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TINACO PLAZA, LLC *v.* FREEBOB'S, INC.
(AC 21992)

Flynn, Bishop and Landau, Js.

Argued September 24, 2002—officially released February 4, 2003

(Appeal from Superior Court, judicial district of New London, geographical area number ten, Dyer, J.)

Lloyd L. Langhammer, for the appellant (defendant).

Kevin J. Burns, for the appellee (plaintiff).

Opinion

LANDAU, J. In this summary process action, the trial court granted the motion for summary judgment filed by the plaintiff, Tinaco Plaza, LLC. The issues before us are whether the court properly determined that, pursuant to General Statutes § 47a-26d,[1] (1) the plaintiff was entitled to possession of the premises and (2) the special defenses alleged by the defendant were inapplicable to the cause of action and facts here. We affirm the judgment of the trial court.

There is no disagreement as to the following facts. In 1985, the plaintiff's predecessor in title leased the premises at 273 Clarks Fall Road in North Stonington to the defendant's predecessors in interest. The lease was for a ten year term and provided the option of

renewal for two additional five year terms.[2] About the time that the original lease was signed, the defendant obtained rights to the leasehold. In May, 1995, the defendant and the plaintiff's predecessors signed an amendment to the lease that memorialized the defendant's right to an additional five year term and included, among other things, the rent to be paid for the additional five year term, through April 30, 2000. One of the covenants contained in the amendment concerned an option to renew the lease for yet another five year term.[3] The plaintiff purchased the premises in 1996.

By letter dated July 30, 1999, the defendant attempted to exercise its option to renew the lease for an additional five year term. The plaintiff rejected the defendant's attempted renewal. In 2000, unlike the events that transpired in May, 1995, the parties did not memorialize an agreement concerning the defendant's desire to exercise its option to renew, and they did not negotiate the rental for an additional five year term. On May 4, 2000, the plaintiff caused a notice to quit the premises by May 12, 2000, to be served on the defendant. Although the time given in the notice to quit has passed, the defendant continues in possession of the premises.

In June, 2000, the plaintiff commenced a summary process action against the defendant seeking immediate possession of the premises. The plaintiff subsequently amended its complaint, which was in three counts. The factual allegations of the complaint are consistent with the undisputed facts. The first count sought possession of the premises on the basis of termination of the lease by lapse of time. The second count sounded in breach of contract, and the third count alleged waste on the premises, unauthorized alterations, injury, misuse and termination by expressed stipulation in the lease. The defendant answered the complaint and alleged a number of special defenses, including the equitable doctrine of laches, equitable forfeiture and promissory estoppel.

At the time it filed its amended complaint, the plaintiff also filed a motion for summary judgment. The defendant objected to the motion for summary judgment. The plaintiff sought summary judgment in its favor on the basis of the allegations in the first count of its amended complaint. Specifically, the plaintiff claimed that the lease has expired, that there is no new lease and that notice to quit was served properly on the defendant. The defendant objected, arguing that it was entitled to remain in possession of the premises pursuant to the renewal option contained in the original lease. The parties disagree as to whether the renewal option was enforceable, as a matter of law, because it required the amount of rent due during the second five year term, if any, to be negotiated after the defendant had exercised its right pursuant to the option to renew.

The court did not reach the issue of enforceability, concluding, on the basis of the undisputed facts, that

the plaintiff was entitled to summary judgment regardless of the enforceability of the renewal clause. That is, as a matter of law, the defendant was unable to demonstrate that it had title in the premises at the time the notice to quit was served. Specifically, the court concluded, citing *Platt* v. *Cutler*, 75 Conn. 183, 52 A. 819 (1902), that the defendant's notice of its intention to renew the lease did not renew the lease because the language of the lease renewal clause required the written consent of the plaintiff if the defendant held over, or the negotiation of the rent due under the new five year term. The term of the amended lease had expired, there was no signing by the plaintiff permitting the defendant to hold over and there was no new lease. The court also concluded, as a matter of law, that the special defenses addressed by the defendant in its brief in support of its objection to the motion for summary judgment were inapplicable to the facts of this summary process action.

