

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-313

FEBRUARY TERM, 2004

	} APPEALED FROM:
David and Betty Atkins	}
d/b/a Westbury Park	} Chittenden Superior Court
	}
v.	}
	} DOCKET NO. S0910-02 Cnc
Joseph Wrisley, Sr.,	}
Jonathan Wrisley and Eric	} Trial Judge: Dennis R. Pearson
Desjardin	}
	}

In the above-entitled cause, the Clerk will enter:

Plaintiffs, the owners of a mobile home park in the Town of Colchester, filed an action to evict defendants Jonathan Wrisley and Eric Desjardin from a mobile home on a lot leased by defendant Joseph Wrisley, Sr. The court entered summary judgment in favor of defendants. Plaintiffs contend the court erred in: (1) failing to enforce the plain language of the lease prohibiting occupancy by convicted criminals; (2) concluding that defendant Jonathan Wrisley= s possession was not a sub-tenancy prohibited by the lease; and (3) granting summary judgment when material facts remained in dispute. We affirm.

The undisputed facts may be summarized as follows. In 1993, defendant Joseph Wrisley, Sr. entered into a lease agreement for a lot in a mobile home park owned by plaintiffs. The lease agreement provided, in part, that occupancy was restricted to persons listed on the application form and approved by management. The approved application listed, in addition to Joseph Wrisley, Sr., his children Joseph Jr. and defendant Jonathan Wrisley, who was seventeen years old at the time. The agreement also prohibited A criminal behavior,@ and subleases without permission of management.

After several years, Joseph Wrisley, Sr. vacated the mobile home, and his son Jonathan began living there with Desjardin. When plaintiffs learned of Jonathan= s prior convictions for possession of marijuana and sexual abuse, they requested that he submit an application for occupancy, and subsequently denied the application. When Jonathan remained in residence, plaintiffs filed this action to evict him and Desjardins, alleging that Joseph Wrisley, Sr. had violated the lease agreement by subleasing the premises to Jonathan and Desjardins without permission. It is undisputed that Desjardins has since left the premises and no longer resides there.

Plaintiffs moved for summary judgment. Following a hearing, the court issued a written decision, concluding that defendants were entitled to judgment as a matter of law. See V.R.C.P. 56(c)(3). (A Summary judgment when appropriate may be rendered against the moving party.@). The court found that Jonathan was listed on the approved application and therefore B under the plain and unambiguous terms of the lease agreement B was entitled to occupy the mobile home situated on the underlying lot leased to his father, Joseph Wrisley, Sr. There was no evidence that Jonathan had become a sub-tenant, and the application for occupancy which he had submitted at plaintiffs= request did not alter his right to occupy the premises under the initial lease agreement. As there was no sub-tenancy, there was no requirement that plaintiffs grant permission for Jonathan= s occupancy. Nor was there any basis to find a breach of the agreement based on Jonathan= s criminal convictions, as the court found that the prohibition against A criminal behavior@ plainly applied only to activity occurring at the park itself. Accordingly, the court entered judgment in favor of defendants. Plaintiffs= subsequent motion to alter or amend the judgment was denied. This appeal followed.

Plaintiffs contend the court's conclusion that Jonathan was entitled to occupy the premises under the initial lease agreement contravenes the plain language of the lease construed as a whole, conflicts with the Mobile Home Park Act, and leads to absurd and unequal results. Plaintiffs cite the lease provision requiring that applicants demonstrate satisfactory character and an absence of past criminal convictions, and assert that it is unreasonable to construe the lease as restricting these requirements to the circumstances existing at the time of the original lease. Plaintiffs also argue that such a construction would violate the policy underlying the Mobile Home Park Act of protecting the health, safety and welfare of the residents of mobile home developments, 16 V.S.A. § 291 (Adj. Sess.) '2, and would lead to unequal results by requiring them to accept some subtenants with unsatisfactory character . . . as well as those with dangerous criminal propensities, (like Wrisley) but reject others of the same ilk who had never before resided at Westbury Park.

We interpret a contract according to its terms and the parties' intent as expressed in the contract language. New England Ship v. Rutland City Sch. Dist., 173 Vt. 69, 79 (2001). Whether a contract term is ambiguous is a question of law for the court to decide. Id. at 75. The plain language of the lease agreement unambiguously entitled Jonathan to occupy the premises as an approved listed person on the application. As the trial court here noted, if plaintiffs had intended to retain the right to terminate their initial approval after a period of years, or on the basis of subsequent criminal convictions, they could have so provided. Courts are not, however, free to rewrite the terms of a contract. Phillips v. Phillips, 164 Vt. 600, 602 (1995) (mem.). Nor do we discern any violation of the provisions of the Mobile Home Park Act resulting from the terms of the lease.

Plaintiffs also contend the court erred in concluding that Jonathan's possession was not a sub-tenancy requiring management approval, citing evidence that Joseph Wrisley, Sr. had not resided in the mobile home for several years, as well as the fact that Jonathan had submitted an application to occupy the mobile home. Alternatively, plaintiffs contend that these facts raised a material issue as to whether there was a sub-tenancy. The trial court correctly concluded, however, that Wrisley Sr.'s absence and the new application were immaterial in view of Jonathan's continuing right to occupy the unit under the lease agreement, and therefore provided no contractual or statutory basis to evict him. Thus, we discern no basis to disturb the judgment.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Paul L. Reiber, Associate Justice

M. Patricia Zimmerman, District Judge,

Specially Assigned