

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2016 CW 0123

METAIRIE WEST, LLC

VERSUS

STATE OF LOUISIANA, DEPARTMENT OF
PUBLIC SAFETY AND CORRECTIONS

Judgment Rendered: OCT 31 2016

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Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 603894

Honorable Timothy E. Kelley, Judge

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BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

JEW
GA
M-J

WELCH, J.

The defendants/appellants, State of Louisiana, Division of Administration (“DOA”) and State of Louisiana, Department of Public Safety and Corrections (“DPSC”), appeal a district court judgment that reversed the decision of the DOA in connection with the termination of a lease between the parties and ruled in favor of the plaintiff/appellee, Metairie West, LLC. For the reasons that follow, we convert this appeal to an application for supervisory writ and grant the relief requested.

FACTS AND PROCEDURAL HISTORY

This suit involves a dispute surrounding the termination of a lease for office space between Metairie West and DPSC. In 2004, the DOA, through the Department of Facility Planning and Control (“FPC”), issued Solicitation RL-690-A, seeking bid proposals for the lease of office space to house the Bureau of Investigation for the Louisiana State Police. See La. R.S. 39:11. The bid solicitation contained a sample copy of the lease, an overview of bidding instructions and procedures, and specifications enumerating highly detailed requirements for the proposed lease property. Notably, the specifications of the bid solicitation established a geographic boundary within which the prospective lease property was required to be located.¹

¹ Solicitation RL-690-A contained the following geographic boundary requirement:

The lease of contiguous office space...in a building located within the parishes of Jefferson (East Bank) or Orleans, Louisiana, and located: Northern boundary - South shore of Lake Ponchartrain; Western boundary – from the South shore of Lake Ponchartrain, South along Williams Boulevard to U.S. 61 (Airline Highway), East on U.S. 61 up to its intersection with David Drive, from David Drive South to Earhart Expressway; Southern Boundary – Earhart Expressway, East to Carrollton Avenue; Eastern Boundary – Carrollton Avenue North to Interstate 10 West to Westend Boulevard North to the South shore of Lake Ponchartrain (properties facing both sides of the boundary streets are acceptable), for the housing of the Department of Public Safety and Corrections, Office of State Police, Bureau of Investigation, State of Louisiana.

The geographic boundary was later amended by addendum to the solicitation, to change the southern boundary as follows:

Metairie West was the successful bidder. In August of 2004, with the approval of the DOA, Metairie West and DPSC entered into a lease for 9,618 square feet of usable office space located at 2400 Veterans Boulevard in Kenner.² The lease property was within the geographic boundary mandated by the bid solicitation. The lease contained an initial term of five years, with an option to renew for an additional five years. Relevant to the instant matter is Paragraph 25 of the lease, which allowed DPSC to terminate the lease at any point four years after initial occupancy, if “adequate space” existed in a building owned by the state or owned or leased by the Office Facilities Corporation (“OFC”).³

In June of 2009, near the end of the lease’s initial five-year term, the option to renew the lease was exercised. Pursuant to the terms of the lease, all terms and conditions contained therein remained in full force and effect upon renewal. However, in January of 2011, DPSC provided notification that it was exercising its option to terminate the lease under Paragraph 25 to relocate to a space leased by the OFC in Benson Tower located at 1450 Poydras Street in Orleans Parish. It is undisputed that Benson Tower is located outside of the geographic boundary set forth in the 2004 bid solicitation.

Pursuant to the requirements of La. R.S. 39:1673 of the Louisiana Procurement Code, Metairie West objected to the termination of the lease in a protest letter dated February 25, 2011. Metairie West’s position at the

Southern Boundary – Earhart Expressway, East on Earhart Expressway to Cambronne Street, South on Cambronne Street to Fig Street, East on [F]ig Street to Dante Street, North on Dante Street to Earhart Expressway, East on Earhart Expressway to Carrollton Avenue,...

² Under La. R.S. 39:1641(A), leases for space to house “state agencies, their personnel, operations, equipment, or activities shall be made in the name of and by the authorized representative or representative body of the state agency but shall be made and entered into only with the approval of the commissioner of administration.”

³ The OFC, established under La. R.S. 39:1798 *et seq.*, is a statutorily created nonprofit corporation authorized for the financing and acquisition, purchase, construction, renovation, improvement, or expansion of public facilities for lease to the state of Louisiana. See La. R.S. 39:1798.3.

administrative level, and reasserted in its appellee brief herein, asserted that DPSC prematurely breached the lease when it terminated the lease to move to Benson Tower. Metairie West argued that Paragraph 11's incorporation of the bid solicitation into the entire lease requires that the phrase "adequate space" found in Paragraph 25 should be interpreted to mean that an "adequate space" is one that encompasses all of the requirements in the bid solicitation specifications, including the geographic restriction. According to Metairie West, the fact that the specifications found in the bid solicitation should always control, signals that each of the specifications was "meaningful and necessary to the provision of adequate space."

