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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

NORDHOFF WAY, LLC, Plaintiff, Cross-Defendant and Appellant, v. WALGREEN CO., an Illinois Corporation, Defendant, Cross-Complainant and Respondent.	B263661 (Los Angeles County Super. Ct. No. BC443562)

APPEAL from a judgment of the Superior Court of Los Angeles County. Susan Bryant-Deason, Judge. Affirmed.

Elkins Kalt Weintraub Reuben Gartside, Jeffrey K. Riffer and Julie Z. Zimball for Plaintiff, Cross-Defendant and Appellant.

Willenken Wilson Loh & Delgado, Jason H. Wilson and W. Scott Norton for Defendant, Cross-Complainant and Respondent.

Plaintiff Nordhoff Way, LLC, appeals from the summary judgment for defendant Walgreen Co. in this action to recover consequential damages for breach of a lease to build out and occupy commercial rental property. We agree with the trial court that the lease precluded any claims for consequential damages and therefore affirm the judgment.

FACTS AND PROCEDURAL HISTORY

In June 2007, Walgreen Co. signed a 75-year lease to operate a drug store in a Northridge shopping center owned by Nordhoff Way, LLC. The lease called for periodic rent increases, but also provided Walgreen with periodic five-year options to terminate the lease beginning at the end of the 25th year. The lease also called for Walgreen to build out its rental space, including the construction of a "shop space" and striping of the parking lot (the "lease construction terms").

About one year later, Walgreen decided not to open its Northridge store. Walgreen had not performed any of the construction work, but continued to pay rent. Nordhoff was later placed in receivership, and in 2010 receiver Patrick Galentine sued Walgreen for specific performance in two regards: (1) for breach of a lease term obligating Walgreen to open for business; and (2) for breach of the lease construction terms. Walgreen cross-complained for breach of contract and interference with prospective economic advantage.

In 2012, Nordhoff sold its shopping center, and, based on the parties' stipulation, the receiver assigned its interests in the action back to Nordhoff. Nordhoff then substituted into the action as plaintiff and filed a first amended complaint. In addition to specific performance, Nordhoff added a claim for consequential damages in the form of lower rent from other tenants and a reduced sales price, each as the alleged result of Walgreen's failure to open for business and perform the lease construction terms.

Walgreen brought a summary judgment motion, contending that: (1) the specific performance claim was effectively mooted by Nordhoff's sale of the shopping center and concomitant assignment of its lease rights to the buyer; and (2) Nordhoff's remaining claim for consequential damages was barred by the lease's exclusive remedies provision.

The remedies limitation provision (art. 18(a)) that Walgreen relied on said that, in the event of a breach by Walgreen, Nordhoff could "sue for rent and other charges due from time to time under the terms of this Lease," and also said that "[t]he foregoing remedies of [Nordhoff] shall be exclusive and are in lieu of any other remedies to which [Nordhoff] may now or hereafter be entitled to at law . . . ."[1] Nordhoff challenged this interpretation, relying primarily on dictionary definitions of the "charges due from time to time" language in the remedies provision. Nordhoff also contended that it was still entitled to seek specific performance of the lease even though it no longer owned the shopping center.

The trial court agreed with Walgreen's interpretation of the lease's exclusive remedy provision, as well as its contention that specific performance was no longer an available remedy.[2] It then entered judgment for Walgreen.[3]

STANDARD OF REVIEW

Summary judgment is granted when a moving party establishes the right to the entry of judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) In reviewing

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[1] We describe this provision in more detail in part 1.2 of our Discussion.

[2] On appeal Nordhoff does not challenge the trial court's specific performance ruling, leaving the availability of consequential damages as the only issue.

[3] This action has been the subject of three other appellate proceedings: (1) a writ of mandate by Nordhoff challenging the summary judgment order, which we denied (B252075); (2) an appeal that we dismissed as premature because Walgreen had a pending cross-complaint, which has since been dismissed (B251368); and (3) an appeal by Nordhoff from the trial court's denial of its anti-SLAPP motion aimed at Walgreen's cross-complaint (Code Civ. Proc., § 425.16 [strategic lawsuit against public participation]), an order that we affirmed because Walgreen's cross-complaint did not target protected First Amendment activity by Nordhoff (B249263).