"On appeal, the scope of our review of the granting of a motion for summary judgment is plenary. . . . In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact [and] a party opposing summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue." (Citations omitted; internal quotation marks omitted.) *Richter* v. *Danbury Hospital*, 60 Conn. App. 280, 286, 759 A.2d 106 (2000). "To establish the existence of a material fact, it is not enough for the party opposing summary judgment merely to assert the existence of a disputed issue. . . . Such assertions are insufficient regardless of whether they are contained in a complaint or brief." (Citations omitted; internal quotation marks omitted.) *New Milford Savings Bank* v. *Roina*, 38 Conn. App. 240, 244, 659 A.2d 1226, cert. denied, 235 Conn. 915, 665 A.2d 609 (1995).

With respect to a motion for summary judgment, "[t]he judgment sought shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . A material fact is a fact that will make a difference in the result of the case. . . . The facts at issue are those alleged in the pleadings." (Citations omitted; internal quotation marks omitted.) *Brunswick* v. *Safeco Ins. Co.*, 48 Conn. App. 699, 703, 711 A.2d 1202, cert. denied, 247 Conn. 923, 719 A.2d 1168 (1998). Summary judgment should be denied if the defendant "raises at least one legally sufficient defense that would bar the plaintiff's claim . . . ." *Perille* v. *Raybestos-Manhattan-Europe, Inc.*, 196 Conn. 529, 543, 494 A.2d 555 (1985).

We first consider whether the court properly determined that the plaintiff was entitled to possession of the premises because the defendant could not show evidence of title in itself at the time the notice to quit was served.[4] See General Statutes § 47a-26d. "The ultimate issue in a summary process action is the right to possession." *Southland Corp.* v. *Vernon*, 1 Conn. App. 439, 443, 473 A.2d 318 (1984).

"A lease is a contract. In its construction, three elementary principles must be kept constantly in mind: (1) the intention of the parties is controlling and must be gathered from the language of the lease in the light of the circumstances surrounding the parties at the execution of the instrument; (2) the language must be given its ordinary meaning unless a technical or special meaning is clearly intended; (3) the lease must be construed as a whole and in such a manner as to give effect to every provision, if reasonably possible. *Hatcho Corp.* v. *Della Pietra*, 195 Conn. 18, 20, 485 A.2d 1285 (1985). In determining the meaning and effect of the controverted language in the lease, the inquiry must focus on the intention expressed in the lease and not on what intention existed in the minds of the parties. *Lampson Lumber Co.* v. *Caporale*, 140 Conn. 679, 682, 102 A.2d 875 (1954)." (Internal quotation marks omitted.) *Warner Associates* v. *Logan*, 50 Conn. App. 90, 94–95, 718 A.2d 48 (1998).

The issue in the case before us can be stated succinctly as whether the contract called for an extension of the existing lease or a renewal of the lease. "It is the general rule that no new lease is necessary upon exercising an option for the extension of the term of the lease for a further specified period after the expiration of the original term, and many courts apply the same rule in the case of options for renewal. . . . The view has been taken that a lease for a specified term with the privilege of a renewal on the same terms is equivalent, where such privilege is exercised, to a demise for the full period of the two terms, without any necessity for the execution of a new lease, and this would seem to be the view which a court of equity would take in case the rights of the lessee under the privilege of renewal is there called in question, as equity regards that as done which ought to be done. . . .

"A technical difference is frequently recognized, however, between the effect of a covenant for renewal and one for extension, especially as to the effect of retention of possession after the original term, it being held that a stipulation for renewal does not, like a covenant to extend, of itself and alone continue the tenancy for the renewal period, but calls for a new lease, a formal extension of the existing lease or something equivalent thereto, performance by the lessee of everything required for him to entitle him to a new lease, or, at least, some affirmative act by way of creation of an

additional term. . . . But it is recognized that the technical difference may be controlled by the intention of the parties as manifested by the entire lease or *by their practical construction of their contract, as by conduct before the controversy arose,* whereby the privilege may be construed as one for an extension of term, though the language employed, in a strict technical sense, may signify renewal. The mere fact that the privilege is called one to renew is not conclusive.'' (Citations omitted; emphasis added; internal quotation marks omitted.) *Ackerman* v. *Loforese*, 111 Conn. 700, 703–704, 151 A. 159 (1930).[5]