The director of FPC, John Davis, acting as the delegate of the Chief Procurement Officer, was tasked with the initial consideration of Metairie West's complaint under La. R.S. 39:1673(B). In a letter dated April 27, 2011, Mr. Davis denied Metairie West's complaint and demand for damages, informed Metairie West of its right to administrative review by the commissioner of the DOA, and provided reasons for the decision to deny the claim. See La. R.S. 39:1673(C) & (D).⁴

Metairie West sought review of Mr. Davis' decision from the commissioner of the DOA, Paul Rainwater. The commissioner, in a letter dated May 26, 2011, found that the lease was terminated in accordance with the lease provisions, noting that the requirements of Paragraph 25 had been met as the termination occurred four years after the initiation of occupancy, and sixty days notice of termination had been provided to Metairie West. Further, the commissioner rejected Metairie

⁴ In rejecting Metairie West's interpretation of the lease, Mr. Davis explained:

Your interpretation of the Lease is not supported by the clear and explicit words of the Lease. The Lease, including its Solicitation, clearly and explicitly allowed for the termination of the lease upon the State of Louisiana's provision to DPSC of adequate space in a building leased by the Office of Facilities Corporation, without any geographical restriction.

West's assertion that the geographic restriction contained in the bid solicitation applied to Paragraph 25's termination provision, and explained:

A plain reading of the documents shows no ambiguity in either the lease or the solicitation. The geographic restriction in the solicitation has no relation to the location of the OFC building as the only condition with regard to an OFC building mentioned in the termination clause was that such building be owned or leased by the OFC. The conclusion that OFC building must be within the geographic area described in the solicitation requires assumptions that are not evident in reading of document.

On July 29, 2011, Metairie West filed a petition for judicial review with the Nineteenth Judicial District Court appealing the decision of the commissioner, and seeking costs and damages, including \$783,236.05 in lost rental payments. The DOA successfully intervened in the matter after asserting that it was a necessary party to the suit under La. R.S. 39:11 and 39:1641 due to its statutory duty to administer and approve all leases of immovable property by state agencies, as well as on the basis that all records and documents pertaining to the lease are housed with the DOA. Pursuant to La. R.S. 49:964(D), the DOA also filed the administrative record with the district court.

The matter sat dormant for almost three years until Metairie West filed a motion to set trial on September 4, 2014. After the September 14, 2015 hearing, the district court found that the incorporation of the bid solicitation into the lease resulted in the geographic restriction applying to all parts of the lease, including Paragraph 25. In a judgment signed on October 9, 2015, the district court reversed the decision of the commissioner and remanded the matter for the calculation of damages. The DOA and DPSC timely filed the instant appeal seeking reversal of the district court's decision on the basis that the district court erred in its interpretation of the lease.

LAW AND DISCUSSION

Appellate Jurisdiction

Controversies between a state and a person having a contract with a governmental body are governed by the provisions of the Louisiana Procurement Code. See La. R.S. 39:1673 and 39:1556(13). Under the Louisiana Procurement Code, prior to filing an action in court, the complaint or controversy must first be presented to the chief procurement officer or, as in the instant matter, her designee. La. R.S. 39:1673(B) In the event the controversy is not resolved by mutual agreement, the chief procurement officer, or her designee, shall promptly issue a decision in writing. La. R.S. 39:1673(C). The decision is final unless the decision is fraudulent or the contractor timely appeals the adverse decision to the commissioner of the DOA. La. R.S. 39:1673(E). Similarly, in the event of an appeal to the commissioner, the decision of the commissioner is final unless it is fraudulent or the contractor timely appeals the adverse decision to the district court. See La. R.S. 39:1685(E) and 39:1691(C).

Generally, judicial review of a decision by the commissioner on a contract or breach of contract controversy is governed by La. R.S. 39:1691. See La. R.S. 39:1685(E)(2). The Nineteenth Judicial District Court is the exclusive venue for any cause of action which arises under or by virtue of the contract. La. R.S. 39:1691(C). In 2008, the legislature enacted 2008 La. Acts, No. 789 (effective date July 7, 2008), adding La. R.S. 39:1691(E), allowing for an appeal of the district court's decision to this court and the Louisiana Supreme Court. La. R.S. 39:1691(E) provides as follows:

E. Writs or appeals; district court decisions. Any party aggrieved by a final judgment or interlocutory order or ruling of the Nineteenth Judicial District Court may appeal or seek review thereof, as the case may be, to the Court of Appeal, First Circuit or the Supreme Court of Louisiana, as otherwise permitted in civil cases by law and the constitution.

