

# **Third District Court of Appeal**

## **State of Florida**

Opinion filed July 3, 2019.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D18-88  
Lower Tribunal No.16-5479

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**Dezer Intracoastal Mall, LLC,**  
Appellant,

vs.

**Seahorse Grill, LLC,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Jorge E. Cueto,  
Judge.

Rosenthal Law Group, and Alex P. Rosenthal and Amanda Jassem Jones  
(Weston), for appellant.

Phillips, Cantor & Shalek, P.A., and Gary S. Phillips and Jeffrey B. Shalek  
(Hollywood), for appellee.

Before EMAS, C.J., and LOGUE and HENDON, JJ.

HENDON, J.

Dezer Intracoastal Mall, LLC (“Landlord”) appeals from a final judgment in favor of Seahorse Grill, LLC (“Tenant”), finding that the Tenant was not in breach of the commercial lease and has paid all amounts due under the lease and the rider to the lease. Based on the clear and unambiguous language of the lease and the rider, we affirm.

The Landlord filed a breach of contract and eviction action against the Tenant, alleging that under the terms of the commercial lease, the Tenant has failed to pay rent and other charges due under the lease.<sup>1</sup> The lease provides that the “rent” includes the “minimum rent” of \$19,481 per month (plus applicable sales and use taxes thereon) and “additional rent.” As utilized in the lease, the term “additional rent” means any other amounts due under the lease except for the “minimum rent.” In the instant case, the “additional rent” in dispute are the “operating expenses.” The lease provides, in relevant part, as follows:

**Section 1.1 REFERENCE PROVISIONS.** Where used in this Lease, the designated terms hereinafter set forth shall have the meanings ascribed by the provisions of this Section 1.1:

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<sup>1</sup> The lease was originally entered into in October 2011 between the Tenant and MSW Intracoastal Mall, LLC, the then-owner of the property in which the leased premises are situated. Thereafter, in March 2013, CJUF III Intracoastal LLC acquired the property from MSW Intracoastal Mall, and in December 2013, the Landlord acquired the property from CJUF III Intracoastal. It is undisputed that each new owner succeeded to the rights and obligations under the lease originally entered into between the Tenant and MSW Intracoastal Mall.

(k) **“Operating Expenses”** –Landlord’s estimate of Tenant’s Proportionate Share of Operating Expenses for the calendar year 2012 is \$5,753.31 per month, which amount shall be due from Tenant on the first (1<sup>st</sup>) day of each month along with the Minimum Rent.

....

**Section 2.3 OPERATING EXPENSES.** Tenant shall pay to Landlord, as Additional Rent, Tenant’s Proportionate Share of all costs and expenses of owning, operating, servicing, managing, maintaining, repairing, replacing, securing, insuring and improving the Shopping Center (“Operating Expenses”), less any contributions to Operating Expenses received by Landlord from Anchor tenants and/or from those outparcel tenants, if any, whose premises are excluded from the calculation of Tenant’s Proportionate Share in accordance with the next sentence. . . .

Prior to the Rent Commencement Date and each calendar year thereafter . . . , Landlord shall furnish to Tenant a written estimate of the Operating Expenses and Tenant’s Share thereof for the ensuing calendar year or portion thereof. Tenant shall pay to Landlord on the first day of each calendar month during the Term, in advance, one-twelfth of Tenant’s Proportionate Share of the Operating Expenses based on Landlord’s estimates (which estimates may be adjusted by Landlord at any time upon written notice to Tenant). . . . After the end of each calendar year (or other accounting period used by Landlord), Landlord shall furnish to Tenant a reconciliation statement setting forth in reasonable detail the actual Operating Expenses for the immediately preceding year, Tenant’s Proportionate Share for such year, payments made by Tenant for such year and Landlord’s new estimate of Tenant’s Proportionate Share of the statement, then Tenant shall pay the difference to Landlord within thirty (30) days thereafter. If the statement indicates an overpayment by Tenant, then Tenant shall be entitled to a credit against installments next becoming due hereunder. If Tenant fails to receive the statement with the new estimate, Tenant shall continue to pay Tenant’s proportionate Share of Operating Expenses based on the prior estimate and upon receipt of the new estimate shall immediately pay the difference. . . .