Nordhoff asks that we disregard these matters or strike them because Walgreen has mischaracterized them and because they rely on facts outside the record and relate to events that occurred after the judgment was entered. We have given them our own neutral characterization and mention them only in the interest of providing a complete procedural history of this action. However, we do disregard other portions of Walgreen's respondent's appendix relating to Walgreen's demurrer and its attempt to recover its attorney's fees.

an order granting summary judgment, we must assume the role of the trial court and re-determine the merits of the motion. In doing so, we must strictly scrutinize the moving party's papers. The declarations of the party opposing summary judgment, however, are liberally construed to determine the existence of triable issues of fact. All doubts as to whether any material, triable issues of fact exist are to be resolved in favor of the party opposing summary judgment. While the appellate court must review a summary judgment motion by the same standards as the trial court, it must independently determine as a matter of law the construction and effect of the facts presented. (*Dominguez v. Washington Mutual Bank* (2008) 168 Cal.App.4th 714, 719-720.)

A defendant moving for summary judgment meets its burden of showing that there is no merit to a cause of action if that party has shown that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. (Code Civ. Proc., § 437c, subds. (o)(2), (p)(2).) The pleadings determine the issues to be addressed by a summary judgment motion and the declarations filed in support of such a motion must be directed to the issues raised by the pleadings. (*Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 84.) If the defendant does so, the burden shifts back to the plaintiff to show that a triable issue of fact exists as to that cause of action or defense. In doing so, the plaintiff cannot rely on the mere allegations or denials of his pleadings, "but, instead, shall set forth the specific facts showing that a triable issue of material fact exists . . . ." (Code Civ. Proc., § 437c, subd. (p)(2).) A triable issue of material fact exists "if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

On appeal from a summary judgment based on the trial court's interpretation of a contract, we are not bound by that interpretation if: (1) there is no extrinsic evidence concerning its interpretation; (2) the extrinsic evidence is not in conflict; or (3) the conflicting extrinsic evidence is written. (*Dept. of Forestry and Fire Protection v. Lawrence Livermore National Security, LLC* (2015) 239 Cal.App.4th 1060, 1066.)

Where conflicting parol evidence is admitted to interpret a contract, then construction of the contract is a question of fact. (*Fischer v. First International Bank* (2003) 109 Cal.App.4th 1433, 1443.)

DISCUSSION

1. The Relevant Contract Terms

1.1. Provisions Concerning Opening for Business

Under the heading "ASSIGNMENT AND SUBLETTING" article 14(a) of the lease states: "[Walgreen] shall open for business for at least one full day, fully staffed, fixturized and stocked with inventory and merchandise on or before" 120 days from the commencement of rent payments. If Walgreen wanted to "discontinue the operation of its business," it could do so only after providing six months' written notice. Article 14 then went on to describe the circumstances under which Walgreen might assign its lease or sublease the premises.

While Nordhoff relies on this provision as the basis for its breach of contract claim, Walgreen contends that another lease provision shows it had no obligation to ever open for business, so long as it continued to pay rent. Article 8(a)(i) of the lease, under the heading "PERMITTED USES: EXCLUSIVE" states: "Subject to any express limitation set forth in this Lease, [Walgreen] has the right (but not the obligation) to use the Leased Premises for any lawful purpose . . . ."[4]

[4] Nordhoff contends in its appellate reply brief that we should disregard Walgreen's argument regarding this lease provision because the issue was not raised below. We express no opinion on the merits of this issue, but assume for analytical purposes only that Walgreen breached the lease by failing to complete its construction obligations and open for business.

Nordhoff also asks us to disregard two other contentions by Walgreen that Nordhoff contends were not raised below: that pursuant to the lease the shopping center's new owner allowed it to sublease the premises, and that Nordhoff is not entitled to consequential damages because it was not the anchor tenant. Those contentions play no part in our analysis.

1.2. Nordhoff's Remedies Provision

Article 18(a) of the lease provided Nordhoff two remedial paths if Walgreen failed to pay rent or breached other lease provisions. Nordhoff could: (1) "sue for rent and other charges due from time to time under the terms of this Lease"; or (2) re-enter with or without terminating the lease. If Nordhoff chose to re-enter, it could re-let to someone else and then apply the rent obtained from re-letting first to the costs of re-letting, and second to "the payment of rent and other charges due hereunder from [Walgreen] to [Nordhoff]." If the re-letting proceeds did not cover those sums, then Walgreen would remain liable for the deficiency in "the rents and other sums to be paid during that month."

