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HOMER G. SCOVILLE *v*. SHOP-RITE SUPERMARKETS, INC., ET AL.
(AC 24063)

Flynn, West and Mihalakos, Js.

Argued September 8—officially released December 14, 2004

(Appeal from Superior Court, judicial district of Middlesex, Housing Session, O'Keefe, J.)

Andrew J. O'Keefe, with whom were *Joseph M. Busher, Jr.*, and *Eugene C. Cushman*, for the appellant (plaintiff).

Charles D. Ray, with whom, on the brief, were *Eric W. Wiechmann* and *Salvatore N. Fornaciari*, for the appellee (named defendant).

Barbara A. Frederick, with whom, on the brief, was *Robert M. DeCrescenzo*, for the appellee (defendant Washington Middle Three, LLC).

Craig A. Raabe, with whom was *Lisa K. Titus*, for the appellee (defendant F.P.T. Associates Leasing, Inc.).

Opinion

MIHALAKOS, J. The plaintiff, Homer G. Scoville, appeals from the judgment of the trial court granting the motions filed by the defendants Shop-Rite Supermarkets, Inc. (Shop-Rite), Washington Middle Three, LLC (Washington), and F.P.T. Associates Leasing, LLC, (F.P.T.), to dismiss his summary process action. The court found that Shop-Rite had provided timely notice of its decision to exercise its option to renew its lease

of the commercial property at issue. On appeal, the plaintiff claims that the court improperly concluded that actual notice of intent to exercise the lease option was not required. In addition, the plaintiff contends that the attempted delivery of a certified letter was insufficient to provide notice under the terms of the lease. We affirm the judgment of the trial court.

I

The following facts and procedural history are relevant to our resolution of the plaintiff's appeal. In 1967, Mott's Shop-Rite of Middletown, Inc. (Mott's), entered into a lease with the owners of a shopping center, known as Washington Plaza, in Middletown. At some time during the 1980s, the plaintiff purchased the property from the original owners, subject to the lease held by Mott's. In 1987, subsequent to the plaintiff's purchase of the land, the lease was assigned by Mott's to Shop-Rite. The lease had an original term of twenty years, but provided, in paragraph five, four options to extend the lease for periods of five years each.[1]

Shop-Rite properly exercised its option to extend the lease in 1988 and 1993. The extension exercised in 1993 was scheduled to end on July 31, 1998. According to the terms of the lease, Shop-Rite was therefore required to give notice to the plaintiff of its intention to exercise the option to extend the lease for an additional five years on or before January 31, 1998, six months before the lease expired. Paragraph thirty of the lease provided the means by which all notices were to be sent to the landlord, including the use of certified mail.[2]

After negotiating a sublease with Washington and F.P.T., Shop-Rite sent a certified letter to the plaintiff, which was dated January 27, 1998, and postmarked January 29, 1998, setting forth its intent to exercise its option. The certified letter was sent to the plaintiff's home in Naples, Florida, the location where Shop-Rite had been directed to send its rent checks.[3] On January 31, 1998, the United States Postal Service attempted delivery of the certified letter to the plaintiff's home. The plaintiff was not at home. The postal service, therefore, left a notice for him, stating that it had attempted to deliver a certified letter, which he could pick up at the post office. The plaintiff alleges that by the time he received the notice, the post office was closed and that he could not retrieve the letter until Monday, February 2, 1998.

The plaintiff informed Shop-Rite by telephone, on February 3, 1998, and by letter, dated February 5, 1998, that the notice of Shop-Rite's intention to exercise the option had not been timely. The plaintiff then sought a declaratory judgment on the status of the lease. The court, *Cohn*, *J.*, issued an interlocutory order, ruling that actual notice, meaning actual in-hand receipt of the notice, was required and that Shop-Rite had not

provided timely notice of its exercise of the option to renew the lease. After Judge Cohn's ruling, the parties attempted to reach a settlement. When negotiations between the parties deteriorated, the plaintiff filed a summary process action. The court, *O'Keefe, J.*, granted the defendants' motions to dismiss the summary process action, finding that according to the terms of the lease, certified mail was appropriate and that actual notice was not required. Thus, according to the court, Shop-Rite had provided timely notice of its intent to exercise the renewal option. This appeal followed.

II

Before addressing the merits of the plaintiff's argument, we set forth our standard of review on a challenge to a ruling on a motion to dismiss. When the facts relevant to an issue are not in dispute, this court's ''task is limited to a determination of whether, on the basis of those facts, the trial court's conclusions of law are legally and logically correct.'' *Harp* v. *King*, 266 Conn. 747, 772, 835 A.2d 953 (2003). Because there is no dispute regarding the basic material facts, this case presents an issue of law and our review is plenary. See *Malchik* v. *Division of Criminal Justice*, 266 Conn. 728, 734, 835 A.2d 940 (2003).