However, 2008 La. Acts, No. 789, § 2 expressly restricted the application of La. R.S. 39:1691(E) to contracts executed after August 1, 2008; thus, there is no right of appeal from the decision of the district court relative to any claims or controversies arising out of any contract executed *prior* to August 1, 2008. See 2008 La. Acts, No. 789, § 2; **Willows v. State, Department of Health & Hospitals**, 2008-2357 (La. 5/5/09), 15 So.3d 56, 62; **KAS Properties, LLC v. Louisiana Board of Supervisors for Louisiana State University**, 2014-0566 (La. App. 1st Cir. 4/21/15), 167 So.3d 1007, 1010.⁵

Here, pursuant to the terms of the lease, the exercise of the option to renew the lease in 2009 resulted in a continuation of the 2004 lease, but did not create a new lease. Consequently, because the bid solicitation and the confection of the lease both occurred prior to August 1, 2008, we find that this court lacks appellate jurisdiction to consider the merits of the appellants' appeal under La. R.S. 39:1691(E). See **KAS Properties, LLC v. Louisiana Board of Supervisors for Louisiana State University**, 167 So.3d at 1010.

Despite the lack of appellate jurisdiction, this court retains the ability to consider the matter under our supervisory jurisdiction. See **Willows v. State, Department of Health & Hospitals**, 15 So.3d at 62; **KAS Properties, LLC v. Louisiana Board of Supervisors for Louisiana State University**, 167 So.3d at 1010; see also La. Const. art. V, § 10(A). Here, the appellants each filed their motions for appeal within the thirty-day delay provided for seeking a supervisory writ; thus, we convert the appellants' appeal to an application for supervisory writ,

⁵ We note that the Louisiana Procurement Code was revised and re-designated by Acts 2014, No. 864, §§ 2 and 3 (effective date January 1, 2015). In its reply brief to this court, the DOA argues that appellate jurisdiction exists herein under La. R.S. 39:1691(E), because 2014 La. Acts, No. 864 did not retain the language limiting the right of appeal to contracts executed after August 1, 2008 found in 2008 La. Acts, No. 789. However, the DOA's argument fails to recognize that the revised and reenacted provisions of 2014 La. Acts, No. 864 apply only to contracts solicited or entered into after the effective date of January 1, 2015, unless the parties agree to its application to a contract entered into prior to the effective date. See La. R.S. 39:1554(A), as revised by 2014 La. Acts, No. 864; see also **Catamaran PBM of Maryland, Inc. v. State, Office of Group Benefits**, 2014-1672 (La. App. 1st Cir. 6/5/15), 174 So.3d 683, 688 n. 8. Therefore, we find no merit in the DOA's position.

and consider the merits of the appeal under our supervisory jurisdiction. See Uniform Rules—Courts of Appeal, Rule 4-3.

The Lease and Bid Solicitation

The interpretation of a contract is a question of law and subject to *de novo* review. **Guest House of Slidell v. Hills**, 2010-1949 (La. App. 1st Cir. 8/17/11), 76 So.3d 497, 499. Contracts have the effect of law for the parties, and the interpretation of a contract is the determination of the common intent of the parties. La. C.C. art. 2045; **Lobell v. Rosenberg**, 2015-0247 (La. 10/14/15), 186 So.3d 83, 89. The reasonable intention of the parties to a contract is sought by examining the words of the contract itself. **Clovelly Oil Company, LLC v. Midstates Petroleum Company, LLC**, 2012-2055 (La. 3/19/13), 112 So.3d 187, 192. When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. *Id.* Common intent, therefore, is determined in accordance with the general, ordinary, plain, and popular meaning of the words used in the contract. *Id.*

The dispute herein centers on the interpretation of Paragraphs 11 and 25 of the lease. Paragraph 11 incorporates the requirements of the bid solicitation into the lease, and establishes that in the event of any inconsistency between the provisions of the lease and the bid solicitation, the bid solicitation governs, to wit:

All Parts of Solicitation RL-960-A, as bid by Lessor on July 8, 2004, are hereby incorporated **into this lease and made a part thereof.** The **building, grounds, and facilities herein leased** shall conform in all respects to the requirements set forth in that solicitation. To the extent that any inconsistency may be found between the language of that lease and of the Solicitation, the language of the Solicitation shall govern. [Emphasis added.]

Paragraph 25, which allows for termination of the lease under certain circumstances, provides as follows:

In the event the State of Louisiana provides the Lessee with adequate space in a building owned by the state or owned or leased by the Office Facility Corporation established by LA R.S. 39:1798 et seq[.],

the Lessor agrees to terminate said lease after sixty days notice. PROVIDED, HOWEVER, THAT THIS RIGHT OF LESSEE SHALL NOT BE EFFECTIVE UNTIL FOUR (4) YEARS AFTER DATE OF OCCUPANCY.