Article 18(a) stated that "[t]he foregoing remedies of [Nordhoff] are exclusive and are in lieu of any other remedies to which [Nordhoff] may now or hereafter be entitled to at law; provided however that [Nordhoff] shall in the event of a default by [Walgreen], after notice and opportunity to cure . . . , be entitled to pursue any equitable remedies to which [Nordhoff] may be entitled."

1.3. Walgreen's Remedies Provision

Article 18(d) of the lease dealt with Walgreen's remedies and entitled Walgreen to sue Nordhoff for damages arising from any uncured defaults, "but not consequential or punitive damages or loss of profits." This provision also restricted Walgreen to recovery of its damages from the net rents and other revenue produced by the shopping center, with no right to recover from Nordhoff's personal assets.

2. The Exclusive Remedies Provision Barred Nordhoff's Claims

2.1. Nordhoff's Contentions

This action turns on the proper interpretation of the lease's remedies provision, which limited Nordhoff's exclusive remedy to "rent and other charges due from time to time under" the lease. The trial court found that the provision was limited to ordinary charges covered by the lease such as rent and common area expenses, and excluded the consequential damages sought by Nordhoff.

Nordhoff contends that summary judgment was improper because, at a minimum, the term is ambiguous, as shown by various dictionary definitions. Nordhoff begins with the term "charge," which the ninth edition of Black's Law Dictionary defined as "price, cost, or expense." Nordhoff expands upon this by resort to the 11th edition of Merriam-Webster's Collegiate Dictionary, which defines "expense" as a financial burden and "cost" as a "loss . . . incurred." Similarly, Nordhoff contends, the phrase "from time to time" is also ambiguous because the Merriam-Webster's dictionary defines it as "once in a while" or "occasionally."

These dictionary definitions are elastic enough to encompass consequential damages in the form of lost profits due to Walgreen's failure to open its store, Nordhoff contends. Because Walgreen produced no contrary extrinsic evidence, Nordhoff contends, the trial court erred.

2.2. Rules of Contract Interpretation

The fundamental rules of contract interpretation arise from the premise that the parties' mutual intent governs. (Civ. Code, § 1636; *U.S. Bank National Association v. Yashouafar* (2014) 232 Cal.App.4th 639, 646 (*U.S. Bank*).) If possible, mutual intent should be inferred solely from the written provisions of the contract. (Civ. Code, § 1639.) The clear and explicit meaning of the provisions, interpreted in their ordinary and popular sense, controls judicial interpretation. (Civ. Code, §§ 1638, 1644; *U.S. Bank*, at p. 646.) If the language used is clear and explicit, it governs, and we will not create an ambiguity where none exists. (*U.S. Bank*, at p. 646.)

A contract is ambiguous if it is susceptible of more than one reasonable interpretation. An ambiguity may appear on the face of a contract, or extrinsic evidence may show a latent ambiguity. A court determining whether a contract is ambiguous must first provisionally consider extrinsic evidence offered to prove the parties' mutual intention. If the court determines the contract may reasonably be construed as the extrinsic evidence suggests, the court must admit that evidence in order to interpret the agreement. (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 114.) The test for admissibility of extrinsic evidence to explain the meaning of a

written instrument is not whether the contract appears plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible. (*Id.* at p. 114, fn. 5.) However, contract language must be interpreted as a whole in light of the circumstances and cannot be found ambiguous in the abstract. The interpretation must be fair and reasonable and may not lead to absurd conclusions. (*Kashmiri v. Regents of University of California* (2007) 156 Cal.App.4th 809, 842.) "A skillful attorney can conjure ambiguities from nearly any document, but such hypothetical difficulties often disappear when the surrounding circumstances are considered." (*Sterling v. Taylor* (2007) 40 Cal.4th 757, 773, fn. 16.)

