

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 5, 2006**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2005AP2545**

**Cir. Ct. No. 2005CV371**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**HOEY OUTDOOR ADVERTISING, INC.,**

**PLAINTIFF-APPELLANT,**

**V.**

**ESTATE OF LAVONNE O. JOHNSON AND ESTATE OF LEONARD W.  
JOHNSON,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from a judgment of the circuit court for Polk County:  
MOLLY E. GALEWYRICK, Judge. *Reversed and cause remanded for further proceedings.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PETERSON, J. Hoey Outdoor Advertising, Inc., appeals a summary judgment dismissing its claims against the Estates of LaVonne and Leonard Johnson. Hoey argues the circuit court erred by concluding the lease

between it and the Johnsons was a renewal contract, rather than an extension contract. We agree, reverse the judgment, and remand for further proceedings.<sup>1</sup>

## BACKGROUND

¶2 In December 1991, Hoey and Leonard Johnson executed a sign site lease. The lease gave Hoey the exclusive right to erect and maintain a billboard on the Johnsons' property, with yearly rent payments of \$600. The initial lease term was two years from the "date of construction," which was August 6, 1992. The lease also provided for two additional ten-year terms, under the same terms, unless the Johnsons inquired whether Hoey wished to terminate the lease and Hoey agreed to termination.

¶3 Hoey paid \$600 annual rent for three years. In August 1995, Hoey agreed to pay \$700 annual rent for the remainder of the lease. Hoey continued to make \$700 annual rent payments through 2005. However, the 2005 rent payment was rejected by the Johnsons.<sup>2</sup> In a June 15, 2005 letter, the Johnsons asserted the lease was not enforceable because, among other reasons, the lease was a renewal lease, and thus required the execution of a new lease for subsequent terms. Accordingly, the Johnsons asserted Hoey had a periodic tenancy that could be terminated upon notice by the Johnsons.

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<sup>1</sup> Because we agree with Hoey's interpretation of the contract, we do not address its alternative arguments that waiver, equitable estoppel or laches apply. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed).

<sup>2</sup> Leonard passed away in 1996, and Hoey was instructed to make payments to LaVonne. LaVonne passed away in 2002. The lease provided that it was "binding upon the personal representatives, successors and assigns" of the parties to the lease, and the enforceability of that provision is not contested on appeal. Accordingly, for simplicity, we refer to the lessor as "the Johnsons" throughout this opinion.

¶4 Hoey commenced this declaratory judgment action to determine the validity of the lease. Hoey contended the lease contained an extension provision, which Hoey properly exercised, extending the lease through 2014. It asserted the lease is in the second year of the second ten-year term.

¶5 The Johnsons moved for summary judgment. The circuit court concluded the lease, by its plain terms, provided for renewal, not extension. The court concluded that, since no new lease had been executed for any subsequent terms, Hoey was a periodic tenant whose tenancy was terminated by the Johnsons' proper notice. It granted summary judgment in the Johnsons' favor.

#### STANDARDS OF REVIEW

¶6 We review a summary judgment independently, using the same methodology as the circuit court. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2) (2003-04). We view the facts in the light most favorable to the nonmoving party. *State Bank of La Crosse v. Elsen*, 128 Wis. 2d 508, 511-12, 383 N.W.2d 916 (Ct. App. 1986).

¶7 The interpretation of a contract presents a question of law that we review independently. *Farm Credit Servs. v. Wysocki*, 2001 WI 51, ¶8, 243 Wis. 2d 305, 627 N.W.2d 444. The primary goal of contract construction is to determine and give effect to the parties' intention at the time the contract was made. *Id.*, ¶12. If the terms of the contract are plain and unambiguous, it is our duty to construe the contract according to its plain meaning even though one of the parties may have construed it differently. *Id.* A contract is ambiguous if it is

susceptible to more than one reasonable construction. *Kohler Co. v. Wixen*, 204 Wis. 2d 327, 335, 555 N.W.2d 640 (Ct. App. 1996).

## DISCUSSION

¶8 Wisconsin recognizes a difference between options to renew a lease and options to extend a lease. *Seefeldt v. Keske*, 14 Wis. 2d 438, 440, 111 N.W.2d 574 (1961). In order to exercise an option to renew, a new lease must be executed. *Id.* at 440-41. An option to extend does not require a new lease agreement. *Id.* at 441. Rather, an option to extend “does not require or contemplate execution of a new lease but simply a continuance of the original one for a further time upon compliance with the conditions for its exercise.” *Id.* at 442 (quoting 172 A.L.R. 1205, 1219 (1948)).

¶9 Hoey contends the lease contains an extension provision, while the Johnsons contend the lease provides for renewal. The relevant language provides:

Lessee shall have the right to renew this Lease for two (2) additional ten (10) year terms under the same terms and conditions as appear herein. Such right to be exercised and binding on the parties unless Lessor inquires, in writing, to Lessee no less than sixty (60) days prior to the end of the original term of [sic] any renewal term thereof as to Lessee’s intent and Lessee confirms to Lessor in writing within thirty (30) days of its receipt of Lessor’s inquiry that it, in fact, does intend to terminate said Lease. During any renewal term of this Lease, Lessee reserves the right to terminate upon thirty (30) days written notice to Lessor. In the case of any such termination by Lessee during any renewal term of this Lease, Lessor agrees to refund any prepaid amounts on a pro/rata basis. Hoey Outdoor Advertising shall have first option to renew lease agreement.

¶10 We conclude there is only one reasonable construction of the provision and, therefore, the lease is unambiguous. While the lease provision uses

the word “renew,” it does not do so in a technical sense because the provision has all the features of an extension. The right to “renew” is under the “same terms and conditions” as the original lease. Thus, the lease does not contemplate negotiations regarding any of the terms. If the lease is continued on the same terms and conditions, it is an extension, not a renewal, which would be subject to negotiation.

¶11 Further, the right to “renew” is “exercised and binding” on the parties unless the Johnsons inquired in writing at least sixty days prior to the end of the lease term of Hoey’s intent to terminate the lease and the Johnsons received confirmation of the termination from Hoey. If Hoey did not terminate, the lease continued under the same terms. No new lease was needed or contemplated. *See id.* at 442. When read as a whole, we conclude the lease is unambiguous and provides an option to extend, not renew.

*By the Court.*—Judgment reversed and cause remanded for further proceedings.

Not recommended for publication in the official reports.