On the basis of our plenary review of the amended complaint, answer and special defenses, the lease and its amendment, and documents and affidavits submitted with respect to the summary judgment motion, we agree with the court that the defendant had no right of possession in the premises at the time the notice to quit was served. In reaching that conclusion, we have adhered to the rule that the technical distinction between a covenant to extend or to renew can be ascertained ''by the intention of the parties as manifested . . . by their practical construction of their contract, as by conduct before the controversy arose . . . .'' Id., 704.[6]

The original lease provided that holding over by the defendant will not renew the lease without the written consent of the plaintiff. The plaintiff has not consented in writing to the defendant's remaining in possession after April 30, 2000. Furthermore, the lease amendment unambiguously provides for the expiration of the lease and requires the negotiation of a new rent as a prerequisite to the defendant's continued possession of the premises. The amendment of lease signed in May, 1995, is instructive. The preliminary statements set forth the context of the agreement, they acknowledge the original lease and its assignments, the option to renew and the parties' ''desire to set forth [therein] their agreement concerning the exercise of the aforesaid option to renew.'' Furthermore, paragraph one of the amendment contains a detailed agreement as to the amount and manner in which rent is to be paid for the five years of the lease. Because the parties executed a signed agreement with respect to the option in 1995 and negotiated the rent to be paid, we conclude that the lease and the amendment provided a covenant to renew that required a writing. For that reason, the trial court properly concluded that the defendant had no right to possession after the five year leasehold expired in 2000. Furthermore, the plaintiff served notice to quit on the defendant and initiated a summary process action as soon after the end of the five year lease as was permissible.

Our construction of the terms of the lease and the amendment are consistent with our case law. See *Platt* v. *Cutler*, supra, 75 Conn. 186 (''lease was for the term

of one year only, and the year had expired. The agreement for renewal conveyed no right nor interest in the premises beyond the term. At most it gave the defendant a right, if he complied with the conditions upon which the right was based, to obtain a lease for two years more, but he did not in fact obtain such a lease''); *Warner Associates* v. *Logan*, supra, 50 Conn. App. 96 (''intent expressed in the plain language of the lease between the plaintiff and the defendants created an option to renew the lease for an additional five year period under the same terms and conditions as the original lease, except that the amount of rent during the renewal period would be subject to a negotiated adjustment . . . the negotiated renewal lease was to be in writing, and if the defendants remained in the premises after the expiration of the term of the lease without having executed a new written lease, such hold-over would not constitute a renewal or extension of the lease''). The same legal principle was followed under different factual scenarios in *F.B. Fountain Co.* v. *Stein*, 97 Conn. 619, 118 A. 47 (1922), and *Karn* v. *DiLorenzo*, 95 Conn. 267, 111 A. 195 (1920).

The dissent takes issue with our reliance on *Platt* and *Warner Associates* and relies on six cases that are factually distinct from the one before us. The most important factual distinction in all of those cases is that the rent to be paid during the extended or renewed leasehold had been determined or a formula for computing it had been agreed on by the parties. The cases cited in the dissent support, rather than detract from, our conclusion that a writing was necessary to renew the leasehold for an additional five year term.[7]

The dissent relies on *Corthouts* v. *Connecticut Fire Safety Services Corp.*, 2 Conn. Cir. Ct. 34, 193 A.2d 909 (1963), for the proposition that the extension of a lease does not require a new writing if at least three limitations are included in the lease, the commencement, the continuance and the termination. Id., 38–39; but see *W.G. Maltby, Inc.* v. *Associated Realty Co.*, 114 Conn. 283, 158 A. 548 (1932), in which our Supreme Court concluded that ''[t]he contract is definite as to the premises to be let, the time when the term was to commence, the duration of the term, *the rent to be paid*, and was, as between the parties, a valid lease of the premises.'' (Emphasis added.) Id., 288.