2.3. Nordhoff Cannot Recover Consequential Damages

Nordhoff's reliance on various dictionary definitions to show an ambiguity in the scope of the remedies provision suffers from two defects. First, its conclusion that "charges" means "loss incurred" is the result of bootstrapping one dictionary definition (cost equals loss incurred) onto another (charge equals cost). Second, it overstates the importance of dictionary definitions as an interpretive tool.[5]

Our courts have long been wary of doing so, warning us not to make " 'a fortress out of the dictionary.' " (*Russian Hill Improvement Assn. v. Board of Permit Appeals* (1967) 66 Cal.2d 34, 42, quoting Justice Learned Hand's dictum in *Cabell v. Markham* (2d Cir. 1945) 148 F.2d 737, 739.) The use of a dictionary to solve a legal problem "can be the subject of easy ridicule." (*Scott v. Continental Ins. Co.* (1996) 44 Cal.App.4th 24, 30, fn. 4.) "The truth behind this potential for ridicule is that dictionary definitions cannot be applied simplistically. For example, the multiple meanings of a word as found in a dictionary cannot be inserted into the text of an insurance policy without regard to the document construed as a whole, the exact context of the language, other basic rules of contract interpretation, and the reasonable expectations of the insured." (*Ibid*; *MacKinnon v. Truck Ins. Exchange* (2003) 31 Cal.4th 635, 649 [although dictionary

[5] Walgreen also relied to a lesser degree on the dictionary, citing the 9th edition of Black's Law Dictionary, which defines "charges" as "expenses which have been incurred, or disbursements made."

definitions may be useful, they do not supply the ordinary and popular sense of insurance policy terms if they disregard the policy's context].)

We find the dictionary definitions advanced by both parties to be of no assistance here. Instead, the remedies provision itself, especially when construed in the context of the lease as a whole, convinces us that Nordhoff may not seek consequential damages. (*MacKinnon v. Truck Ins. Exchange, supra,* 31 Cal.4th at p. 649 [dictionary definitions cannot disregard context of contract provisions].)

We begin with the remedies provision itself, which states that Nordhoff is entitled to recover "rent and other charges *due from time to time under the terms of this Lease.*" (Italics added.) Walgreen contends, and we agree, that by tying "rent and other charges" to the modifying phrase "due . . . under . . . this Lease," the plain language of the provision limits Nordhoff's remedies to only those charges imposed by the lease itself, and does not extend to consequential damages. Our conclusion finds support throughout the lease, where the phrases "rent and other charges" and "rent or other charges" appear in three other lease terms in addition to the remedies provision of article 18(a).

Article 3(b)(ii) states that Walgreen had "no obligation to pay rent or other charges" until Nordhoff provided information and instruments concerning certain lease obligations, which included Walgreen's obligations to pay its pro rata share of common area costs such as maintenance, landscaping, repairs, and insurance (art. 7.), as well as certain sign maintenance costs (art. 11). This provision establishes a direct link between the phrase "other charges . . . due . . . under . . . this Lease" and a class of specific recurring sums that Walgreen was obligated to pay periodically pursuant to the lease. Likewise, article 20 obligates Walgreen to pay a pro rata share of general property taxes, while article 21 requires Walgreen to pay a pro rata share of general liability insurance on the lease premises.

Article 15(a) and (b) and 27 are consistent with this interpretation; the former provides for a proportional abatement of "rent and all other charges" while the building undergoes repairs following a fire or other casualty; the latter states that if Nordhoff transfers title to the shopping center property, then Walgreen has no obligation to pay

"rents or any other charges under this Lease" until it receives proper notification of the new owner's identity and address. The "other charges" that would abate under those circumstances cannot reasonably be construed to cover the abstract obligation of consequential damages arising from some potential breach of the lease by Walgreen. Instead, the phrase must be construed in light of the lease provisions that establish Walgreen's obligation to cover its share of certain recurring charges such as common area and signage costs, taxes, and insurance.[6]

Taking the lease terms as a whole, we believe the parties have thus defined rent and other charges due under the lease to mean only such recurring, specified, charges.[7] It cannot mean, as Nordhoff contends, lost profits or other consequential damages resulting from a breach of the lease, because such damages are not charges due from time to time under the lease. This is consistent with the lease's other remedies provisions as well.

Article 18(a) states that, in the event of a breach by Walgreen, Nordhoff may sue to recover rent and other charges due under the lease. It also states that this remedy (and

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[6] Walgreen cites *Avalon Pacific-Santa Ana, L.P. v. HD Supply Repair & Remodel, LLC* (2011) 192 Cal.App.4th 1183, 1200-1201 and *175 Broad Street, L.L.C. v. The Nead Organization* (N.J.App. Div. 2013) 2013 WL 105287 to support its construction of the lease. In the former, the lessor sued to recover the costs of repairs to the premises during the lease term, although the lease entitled him to sue "for the collection of the rent or other amounts for which Tenant may be in default . . . ." The Court of Appeal held that the phrase " 'other amounts for which Tenant may be in default' " was to be construed as a reference to "specific monetary obligations imposed by the Lease." (*Avalon, supra,* at pp. 1200-1201.) At issue in the unpublished New Jersey case was the scope of an arbitration provision, which excluded from arbitration claims for "rent or other charges by tenant." The New Jersey court held that the phrase had to be construed as an adjunct to rent and could only apply to charges that were the tenant's lease obligations in exchange for the right to occupy the premises. (*175 Broad Street, supra,* slip opn. at p. 5.)

