

Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed September 17, 2008.
Not final until disposition of timely filed motion for rehearing.

No. 3D07-454
Lower Tribunal No. 05-23379

Skylake Insurance Agency, Inc.,
Appellant,

vs.

NMB Plaza, LLC,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Robert Scola,
Jr., Judge.

Scott Alan Orth, for appellant.

Bennett G. Feldman, for appellee.

Before COPE, RAMIREZ, and SALTER, JJ.

COPE, J.

This is an appeal of a summary final judgment in a commercial landlord-tenant dispute. The question is whether the commercial ten-year lease in this case was executed with legally sufficient formalities so as to be enforceable. We conclude that the answer is yes.

The landlord, NMB Plaza LLC, is the developer of an office building in North Miami Beach, Florida. While the building was under construction, the landlord signed a ten-year lease with the tenant, Skylake Insurance Agency, Inc. The tenant's occupancy was to begin ninety days after completion of the building.

There was a written lease which was signed on behalf of the landlord by a member of NMB Plaza LLC, and on behalf of the tenant by the president and vice president of Skylake Insurance Agency, Inc. There were no witnesses to any of the signatures.

As the building neared completion, the landlord repudiated the lease because there were no witnesses to the signatures. The tenant brought an action for specific performance of the lease and made an alternative claim for damages for fraud. The trial court entered summary judgment for the landlord, and the tenant has appealed.

The tenant contends that the trial court erred by holding the lease to be unenforceable because of the lack of witness signatures on the lease. The tenant maintains that the lease satisfies the statute of frauds, see § 725.01, Fla. Stat.

(2003), because the landlord signed it. The tenant argues that since the section 725.01 statute of frauds has been satisfied, the lease is enforceable.

The landlord counters that for a lease of more than one year, there must be a “writing, signed in the presence of two subscribing witnesses by the party . . . granting . . . such . . . term of more than 1 year” § 689.01, Fla. Stat. (2003).¹

Under its plain language, section 689.01 is applicable to a conveyance of real estate, including a lease of more than a year. See Fla. Women’s Med. Clinic,

¹ The statute states, in its entirety:

689.01 How real estate conveyed.—No estate or interest of freehold, or for a term of more than 1 year, or any uncertain interest of, in or out of any messuages, lands, tenements or hereditaments shall be created, made, granted, transferred or released in any other manner than by instrument in writing, signed in the presence of two subscribing witnesses by the party creating, making, granting, conveying, transferring or releasing such estate, interest, or term of more than 1 year, or by the party’s agent thereunto lawfully authorized, unless by will and testament, or other testamentary appointment, duly made according to law; and no estate or interest, either of freehold, or of term of more than 1 year, or any uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments, shall be assigned or surrendered unless it be by instrument signed in the presence of two subscribing witnesses by the party so assigning or surrendering, or by the party’s agent thereunto lawfully authorized, or by the act and operation of law. No seal shall be necessary to give validity to any instrument executed in conformity with this section. Corporations may convey in accordance with the provisions of this section or in accordance with the provisions of ss. 692.01 and 692.02.

Inc. v. Sultan, 656 So. 2d 931, 933 (Fla. 3d DCA 1995); Burch v. Brinkley, 382 So. 2d 440, 441 (Fla. 1st DCA 1980); Tino v. Outdoor Media, Inc. 342 So. 2d 196 (Fla. 3d DCA 1970); 34 Fla. Jur. 2d Landlord and Tenant § 32 (2007).

The tenant points out, however, that there is an exception. The last sentence of section 689.01 states, “Corporations may convey in accordance with the provisions of this section or in accordance with the provisions of ss. 692.01 and 692.02.” Sections 692.01 and 692.02 govern conveyances by corporations. The tenant’s reliance on those statutory provisions is misplaced, because the landlord is not a corporation but is instead a limited liability company under the Florida Limited Liability Company Act, chapter 608, Florida Statutes (2003).

Our independent research discloses the existence of another exception. Chapter 608 contains its own provisions regarding the disposition of limited liability company property, including real estate. “Instruments and documents providing for the acquisition, mortgage, or disposition of property of the limited liability company shall be valid and binding upon the limited liability company, if they are executed in accordance with this chapter [608].” § 608.425(3), Fla. Stat. (2003). A lease qualifies as a “disposition” of property of the limited liability company.

Section 608.4235, Florida Statutes (2003), addresses the authority of limited liability company members, managing members, and managers. Subsection (3) provides:

(3) Unless the articles of organization or operating agreement limit the authority of a member, any member of a member-managed company or manager of a manager-managed company **may sign and deliver any instrument transferring or affecting the limited liability company's interest in real property.** The instrument is conclusive in favor of a person who gives value without knowledge of the lack of the authority of the person signing and delivering the instrument.

(Emphasis added).

The lease bears the signature of Eli Hadad on behalf of NMB Plaza LLC as lessor. The lessor's answer admits that the lease was signed and raises no claim that the lessor's signature was unauthorized.

As already stated, subsection 608.425(3) provides that the disposition of property of a limited liability company is "valid and binding upon the limited liability company, if . . . executed in accordance with this chapter [608]." Thus it is only necessary that a conveyance by a limited liability company (in this case a lease) comply with chapter 608. It is not necessary that the document contain the

signatures of witnesses required under section 689.01. For the stated reasons, we conclude that the lease should not have been held to violate section 689.01.²

The tenant pled an alternative claim for damages for fraud. The trial court entered summary judgment relying on certain cases stating that if “a breach of contract action is barred by the statute of frauds, the action for fraud is barred as well.” Khawly v. Reboul, 488 So. 2d 856, 857 n.1 (Fla. 3d DCA 1986) (citing Canell v. Arcola Hous. Corp., 65 So. 2d 849, 851 (Fla. 1953); Ashland Oil, Inc. v. Pickard, 269 So. 2d 714, 721 (Fla. 3d DCA 1972)); see Hertz v. Salman, 718 So. 2d 942 (Fla. 3d DCA 1998); see also Steinberg v. Kearns, 907 So. 2d 691, 692 (Fla. 4th DCA 2005) (explaining Canell and Khawly). Because we have reversed on the statute of frauds issue, we must reverse on the alternative count for fraud as well.

For the stated reasons, we reverse the summary judgment and remand for further proceedings consistent herewith.

² We do not fault the trial court for its ruling because the dispositive statutes were not called to the trial court’s attention. We conclude that the tenant’s basic position—that the landlord’s signature was sufficient—is correct, although we reach that conclusion on the basis of chapter 608, rather than the statutes cited by the tenant.