We find Paragraph 25 to be an unambiguous reservation by DPSC of the right to terminate the lease for a reason other than breach by the lessor, Metairie West. See La. C.C. art. 2718. The unambiguous text of Paragraph 25 imposes no qualifying conditions beyond the three listed in the text: (1) the provision of adequate space in a building owned by the state or owned or leased by the OFC; (2) sixty days notice must be provided prior to termination; and (3) four years must have passed since the date of occupancy. Importantly, Paragraph 25 contains no requirement that the property owned by the state or owned or leased by OFC be located within any identifiable geographic boundary. Further, as set forth below, we find nothing in the record to suggest that such a geographic restriction is imposed by Paragraph 11 or the bid solicitation.

Metairie West stresses Paragraph 11's incorporation of "all parts" of the bid solicitation into the lease, as well as Paragraph 11's provision that bid specifications control in the event of an inconsistency between the lease and the bid solicitation. Yet, our review of the record reveals no inconsistencies between the bid solicitation and the lease on the issues of termination or scope of the geographic restriction. First, the bid solicitation contains two references to termination by the lessee for the purpose of moving to a state owned, or OFC owned, or OFC leased building, and both references establish terms identical to those found in Paragraph 25 of the lease. Second, there is no specific language in the bid solicitation to support or to suggest that the specifications enumerated therein apply to any property other than the property being offered as a potential candidate for the lease advertised therein. Paragraph 11 expressly provides that the "building, grounds, and facilities *herein leased* shall conform in all respects to the

requirements set forth in that solicitation”; but there is no such similar statement with regard to state owned or OFC owned or leased property. [Emphasis added.] The OFC did not bid on the lease, is not a party to the lease, and Benson Tower is not the “building, grounds, and facilities herein leased.” In sum, we have not been directed to, nor can we find, any specific language in Paragraph 11 or the bid solicitation to suggest that the geographic restriction extends to property owned or leased by the OFC in the event of termination as contemplated by Paragraph 25.

Additionally, we find that the application of the generally prevailing meaning of the word “adequate” does not support the interpretation that the reference to “adequate space” in Paragraph 25 of the lease encompasses all of the requirements in the bid solicitation specifications, including the geographic restriction. The adjective “adequate” is defined as “equal to a requirement or occasion, sufficient, suitable.” Webster’s New Universal Unabridged Dictionary (2d ed. 1983). Here, “adequate” modifies the noun “space”; which we construe in Paragraph 25 to mean a space equal to, sufficient, or suitable for the day to day office space requirements necessary for DPSC’s employees to perform their duties.

To read all of the bid solicitation specifications, of which there are many, into the OFC leased building herein would impose the requirement that the OFC space not be adequate, but instead be “identical” or “the very same as” the Metairie West owned lease space. See Webster’s New Universal Unabridged Dictionary (2d ed. 1983). If such was the intent of the parties, the lease could easily substitute the word “adequate” with “identical,” or, as noted above, could have expressly extended bid solicitation specifications, including the geographic restriction, to the OFC owned or leased property somewhere in the lease or bid documents.

Mindful that a contract “must be interpreted in a common-sense fashion, according to the words of the contract their common and usual significance[.]” we find that a straightforward reading of Paragraph 25 makes clear that upon sixty

days notice DPSC was free to terminate the lease at any point after occupancy in the event that sufficient space became available in a state owned or OFC leased or owned property. **Clovelly Oil Company, LLC v. Midstates Petroleum Company, LLC**, 112 So.3d at 192 (citation omitted). The purpose of the OFC is to make properties available for the housing of state government, and such a reading of Paragraph 25 comports with this purpose. See La. R.S. 39:1798.3. To read a geographic restriction into Paragraph 25 creates ambiguity where none exists, as it requires the addition of a condition not found in either the bid solicitation or the lease. As such, we find the termination of the lease herein by DPSC was proper under the lease.

CONCLUSION

For the reasons set forth above, we convert the appeal filed by the DOA and DPSC to an application for supervisory writ. We hereby grant the writ application, reverse the district court judgment signed on October 9, 2015, and reinstate the decision of the commissioner. All costs associated with this matter are assessed to Metairie West, LLC.

APPEAL CONVERTED TO APPLICATION FOR SUPERVISORY WRIT; WRIT GRANTED; DISTRICT COURT JUDGMENT REVERSED AND DECISION OF THE COMMISSIONER OF THE DIVISION OF ADMINISTRATION REINSTATED.