In *Corthouts*, the lease provided an option for an extension and the amount of rent to be paid if the lease were extended.[8] The lessee was not required to give notice of its intension to exercise its option to continue in possession of the premises. Under certain conditions, which were present in *Corthouts*, a lessee's mere holding over was sufficient to exercise its option. *Corthouts* v. *Connecticut Fire Safety Services Corp.*, supra, 2 Conn. Cir. Ct. 39. The court noted that the lease at issue provided the amount of rent to be paid and distin-

guished the case from *Welk* v. *Bidwell*, 136 Conn. 603, 73 A.2d 295 (1950), in which the dispute centered on the amount of rent to be paid. *Corthouts* v. *Connecticut Fire Safety Services Corp.*, supra, 40.

In *Welk*, the landlord and the tenant had agreed to a month-to-month lease of a tobacco barn for $10 per month. *Welk* v. *Bidwell*, supra, 136 Conn. 605. Prior to the expiration of a month's term, the landlord informed the tenant that he was increasing the rent to $125. Id. The tenant held over, refused to pay $125 per month and continued to pay $10 per month. Id. The landlord brought an action to collect the difference between $10 and $125 per month. Id., 604–605.

"The fact that the [tenant in *Welk*] held over in possession of the property after the expiration of his lease for the month . . . did not itself create a lease for the subsequent month. The parties were free to make a contract for the future occupancy of the property. If there had been no dispute between them as to the terms of the future occupancy, the holding over by the tenant and the acquiescence therein by the landlord would have raised such a contract by implication. . . . Indeed, if the landlord had specified terms for the future occupancy of the property, the continuance in possession by the tenant without objection by him to those terms might have been construed as an acceptance of those terms and thus a contract would have been implied from the conduct of the parties. . . . But if there had actually been no meeting of the minds either because of ambiguity or uncertainty in negotiations or because the negotiations had not been completed, then, of course, there could have been no contract. . . . If a tenant remains in possession without the consent of the landlord, there is no contract for an extended term to be implied from the holding over. . . . A fortiori, where the parties are in definite dispute as to any of the essential terms of a new tenancy, certainly no lease can be implied from the fact that the tenant holds over." (Citations omitted.) Id., 607–608.

The *Welk* court noted that the landlord could not impose the increased rent on the tenant and that the tenant's refusal to pay left the parties without a contract. Id., 608. The tenant was not a trespasser, as he had entered into possession of the property under a lease that gave him the right to possession. Id. "The plaintiff could have revoked that right and recovered the right of possession by peaceable entry or by way of summary process." Id.;[9] see also *FJK Associates* v. *Karkoski*, 52 Conn. App. 66, 68, 725 A.2d 991 (1999). The case before us is similar: The parties do not have a contract or lease because there was no meeting of the minds as to the rent to be paid during the optional, second five year lease term.

The case of *Ackerman* v. *Loforese*, supra, 111 Conn. 700, demonstrates how the practical construction of

the parties' contract can be determined by their conduct prior to a dispute. In 1919, the Ackerman parties entered into the five year lease that contained an option for renewal and an option to purchase the premises for a specific sum. At the end of the first year under the lease, the parties executed a supplemental agreement continuing the lease in all respects, except that the amount of rent was increased. In 1924, at the end of the five year term, the tenant notified the landlord that he was exercising his option to continue to rent the premises under the same terms and conditions of the original lease. The tenant offered to sign a renewal lease, but no new lease was executed. After refusing to accept the tenant's rent for a few months in 1924, the landlord accepted all rent until the events that gave rise to the tenant's action for specific performance. In 1929, the tenant notified the landlord of his intent to exercise the option to purchase and tendered the agreed on price. The landlord refused to convey the premises to the tenant. ''[The landlord's] acquiescence and conduct and that of his successors was consistent only with a construction that the word 'renewed' was used in the lease as synonymous with 'extended' or with an admission that the exercise by the [tenant] of his election to renew was such an affirmative act as to create the renewal.'' Id., 706. In the present case, the plaintiff did not acquiesce in the defendant's holding over, thereby creating a new lease by implication. See *Welk* v. *Bidwell*, supra, 136 Conn. 607.[10]

Here, there is no question that the parties did not sign a new agreement, the rent for a second five year term had not been determined, and the plaintiff did nothing to acquiesce in the defendant's continuing in possession after April, 2000. The option in the lease constituted a renewal, not an extension of the lease. That conclusion is supported by the undisputed conduct of the parties in May, 1995.