Nordhoff contends these decisions are inapplicable for reasons that we need not reach. Although we find both decisions generally supportive of Walgreen's contentions, they play no part in our analysis. Instead, our decision is based solely on our interpretation of the terms of the Walgreen-Nordhoff lease.

[7] It is undisputed that Walgreen continued to pay rent and all such other charges.

the others mentioned in the provision) "shall be exclusive and . . . in lieu of any other remedies to which [Nordhoff] may now or hereafter be entitled to at law . . . ." Despite Nordhoff's assertion that the exclusive remedies language is ambiguous, it is a clear – and therefore operative – expression of the parties' intent to limit Nordhoff's remedies in some fashion. (*Michel & Pfeffer v. Oceanside Properties, Inc.* (1976) 61 Cal.App.3d 433, 442-443; *Pratt-Low Preserving Co. v. Evans* (1921) 55 Cal.App. 724, 731.) If Nordhoff were entitled to recover its consequential damages, then what purpose does this exclusive remedies provision serve and what remedies does it exclude? If none, then the language is surplusage, requiring us to adopt a contrary construction if we can. (*Segal v. Silberstein* (2007) 156 Cal.App.4th 627, 633.)

The limitation on remedies also applied to any lawsuit filed by Walgreen although the precise limitations were different than those imposed on Nordhoff. Article 18(d) limits Walgreen's remedies to damages "but not consequential or punitive damages or loss of profits." The lease also restricted the source of any recovery by Walgreen to the shopping center's operations, expressly precluding recovery from the owner's personal assets. Therefore, the parties negotiated for mutual limitations on the damages each might recover in case of a breach by the other. We recognize that article 18(d) expressly mentions consequential damages, while article 18(a) does not, but see no difference between the two in light of the only reasonable interpretation of the phrase "rent or other charges" under the lease.[8] (*Producers Dairy Delivery Co. v. Sentry Ins. Co.* (1986) 41 Cal.3d 903, 916, fn. 7 [contract language cannot be found ambiguous in the abstract and language must be construed in the context of the contract as a whole].)

We also reject Nordhoff's contention that any ambiguities in the lease must be construed against Walgreen as the drafter. First, the exclusive remedies provision is not ambiguous. Neither is the phrase "rent and other charges due from time to time . . . under

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[8] Nordhoff contends that we cannot consider what Walgreen describes as its "textual analysis" of the lease because Walgreen did not raise the issue below. We disagree. Even though Walgreen's trial court points and authorities did not refer to it as such, its argument was geared toward an interpretation of the totality of the lease provisions.

this lease" when the lease is construed as a whole. As a result, there are no ambiguities to resolve against any party.

Second, the lease expressly states in article 32(d) that "[a]ll provisions of this Lease have been negotiated by both parties at arm's length and neither party shall be deemed the scrivener of the lease. This Lease shall not be construed for or against either party by reason of the authorship or alleged authorship of any provision thereof."

Nordhoff contends we must rule against Walgreen on this point because Walgreen failed to produce evidence that it had not drafted the Lease. As discussed in section 3., below, Walgreen's summary judgment motion was decided as a matter of law based on the contract terms alone, and those terms entitled Walgreen to summary judgment. The burden fell to Nordhoff to challenge that interpretation. Although Nordhoff said in its trial court points and authorities that "Walgreen wrote the lease," it did not support that contention with any evidence in either its points and authorities or its opposition separate statement.

Nordhoff makes a few final contentions that we also find unpersuasive. It cites *Oxbow Carbon & Minerals, LLC v. Dept. of Industrial Relations* (2011) 194 Cal.App.4th 538, 554 for the proposition that the phrase "charges due from time to time" cannot be read to include common area costs and taxes because it did not say so expressly. First, *Oxbow* appears inapplicable because it considered only whether a lease term could be construed in a manner that defeated the prevailing wage laws, and did not involve a lease with terms like those at issue here. Second, as phrased by Nordhoff, its contention omits a key portion of the disputed phrase: "under the terms of this lease." That phrase qualifies the previous one, and, as discussed above, ties rent and other charges to specific, recurring amounts stated as lease obligations.