....

**Section 11.28 RIDER.** If any provision contained in a Rider to this Lease is inconsistent with any other provision herein, the provision contained in the Rider shall control unless otherwise provided in the Rider.

Paragraph 8 of the rider to the lease addresses increases in the operating expenses chargeable to the Tenant, and provides as follows:

By reference hereto, this Rider is hereby incorporated into and made a part of the above referenced Lease between Landlord and Tenant. In the case of any inconsistency between the provisions of this Rider to the Lease and the balance of the Lease, the provisions of this Rider shall govern and control.

....

8. OPERATING EXPENSES / FIXED INCREASES: Notwithstanding anything to the contrary contained in the Lease, Operating Expenses (as the term is defined in Section 2.3 of the Lease) shall increase annually during the Term by the fixed amount of three percent (3%) per calendar year over the Operating Expenses in effect for the immediately preceding calendar year, notwithstanding the actual amount of Operating Expenses otherwise allocable to the Leased Premises.

(underlining added).

At the bench trial, trial court noted that the case involved an interpretation of the lease and the rider, and the parties have agreed that the contract is unambiguous. Despite each party agreeing that the relevant provisions were unambiguous, each party ascribed a different meaning to the provisions.

Following the bench trial, the trial court entered a detailed final judgment in favor of the Tenant. The trial court found that the relevant provisions in the lease

and the rider are clear and unambiguous. Further, the trial court found as follows:

11. The Lease sets forth in clear and unambiguous language that the Operating Expenses would only increase each year by the fixed amount of three percent (3%). To find otherwise would be [sic] completely eviscerate the underlined language immediately above. As a result, the exact amount of the Operating Expenses can be determined by the amount of the Operating Expenses for the first year and then increasing that amount by exactly three percent (3%) every year thereafter.

Based on the trial court's interpretation of the lease and the rider, including paragraph 8, the trial court found that the Landlord had received all amounts due from the Tenant, including the operating expenses. Thus, the trial court entered a final judgment in favor of the Tenant. The Landlord's appeal of the final judgment followed.

“The standard of review applicable to the question of whether a contract is ambiguous is *de novo*.” Garcia v. Tarmac Am. Inc., 880 So. 2d 807, 809 (Fla. 5th DCA 2004) (quoting V & M Erectors, Inc. v. Middlesex Corp., 867 So. 2d 1252, 1253 (Fla. 4th DCA 2004)). “The interpretation of a contract involves a pure question of law for which this court applies a *de novo* standard of review.” Dirico v. Redland Estates, Inc., 154 So. 3d 355, 357 (Fla. 3d DCA 2014) (quoting Muniz v. Crystal Lake Project, LLC, 947 So. 2d 464, 469 (Fla. 3d DCA 2006)); see N. Star Beauty Salon, Inc. v. Artzt, 821 So. 2d 356, 358 (Fla. 4th DCA 2002) (“A trial court's interpretation of a contract is reviewable by this court under a *de novo* standard of review provided the language is clear and unambiguous and free of

conflicting inferences.”). Further, “when the language is clear and unambiguous, it must be construed to mean ‘just what the language therein implies and nothing more.’” Walgreen Co. v. Habitat Dev. Corp., 655 So. 2d 164, 165 (Fla. 3d DCA 1995) (quoting Camichos v. Diana Stores Corp., 25 So. 2d 864, 870 (Fla. 1946)).

In the instant case, based on our de novo review of the lease and the rider, we agree with the trial court’s determination that the relevant provisions of the lease and the rider, including paragraph 8 of the rider, are unambiguous. We also conclude that the trial court accurately interpreted the provisions. As the trial court correctly found, pursuant to paragraph 8 of the rider, the operating expenses chargeable to the Tenant will only increase each year by the fixed amount of three percent (3%), “notwithstanding the actual amount of Operating Expenses otherwise allocable to the Leased Premises.” Accordingly, we affirm the final judgment under review.

Affirmed.