We therefore conclude that the court properly granted the plaintiff's motion for summary judgment because, in accordance with § 47a-26d, the defendant had no right to possession of the premises after the five year leasehold expired.[11]

II

The defendant also claims that the court improperly concluded that the equitable doctrines of laches, equitable forfeiture and promissory estoppel were not applicable special defenses in this case.[12] Although we acknowledge that equitable special defenses may be alleged in a summary process action; see *Fellows* v. *Martin*, 217 Conn. 57, 61–63, 584 A.2d 458 (1991); *Kim* v. *Magnotta*, 49 Conn. App. 203, 227, 714 A.2d 38 (1998) (*Lavery, J.*, dissenting), rev'd on other grounds, 249 Conn. 94, 733 A.2d 809 (1999); we agree with the court that the special defenses alleged by the defendant are unavailing here.[13]

A

The defendant claims that the court improperly determined that the doctrine of laches did not apply here, where the defendant claims that it was harmed by the plaintiff's delay in informing it that the lease would not be renewed.

"The defense of laches, if proven, bars a plaintiff from seeking equitable relief in a case in which there has been an inexcusable delay that has prejudiced the defendant. First, there must have been a delay that was inexcusable, and, second, that delay must have prejudiced the defendant. . . . A conclusion that a plaintiff has been guilty of laches is one of fact for the trier and not one that can be made by this court, unless the subordinate facts found make such a conclusion inevitable as a matter of law. . . . We must defer to the court's findings of fact unless they are clearly erroneous." (Citation omitted; internal quotation marks omitted.) *Ridgefield* v. *Eppoliti Realty Co.*, 71 Conn. App. 321, 333, 801 A.2d 902, cert. denied, 261 Conn. 933, 806 A.2d 1070 (2002).

On the basis of our review of the pleadings, we agree with the court's findings and analysis. In this summary process action, count one of the complaint seeks to evict the defendant on the basis of the termination of the lease by lapse of time. The defendant did not raise a genuine issue of fact that the plaintiff did not commence its action in a timely manner, but claimed that the plaintiff did not present timely its legal theory regarding the enforceability of the renewal option. The lease expired on April 30, 2000. The notice to quite was served on the defendant on May 4, 2000, and the action was commenced in June, 2000. The plaintiff could not have commenced the action prior to the expiration of the lease.

"[T]he defense of laches does not apply unless there is an unreasonable, inexcusable, and prejudicial delay in bringing suit." (Internal quotation marks omitted.) *Cummings* v. *Tripp*, 204 Conn. 67, 88, 527 A.2d 230 (1987); *Castonguay* v. *Plourde*, 46 Conn. App. 251, 265, 699 A.2d 226, cert. denied, 243 Conn. 931, 701 A.2d 660 (1997). The court, therefore, properly concluded that the defendant could not prevail on its special defense of laches.

B

The defendant claims that the doctrine of equitable estoppel should bar the plaintiff's claim. The defendant asserts that the plaintiff should have told the defendant that it did not believe the covenant to renew was enforceable when it acquired title to the premises. Although the court analyzed the defendant's claim, it also restated its conclusion that the enforceability of the renewal option relates to the defendant's right to a new lease, not to the defendant's right of possession. We agree that the defendant's equitable estoppel

defense does not apply to the plaintiff's right of possession in this summary process action.

C

The defendant's third equitable defense is based on the doctrine of equitable forfeiture. We agree with the court's clear analysis of this claim, which follows.

"Equitable principles barring forfeiture may apply to summary process actions for nonpayment of rent if: (1) the tenant's breach was not willful or grossly negligent; (2) upon eviction the tenant will suffer a loss wholly disproportionate to the injury to the landlord; and (3) the landlord's injury is reparable." *Cumberland Farms, Inc.* v. *Dairy Mart, Inc.*, 225 Conn. 771, 778, 627 A.2d 386 (1993). In the present action, the defendant argues that the doctrine should excuse its alleged failure to properly exercise its right of renewal by sending notice via certified mail. The court already concluded in its memorandum of decision that under the holding in *Platt* v. *Cutler*, supra, 75 Conn. 186–87, "proper notice by the defendant of its intent to renew might create a contractual right to a new lease, but does not itself create a right to possession. Consequently, under the facts of the present case, the equitable doctrine against forfeitures does not implicate the defendant's right to possession, as equitable defenses to summary process must. Nor does the defense constitute a genuine issue of material fact because it cannot affect the outcome of the case."