The issue in this case is whether the attempted delivery of a certified letter constitutes sufficient and timely notice of acceptance of an option to renew a lease. The plaintiff's argument is twofold. The plaintiff first maintains that the terms of the lease require actual notice[4] to exercise the option to renew the lease and that the attempted delivery via certified mail does not comply with the terms of the lease. Alternatively, the plaintiff suggests that paragraph five, the portion of the lease containing the option provisions, does not specify any notice requirement. In the absence of an agreement between the parties, acceptance of an option contract is effective only when the optionor receives actual notice of that acceptance. The defendants respond that actual notice was not contemplated according to the terms of the lease and that the use of certified mail was an acceptable form of notice to the landlord, which implicitly does not require that the landlord actually receive the letter on a particular date.

The plaintiff asserts that due to the nature of an option contract, actual notice of acceptance is generally required. ''An option is a continuing offer to sell, irrevocable until the expiration of the time period fixed by agreement of the parties, which creates in the option holder the power to form a binding contract by accepting the offer.'' *Smith* v. *Hevro Realty Corp.*, 199 Conn. 330, 336, 507 A.2d 980 (1986). ''The principles that govern the interpretation of an option contract are well settled. To be effective, an acceptance of an offer under an option contract must be unequivocal, unconditional, and in exact accord with the terms of the option.''

(Internal quotation marks omitted.) Id., 339. In dicta, our Supreme Court in *Smith* stated that ''[u]nless the parties have agreed to the contrary, acceptance under an option contract is not effective until it is received by the offeror.'' Id., 337; 1 Restatement (Second), Contracts § 63 (b) (1981).[5] Hence, when accepting an option contract, actual in-hand notice or receipt of notice is generally required.

Nevertheless, parties to an option contract may make an agreement that does not require actual notice for effective acceptance. ''It is [well] established . . . that parties are free to contract for whatever terms on which they may agree. This freedom includes the right to contract for the assumption of known or unknown hazards and risks that may arise as a consequence of the execution of the contract.'' (Internal quotation marks omitted.) *Gibson* v. *Capano*, 241 Conn. 725, 730, 699 A.2d 68 (1997). ''[A] contract is to be construed to give a reasonable effect to each of its provisions if possible. . . . The object of the court is to construe the contract as a whole, in a reasonable and practical way, consistent with its language, background, and purpose.'' (Citation omitted; internal quotation marks omitted.) *Zenon* v. *R. E. Yeagher Management Corp.*, 57 Conn. App. 316, 325, 748 A.2d 900 (2000).[6] Because a lease is a contract, it should be subject to the same rules of construction as any other contract. See *Ingalls* v. *Roger Smith Hotels Corp.*, 143 Conn. 1, 6, 118 A.2d 463 (1955).

An examination of Shop-Rite's lease as a whole suggests that the parties, exercising their right to contract, reached an agreement that allowed for notice to be sent to the landlord by certified mail. Consequently, the parties have agreed that actual in-hand notice of acceptance of the option is not required.[7] We are not persuaded by the plaintiff's argument that the use of the phrase ''giving notice'' in paragraph five distinguishes the option provision from the methods of notice delineated in paragraph thirty of the lease. There is nothing in the language of either provision that suggests that they should be read separately. Instead, we conclude that the parties specifically contracted for the use of certified mail as a form of notice. A logical inference is that the parties specified the use of certified mail, as opposed to regular postal service, because of the special protections provided by that method of delivery. Certified mail provides a record of service and requires a signature on delivery. There is, however, nothing to suggest that when the parties designated certified mail as an acceptable method of service, they intended the option holder to bear the risk of late delivery or that the landlord would not be home at the moment that the mail was delivered.

Connecticut courts have examined the risks and benefits associated with designating certified mail as a method of notice. In *Bittle* v. *Commissioner of Social*

Services, 249 Conn. 503, 515–16, 734 A.2d 551 (1999), our Supreme Court concluded that when the state provided persons with ''the option of using the United States mail, the legislature did not intend to make the party using the United States Post Office responsible for misdeliveries, nondeliveries or tardy deliveries that may occur, however rare they may be. . . . [N]either an agency nor the public can wield control over the delivery schedules of the post office. The most either can do, when choosing the mail option for delivering documents, is to place those documents in the hands of the post office.'' Id.; *Masko* v. *Wallingford*, 67 Conn. App. 276, 281–82, 786 A.2d 1209 (2001). It is accepted generally that when the parties designate postal delivery as a method of service or notice, the process is complete when the item is sent, not when it is delivered to the recipient.

Any rule that provides that the risk of delivery of certified mail should be placed solely on the sender would set a dangerous precedent. There are many variables associated with any type of mail delivery that are out of the control of either party, such as misdelivery or late delivery. In addition, by placing the risk solely on the optionee, the optionor could intentionally avoid accepting delivery until after the terminal date had passed.[8]

Even though we acknowledge that generally, actual in-hand notice is required to make effective acceptance of an option contract, parties are free to contract for a different form of notice. In this case, the lease provided that notice could be given via certified mail. The inclusion of a designated method of notice suggests that the facts of this case are similar to those of *Smith* v. *Hevro Realty Corp.*, supra, 199 Conn. 330. In that case, the parties reached a separate agreement, which determined how notice was to be given. Id., 337. Thus, our Supreme Court determined that notice of acceptance was effective before it was actually received. Similarly, the United States District Court for the District of Connecticut has held that when a lease designates the method of providing notice of acceptance of an option, the language of the lease should control. *Getty Refining & Marketing Co.* v. *Zwiebel*, 604 F. Sup. 774, 777 (D. Conn. 1985). Actual notice was not required. See id.

