

Appeals Court casts aside side agreement

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In a recent decision, the Appeals Court held that a purchaser of commercial property that is subject to a lease cannot “cherry pick” the lease obligations that it would assume upon the purchase. The Appeals Court concluded that the side agreement between the seller and the purchaser which divided up the lease obligations between them was not binding on the lessee. *Bright Horizons Childrens Centers, Inc. v. Sturtevant, Inc.*, 82 Mass. App. Ct. 482, 975 N.E.2d 885 (2012).

Our client, Bright Horizons Childrens Center, Inc., had entered into a lease with 400 Longwater Realty, LLC. The lease required Longwater to construct a building on property owned by Longwater in Norwell. Before the construction was fully completed, Longwater sold the property – and the lease – to Sturtevant, Inc.

Sturtevant, a manufacturer of material processing equipment based in Hanover, had recently sold its industrial warehouse. It purchased the Norwell property and the lease for tax purposes. However, Stutevant had no desire to be responsible for the completion of the building and the

attendant risks. To avoid them, Sturtevant entered into a side agreement with Longwater whereby Longwater agreed to retain them.

After the sale of the property, the construction of the building dragged on. Deadlines passed. Costs escalated. Longwater, which had run out of money, ran off the job. Bright Horizons stepped in and completed the work. The bill for that work was sent to its new landlord, Sturtevant. Relying on its side agreement with Longwater, Sturtevant refused to pay for the construction costs. Litigation ensued.

At trial, the Superior Court instructed the jury that Sturtevant could only be held liable for those lease obligations that it had agreed to accept. Following this instruction, the jury found that Sturtevant was not responsible for the construction obligations in the lease. An appeal ensued.

On appeal, the Appeals Court held that the jury instruction was error. The “ancient rule,” followed in Massachusetts, is that a successor lessor “stands in the shoes of and has the same rights and duties under the lease as had been held by its predecessor.” Any modification of those rights and duties could be made only with Bright Horizons’s express consent.

Sturtevant conceded as much. It

argued, however, that Longwater had the obligation to obtain such consent. Sturtevant contended that it had no such obligation and could not be held liable for Longwater’s failure to obtain Bright Horizons’s consent. The Appeals Court rejected that argument. The Appeals Court also rejected the argument that Bright Horizons had waived any right to object to the side agreement by not asking if it existed. The court noted that any waiver would have had to be set forth in a written instrument signed by Bright Horizons, “which obviously does not exist here.”

Concluding that the side agreement was “a nullity vis-à-vis Bright Horizons,” the Appeals Court vacated the judgment, set aside the jury’s verdict, and ordered that judgment be entered for Bright Horizons. This decision reaffirms the “black letter law” that one party to a lease cannot modify the rights or duties of a counterparty by unilateral action.

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