The judgment is affirmed.[14]

In this opinion FLYNN, J., concurred.

[1] General Statutes § 47a-26d provides: "If, on the trial of a summary process complaint it is found that the defendant is the lessee of the complainant and holds over after the termination of the lease or rental agreement or, if there was no lease or rental agreement, that the defendant is the occupant of such premises and has no right or privilege to occupy the same and that notice to quit has been given as provided in this chapter, yet that the defendant holds possession or occupancy after the expiration of the time specified in such notice to quit, and the defendant does not show a title in himself which accrued after the giving of the lease or rental agreement, if any, or *if the defendant does not show a title in himself existing at the time the notice to quit possession or occupancy was served upon him*, the court shall forthwith enter judgment that the complainant recover possession or occupancy of the premises with his costs, and execution shall issue accordingly subject to the provisions of sections 47a-35 to 4a-41, inclusive." (Emphasis added.)

[2] The lease states in relevant part: "And it is further agreed that in case the said Tenant shall, with the written consent of the said Landlord endorsed hereon, or on the duplicate hereof, at any time hold over the said premises, beyond the period above specified as the termination of this lease, then the said Tenant shall hold said premises upon the same terms, and under the same stipulations and agreements as are in this instrument contained, and no holding over by said Tenant shall operate to renew this lease without such written consent of said Landlord."

The lease further states in relevant part: "ADDITIONAL OPTIONS

"If this lease is not in default nor has been cancelled at the expiration of the prime leased terms as contained herein, at the expiration of the term of this lease (April 30, 1995) the Tenant shall have the further option to renew said lease for Two further periods of Five years each from said date upon the same terms and conditions except that annual rental for said additional terms is to be negotiated by the parties, provided, however, that

notice of said intention to renew shall be given to the Landlord on or before October 31, 1994.''

[3] The amendment to the lease states: ''This Amendment made and executed this 2nd day of May, 1995, by and between [the plaintiff's predecessor] (hereinafter referred to as the Landlord) and [the defendant] (hereinafter referred to as the Tenant).

''Witnesseth:

''WHEREAS, Landlord and Tenant are parties to certain Lease made and executed on April 25, 1985, and a certain Assignment of Lease dated April 23, 1985, relating to certain premises located within the Plaza Trust Stop in North Stonington, Connecticut, all as more particularly described therein; and

''WHEREAS, Landlord and Tenant entered into a certain Amendment of Lease made and executed on June 27, 1994, (the foregoing Lease, Assignment of lease and Amendment of Lease, copies of which are attached hereto, hereinafter collectively referred to as the 'Lease'); and

''WHEREAS, the Lease provides that at the expiration of the term of the Lease on April 30, 1995, 'the Tenant shall have the further option to renew said Lease for two further periods of five (5) years each'; and

''WHEREAS, the parties desire to set forth herein their agreement concerning the exercise of the aforesaid option to renew.

''NOW, THEREFORE, Landlord and Tenant hereby agree as follows:

''1. The Landlord and Tenant agree that the first option to renew the Lease shall be and hereby is exercised to be effective for the period from [M]ay 1, 1995, through April 30, 2000. During said renewal term the sole rental payable by the Tenant to the Landlord under the Lease (in lieu of any other fixed or percentage rental amounts otherwise specified in the Lease) shall be as follows:

''(A) During the first year of the renewal term (May 1, 1995 through April 30, 1996) annual rental shall be $67,600.00 payable weekly in equal installments of $1,300.00 each on the first day of each week;

''(B) During the second year of the renewal term (May 1, 1996, through April 30, 1997) annual rental shall be $70,200.00 payable weekly in equal installments of $1,350.00 each on the first day of each week; and

''(C) During the third year of the renewal term (May 1, 1997, through April 30, 1998) annual rental shall be $72,800.00 payable weekly in equal installments of $1,400.00 each on the first day of each week;

''(D) During the fourth year of the renewal term (May 1, 1998, through April 30, 1999) annual rental shall be $75,400.00 payable weekly in equal installments of $1,450.00 each on the first day of each week;