Furthermore, in *Westmoreland* v. *General Accident Fire & Life Assurance Corp.*, 144 Conn. 265, 270, 129 A.2d 623 (1957), which involved notice of cancellation of an insurance policy, our Supreme Court recognized that parties are free to contract as to how notice is to be given. The insurance policy in *Westmoreland* provided that the policy could be cancelled by providing notice to the insured by mail and that the mailing of the cancellation letter was sufficient proof of notice. Id. The court stated that ''[i]t is always competent for

parties to contract as to how notice shall be given, unless their contract is in conflict with law or public policy. When they do so contract, the giving of a notice by the method contracted for is sufficient whether it results in actual notice or not.'' Id.

We conclude, therefore, that when parties have made an agreement, either separately or as part of the lease, designating the method of notice required for acceptance of an option contract, the parties must adhere to that agreement. Nowhere in the lease is there a requirement of actual notice. If more than mailing was required, the parties could have contracted to provide that the optionee must produce a signed return receipt to establish sufficient proof of notice.[9] Instead, the lease clearly designates certified mail as the method of notice for effective acceptance of the option contract. The defendants did what was required of them according to the terms of the lease, and we hold that notice of acceptance was timely.[10] Although we do not agree with the trial court that had actual notice been required, the attempted delivery of certified mail constitutes actual notice, we affirm the court's ruling on the defendants' motions to dismiss.

The judgment is affirmed.

In this opinion WEST, J., concurred.

[1] The relevant portion of paragraph five of the lease provides: ''(a) The Tenant may, by giving notice to the Landlord six (6) months or more before the last day of the term of this Lease, extend such term to and including the 31st day of July, 1993, upon the same covenants and agreements as are herein set forth.

''(b) If the Tenant has exercised the foregoing privilege to extend the term and is otherwise rightfully in possession of the premises it may, by giving notice to the Landlord six (6) months or more before the last day of the extended term, further extend said term to and including the 31st day of July, 1998 upon the same covenants and agreements as are herein set forth.''

[2] The relevant portion of paragraph thirty of the lease provides: ''All notices due the Landlord shall be sent by telegram or registered or certified mail addressed to the person to whom rent is payable at the address to which payments of rent may be sent, except that if the Tenant shall be in doubt as to whom payments should be made they may be addressed and sent to the person to whom rent was last paid at the address where such payment was directed.''

[3] The record also shows that Shop-Rite had sent a copy of the letter by certified mail to the plaintiff's home in Niantic and to his post office box in Glastonbury. In addition, the defendants also sent a copy of the same letter by United Parcel Service overnight mail to the plaintiff's addresses in Naples, Niantic and Glastonbury.

[4] In his brief, it appears that the plaintiff equates the term ''actual notice'' with ''in-hand'' receipt.

[5] According to § 63 of the Restatement, ''Unless the offer provides otherwise . . . (b) an acceptance under an option contract is not operative until received by the offeror.'' Here, the lease provisions create an agreement between the parties designating certified mail as the method of notice for accepting the option. The parties, therefore, have contracted out of the general rule set out by the Restatement.

[6] See *Xanthakey* v. *Hayes*, 107 Conn. 459, 470, 140 A. 808 (1928) (discussing whether lessee had performed conditions of option to renew lease, court stated that ''[a]ll of the clauses of the instrument are to be construed together as a whole, so as to give effect to all of its parts'' [internal quotation marks omitted]).

[7] See footnote 5.

[8] We will not speculate as to whether there was any avoidance of the letter in this case. We merely point out that a rule that places the risk on

the sender may allow for uncertainty and manipulation of the contracting process.

[9] See *Stratton* v. *Abington Mutual Fire Ins. Co.*, 9 Conn. App. 557, 562–63, 520 A.2d 617, cert. denied, 203 Conn. 807, 525 A.2d 522 (1987).

[10] We find under the facts of this case that the lessee, Shop-Rite, complied with the contractual provisions for accepting the plaintiff's offer to renew the lease. As long as Shop-Rite had the post office attempt delivery of the certified letter to the plaintiff at the address designated by the plaintiff in the lease on or before the last permissible day for the plaintiff's receipt of the certified letter, Shop-Rite had no further duty to make sure that the plaintiff was at the designated address to receive the certified letter in-hand. That would place too great burden on Shop-Rite to make sure that the plaintiff was at home when delivery was going to be attempted on January 31, 1998.

It is unreasonable for a party to stipulate that certified mail is an acceptable means of sending notice and then to claim that notice was not timely given because he was not at the designated address to receive it on the due date, whether his absence was intentional or unintentional. The plaintiff's absence from the designated address, whether intentional or unintentional, is overridden by the importance attendant to the certified letter that the postal carrier attempted to deliver, pursuant to the terms of the lease agreement, at the designated address on January 31, 1998. See footnote 9.