).

As these cases illustrate, since we are construing the lease and the service agreement to see if they were breached, we cannot read the SNDA in isolation. We must also look to the lease and the service agreement to discern what was intended by the language in the SNDA. See Phoenix Spring Beverage Co. v. Harvard Brewing Co., 312 Mass. 501, 505 (1942) (as general rule multiple writings evidencing single contract must be "read

together"). See also Restatement (Second) of Contracts § 202(2) (1981) ("all writings that are part of the same transaction are interpreted together"). Because the lease conditioned the validity of a future SNDA on the lender's recognition of the tenant's rights under the lease, and Brookline Bank ultimately recognized those rights under the SNDA, we conclude that all the documents, read together, expressed an intent to preserve the tenant's special termination rights as set forth in the lease.

The two cases cited by the landlord are distinguishable from the multi-agreement analysis required here as those cases involved discerning the intent of the parties from a single agreement. See Healthco, Inc. v. E & S Realty Assocs., 400 Mass. 700, 702 (1987) ("Healthco expressly agreed to request E & S's consent before it assigned the lease to a third party"); Tage II Corp. v. Ducas (U.S.) Realty Corp., 17 Mass. App. Ct. 664, 665 (1984) (lease "prohibited an assignment or subletting 'without the Lessor's prior written consent'"). Unlike the situations presented in these single-agreement cases, the present case requires us to examine the lease, the service agreement, and the SNDA. Where, as here, "the three documents were in essence part of one transaction, they must be read together to effectuate the intention" of the landlord and the tenant. Chase, 32 Mass. App. Ct. at 250.

Even if it breached a promise owed to Brookline Bank under the SNDA, the tenant could still exercise its special termination rights against the landlord under the lease and the service agreement. See Restatement (Second) of Contracts § 297(1) (1981) (where party makes promises to two or more parties "the manifested intention of the parties determines whether he promises the same performance to all, a separate performance to each, or some combination"). We reach this conclusion because the tenant's obligation to seek approval of Brookline Bank constituted one of the mutual promises between the tenant and Brookline Bank. For example, the tenant agreed (1) to subordinate the priority of the lease to the mortgage, (2) to pay rent to Brookline Bank in the event of foreclosure, (3) to allow time for Brookline Bank to cure any default under the lease, (4) to refrain from making advance rent payments to Brookline Bank, and (5) to seek Brookline Bank's approval before cancelling the lease. Brookline Bank agreed (1) to recognize the tenant's rights under the lease, (2) to refrain from disturbing the tenant's right of occupancy, and (3) to recognize the tenancy in the event of foreclosure. We do not read any of these mutual promises between the tenant and Brookline Bank to create any tenant obligations to the landlord. Our conclusion is further buttressed by language in the SNDA that repeatedly expressed an intent to preserve the tenant's rights under the

lease and avoided any attempt to rewrite the relationship of the landlord and the tenant. Indeed, in its introductory provisions, the SNDA acknowledged the overall intent to preserve that relationship as delineated in the lease: "The Tenant requires as a condition to the Lease being subordinate to the Mortgage that its rights under the Lease be recognized." As a further indication that the lease retained its force as the dominant agreement, the tenant promised in the SNDA to deliver any necessary documents in the event of a foreclosure sale, but such documents "shall not vary the terms of the Lease nor obligate the Tenant to any greater obligation than contained in the Lease." Thus, there is no basis for the landlord's conclusion that the SNDA altered or "governed" any obligation set out in either the lease or the service agreement.

Given the expressed intent in the SNDA to preserve the tenant's rights established by the lease and the service agreement and the absence of any shared intent by the parties to the SNDA to modify these agreements, we conclude that the tenant's obligations to Brookline Bank under the SNDA did not alter the relationship between the landlord and the tenant. See I & R Mechanical, Inc. v. Hazelton Mfg. Co., 62 Mass. App. Ct. 452, 455 (2004) (contract formation requires parties to "give their mutual assent by having 'a meeting of the minds' on the same proposition on the same terms at the same time"). Because

the landlord, the tenant, and Brookline Bank did not all intend to limit the tenant's exercise of its special termination rights against the landlord, the tenant's notice of termination without Brookline Bank's written consent did not constitute a breach of the tenant's contracts with the landlord.