''(E) During the firth year of the renewal term (May 1, 1999, through April 30, 2000) annual rental shall be $78,000.00 payable weekly in equal installments of $1,500.00 each on the first day of each week;

''2. *With respect to the Tenant's option to renew the Lease for an additional period of five (5) years (from May 1, 2000, to April 30, 2005) as provided in the Lease, the Tenant shall be required to exercise same by notice of intention to renew given to the Landlord on or before October 31, 1999.*

''3. In consideration of the foregoing, it is further agreed and made a part of this agreement, that the Tenant shall begin a 'cosmetic' interior renovation of the restaurant premises on or before April 30, 1996. This renovation is to be completed on or before April 30, 1997.

''4. Except as expressly modified and amended pursuant to the terms of this Amendment, all other covenants and agreements provided for in the Lease shall remain in full force and effect and continue to govern the parties.'' (Emphasis added.)

[4] The defendant's statement of the issues on appeal states in relevant part: ''Did the court err in granting summary judgment in favor of the plaintiff?'' In its brief, the plaintiff argued that we should not consider the claim because the statement of the issue is too broad and that we should not consider several of the defendant's arguments on appeal regarding the court's construction of the contract because they were not raised in the trial court. In the trial court, the defendant argued against the granting of the motion for summary judgment on the basis of the validity of the renewal covenant in the lease, the propriety of the manner in which it exercised its option to renew the lease and three of the special defenses it alleged.

In its brief on appeal, the defendant challenges the validity of the court's rendering judgment on the basis of General Statutes § 47a-26d, certain case law and the unambiguous language of the lease and its amendment. It also challenges the court's construction of the lease and its amendment. Although the defendant's statement of the issue on appeal may be less than precise,

there is no surprise or prejudice to the plaintiff. The central issue on appeal is no different from the one in the trial court.

We will review the propriety of the court's judgment on the basis by which it was decided, whether the defendant could show title in the premises pursuant to § 47a-26d. We will not consider the enforceability of the renewal covenant as it is irrelevant to the plaintiff's right of possession, as the court concluded.

[5] The rule has been cited in our case law for more than eighty years. See, e.g., *Didriksen* v. *Havens*, 136 Conn. 41, 44–45, 68 A.2d 163 (1949); *Blanck* v. *Kimland Realty Co.*, 122 Conn. 317, 318–19, 189 A. 176 (1937); *Johnson* v. *Mary Oliver Candy Shops, Inc.*, 116 Conn., 86, 89, 163 A. 606 (1933); *W.G. Maltby, Inc.* v. *Associated Realty Co.*, 114 Conn. 283, 288–89, 158 A. 548 (1932); *Freiheit* v. *Broch*, 98 Conn. 166, 171, 118 A. 828 (1922); *City Coal Co.* v. *Marcus*, 95 Conn. 454, 111 A. 857 (1920); *David A. Altschuler Trust* v. *Blanchette*, 33 Conn. App. 570, 572, 636 A.2d 1381, cert. denied, 229 Conn. 906, 640 A.2d 117 (1994); *Seven Fifty Main Street Associates Ltd. Partnership* v. *Spector*, 5 Conn. App. 170, 171–72, cert. dismissed, 197 Conn. 815, 499 A.2d 804 (1985).

[6] The dissent has taken the position that the majority has decided a genuine issue of material fact, although not in those words. See footnote 4. "While the court must view the inferences to be drawn from the facts in the light most favorable to the party opposing the motion . . . a party may not rely on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment." (Citation omitted; internal quotation marks omitted.) *Norse Systems, Inc.* v. *Tingley Systems, Inc.*, 49 Conn. App. 582, 591, 715 A.2d 807 (1998).

The complaint, the lease and the amendment were before the court. There was no disagreement about what the parties did in 1995 to renew the lease. They signed an amendment to the lease. In opposition to the motion for summary judgment, the defendant contended that there was a disagreement about the intent of the parties. The trial court made its determination on the basis of the language in the lease. All of the evidence was before the trial court, which determined that according to the language of the lease, to remain on the premises, the defendant needed a writing. The majority agrees, but in response, the dissent points out that the distinction between renewal and extension is vague and that the conduct of the parties is determinative. The majority agrees with that proposition of law.