Nordhoff also cites *Rossetto v. Barross* (2001) 90 Cal.App.4th Supp. 1, 5-6, and a comment to Civil Code section 1951 for the proposition that "rent" includes other charges such as taxes. As the *Rossetto* court noted, Civil Code section 1951, subdivision (a) provides that rent "includes charges *equivalent* to rent." A Law Revision Commission comment to that section states that it "makes clear that 'rent' includes all

charges or expenses to be met or defrayed by the lessee in exchange for use of the leased property." The section is necessary to make sure that lessors are able to recover as damages all amounts owed under the lease, including taxes if applicable. (See Cal. Law Revision Com. com., Deering's Ann. Civ. Code (2005 ed.) foll. § 1951, p. 559.) As we read it, this section is consistent with our interpretation because it recognizes that a tenant's lease obligations can include *periodic charges* other than rent that are called for under the terms of a lease.

Finally, Nordhoff contends it should be allowed to recover both nominal damages and consequential damages for Walgreen's failure to build out the store and the shop space and to stripe the parking lot. As discussed above, however, Nordhoff's exclusive remedy was limited to unpaid rent and charges due under the lease, damages that it did not suffer.

3. Summary Judgment Was Proper Because the Parties Did Not Introduce Extrinsic Evidence

Nordhoff contends the trial court erred by granting summary judgment because the contract was ambiguous, Walgreen failed to provide extrinsic evidence to support its understanding of the exclusive remedies provision, and there was conflicting parol evidence from the competing dictionary definitions relied on by the parties. (*Fischer v. First International Bank, supra*, 109 Cal.App.4th at p. 1443 [contract interpretation is a question of fact when conflicting parol evidence is admitted]; *Stamm Theatres, Inc. v. Hartford Casualty Ins. Co.* (2001) 93 Cal.App.4th 531, 543 [summary judgment not proper for ambiguous contract].) We reject these contentions.

Dictionary definitions are not extrinsic evidence: they are merely interpretive tools used to determine the meaning of contract language. (See *Retired Employees Assn. of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4th 1171, 1190 [differentiating between dictionary definitions and extrinsic evidence of the parties' course of conduct]; *Sappington v. Orange Unified School Dist.* (2004) 119 Cal.App.4th 949, 953-954 [using dictionary definitions to construe extrinsic evidence].) True extrinsic evidence would have come in the form of witness statements concerning the

parties' lease negotiations as they bore on the intent and meaning of the exclusive remedies provision. (See *Fremont Indemnity Co. v. Fremont General Corp., supra,* 148 Cal.App.4th at p. 114 [if appropriate, trial court considers "extrinsic evidence offered to prove the parties' mutual intention"].) There was no such evidence from either party.

Interpretation of the contract therefore turned solely on the lease provisions themselves, without the use of extrinsic evidence. As a result, interpretation of the contract was purely a function of the trial court and could be resolved by way of summary judgment. (*Fischer v. First International Bank, supra,* 109 Cal.App.4th at p. 1443; *Bashi v. Wodarz* (1996) 45 Cal.App.4th 1314, 1318 [in absence of material fact issues to be tried, and where sole question is one of law, trial court has duty to hear and determine the legal issue in a summary judgment motion].) As already discussed, the exclusive remedies provision was not ambiguous in light of the parties' use of the phrase "rent and other charges" throughout the lease. Because there were no ambiguities, and because no extrinsic evidence was introduced, summary judgment was proper.[9]

DISPOSITION

The judgment is affirmed. Respondent Walgreen shall recover its appellate costs.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J. FLIER, J.

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[9] Nordhoff contends the trial court erred because it did not specify the evidence showing that no triable fact issues existed. (Code Civ. Proc., § 437c, subd. (g).) Because there was no evidence – only the trial court's interpretation of the contract language as a matter of law – the trial court did not err. We also reject Nordhoff's contention that the trial court did not consider its opposition points and authorities. The trial court said at the hearing that the opposition points and authorities had not been filed with the court, that it had received all the papers the day before, and then "had to start over" and "redo the whole thing." In short, the trial court read Nordhoff's opposition points and authorities even though they may not have been properly filed.