2. Prompt notice of vacancies. In "late August 2017," the tenant notified the landlord of resident notices of termination dated May 30, July 3, July 7, July 30, and August 2. The landlord contends that the tenant breached the service agreement and the covenant of good faith and fair dealing by failing to notify the landlord "promptly" of these anticipated vacancies, thereby creating a material issue of fact. See Bernard J. Basch & Sons v. Travelers Indem. Co., 392 Mass. 1002, 1002 (1984) ("that both parties moved for summary judgment does not mean that no material factual issue remained"). Because the landlord had no reasonable expectation of proving these claims, we conclude that summary judgment properly entered for the tenant.

To successfully state a claim for breach of contract, a party "must demonstrate that there was an agreement between the parties; the agreement was supported by consideration; the plaintiff was ready, willing, and able to perform his or her part of the contract; the defendant committed a breach of the contract; and the plaintiff suffered harm as a result." Bulwer v. Mount Auburn Hosp., 473 Mass. 672, 690 (2016). A plaintiff

must show "that any harm flowed from the breach of the contract." Forlano v. Hughes, 393 Mass. 502, 508-509 (1984). "In no event is recovery permitted of damages not resulting from the breach of the contract, that is, not the consequences of such breach." Boylston Housing Corp. v. O'Toole, 321 Mass. 538, 562 (1947). The landlord contends that a factfinder needs to determine whether the tenant acted "promptly" under the service agreement by gradually and quietly accumulating the five resident notices needed to invoke the special termination rights and thereby thwarting the landlord's ability to fill vacancies as they occurred.

Even if we inferred that the tenant delayed revealing the resident notices (received from May 30 through August 2) until early August when it held enough notices to invoke its special termination rights, the landlord offered no evidence that it "suffered harm as a result" of such delayed notification. Bulwer, 473 Mass. at 690. Rather than showing harm, the record indicates that the landlord suffered no harm from the tenant's conduct because vacancies continued unabated during the five months between the time the tenant provided notice in August 2017 and the time the tenant exercised its special termination rights in January 2018. See Tenants' Dev. Corp. v. AMTAX Holdings 227, LLC, 495 Mass. 207, 223 (2025) (plaintiff must show that defendant "'destroy[ed]' or 'injur[ed]' the

plaintiff[']s ability to receive a benefit under the contract"); Schwartz v. Travelers Indem. Co., 50 Mass. App. Ct. 672, 682 (2001) (summary judgment proper where plaintiff had "no reasonable expectation of proving that harm occurred as a result of any breach of contract"). Beyond indulging in pure speculation, there was no evidence that notice provided before August 2017 would have enabled the landlord to fill any vacancies and forestall termination. See Carroll v. Select Bd. of Norwell, 493 Mass. 178, 194 (2024) (summary judgment cannot be defeated by speculation).

The landlord's contention that the tenant violated the implied covenant of good faith and fair dealing suffers from a similar infirmity. "[E]very contract is subject to an implied covenant of good faith and fair dealing." Anthony's Pier Four, Inc. v. HBC Assocs., 411 Mass. 451, 473 (1991). The covenant protects "the reasonable expectations" of the parties, Chokel v. Genzyme Corp., 449 Mass. 272, 276 (2007), and provides "that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." Weiler v. PortfolioScope, Inc., 469 Mass. 75, 82 (2014).

As previously discussed, there was no evidence that any delay by the tenant in notifying the landlord of vacancies did any harm. As such, the record does not show the tenant

"destroy[ed] or injur[ed]" any right of the landlord to receive fruits of the contract. Weiler, 469 Mass. at 82. Also, given the tenant's special termination rights expressed in both the lease and the service agreement, we discern no violation of the landlord's "reasonable expectations." Chokel, 449 Mass. at 276. By availing itself of the special termination rights and thereby limiting its financial exposure, the tenant did not violate the implied covenant of good faith and fair dealing. See A.L. Prime Energy Consultant, Inc. v. Massachusetts Bay Transp. Auth., 479 Mass. 419, 435 (2018) (buyer of fuel did not violate covenant where exercise of contract's "termination for convenience" clause caused no injury to seller); Buffalo-Water 1, LLC v. Fidelity Real Estate Company, LLC, 481 Mass. 13, 28 (2018) (buyer of commercial building did not violate covenant where exercise of contract's option to purchase caused no injury to seller).

While the parties could have established more stringent and specific notice requirements or otherwise limited the tenant's exercise of its special termination rights, they did not do so. The landlord cannot now "insert these conditions into [the] contract . . . through the side door of the covenant of good faith and fair dealing." Buffalo-Water 1, LLC, 481 Mass. at 28. "[T]he implied covenant of good faith and fair dealing cannot create rights and duties that are not already present in the

contractual relationship." Eigerman v. Putnam Invs., Inc., 450 Mass. 281, 289 (2007).

Judgment affirmed.