Appellate review of a motion for summary judgment is plenary. The parties do not disagree that they negotiated rent and signed an amendment for the five year renewal in 1995. The parties' behavior was what it was; there is nothing ambiguous about it. In view of our case law, cited by the dissent, there is no evidence that could be presented at a trial that could change the outcome. Consequently, the majority has not engaged in fact-finding, as there was no genuine issue of material fact that a writing was needed to renew the lease in 1995. See id., 589–95.

[7] The majority takes no issue with the legal propositions cited by the dissent, only their application.

[8] The *Corthouts* lease stated in relevant part: "The exercise of said option shall act as and be an extension of this lease on the same terms and conditions as those recited herein, except that the rental to be paid shall be increased . . . ." (Internal quotation marks omitted.) *Corthouts* v. *Connecticut Fire Safety Services Corp.*, supra, 2 Conn. Cir. Ct. 35.

[9] "So in all cases [the landlord] may at any time, after the expiration of the lease, bring his [summary process] action, on giving . . . notice, provided he has done no act which will amount to an express, or implied assent, to the continuance of the lease." (Internal quotation marks omitted.) *City Coal Co.* v. *Marcus*, 95 Conn. 454, 464, 111 A. 857 (1920).

[10] We need not examine in detail the remainder of the cases cited by the dissent. They are distinguishable on their facts in that the amount of rent to be paid in the extended or renewed term was determined. Additional distinctions with respect to the holdings of the cases are noted here parenthetically. *Didriksen* v. *Havens*, 136 Conn. 41, 44–45, 68 A.2d 163 (1949) (exchange of letters constituted extension of lease, including option to purchase); *Blanck* v. *Kimland Realty Co.*, 122 Conn. 317, 319–20, 189 A. 176 (1937) (character of written agreement too informal to construe renewal provision as covenant to renew); *W.G. Maltby, Inc.* v. *Associated Realty Co.*, supra, 114 Conn. 288–90 (exchange of letters constituted offer and acceptance; conduct of parties presumptive intent of parties); *Seven Fifty Main Street Associates Ltd. Partnership* v. *Spector*, 5 Conn. App. 170, 172, 497 A.2d 96 (affirmative act on part of tenant necessary to exercise right

to renew), cert. dismissed, 197 Conn. 815, 499 A.2d 804 (1985).

[11] The dissent also invites a review of more recent decisional law. Those cases, too, are factually distinct and do not support the position taken by the dissent. In each case, the new rent was determined or there was an agreed formula for computing the same. See *Warner Associates* v. *Logan*, supra, 50 Conn. App. 96 (negotiated renewal lease to be in writing, tenant holding over would not constitute renewal or extension of lease); *David A. Altschuler Trust* v. *Blanchette*, supra, 33 Conn. App. 573 (reviewing court need not reach question whether lease created covenant to renew or covenant to extend; writing required to extend landlord-tenant relationship three years); *Tehrani* v. *Century Medical Center, P.C.*, 7 Conn. App. 301, 508 A.2d 814 (1986) (defects in notice to quit); *Zuckerman Group* v. *Raveis*, 4 Conn. App. 568, 495 A.2d 300 (lease renewed, defendant breached), cert. dismissed, 197 Conn. 811, 499 A.2d 62 (1985).

[12] We note, as the trial court did, that the defendant's special defenses contain no specific allegations of fact as required by Practice Book §§ 10-1 and 10-50. The plaintiff did not object to the form of the special defenses or file a motion to strike them.

[13] The defendant alleged a number of equitable special defenses, but briefed arguments only as to three of them in the trial court and in this court.

[14] Ironically, the plaintiff requested that we consider, as an alternate basis for affirming the judgment, the enforceability of the renewal option in the lease. Because we affirm the judgment on the basis of the issues presented by the defendant, we will not consider the plaintiff's alternate basis. The plaintiff requested that we consider the alternate basis as a matter of judicial economy so that the parties and the court could obviate the need for a trial in the parties' separate breach of contract action. As we and the trial court both have stated, the enforceability of the renewal clause is not relevant to the plaintiff's summary process action, which concerns only the right of possession.