FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-2007

TALLAHASSEE CORPORATE CENTER, LLC,

Appellant,

v.

FLORIDA DEPARTMENT OF MANAGEMENT SERVICES, FLORIDA DEPARTMENT OF EDUCATION, and FLORIDA DEPARTMENT OF FINANCIAL SERVICES,

Appellees.

On appeal from the Circuit Court for Leon County.
John C. Cooper, Judge.

November 30, 2022

PER CURIAM.

Tallahassee Corporate Center, LLC, as landlord of commercial office space (Landlord), appeals a final summary judgment holding that the Appellees, State agencies that leased space from Landlord, are immune from Landlord's lawsuit attempting to collect unpaid rent. The issue on appeal is whether a contractual attempt to circumvent section 255.2502 of the

Florida Statutes leaves the State agencies liable for the allegedly unpaid rent otherwise due. Section 255.2502 provides as follows:

> **Contracts which require annual appropriation; contingency statement.**—No executive branch department or agency, public officer or employee shall enter into any contract on behalf of the state, which contract binds the state or its executive agencies to the lease, rental, lease-purchase, purchase, or sale-leaseback of office space, real property or improvements to real property for a period in excess of 1 fiscal year, including any and all renewal periods and including all leases which constitute a series of leases unless the following statement is included in the contract: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature." The foregoing statement shall not be amended, supplemented, or waived, and shall be printed in type at least as large as any other type appearing on the contract. Any contract in violation of this section shall be null and void."

§ 255.2502, Fla. Stat. This statute was in effect when the leases at issue were entered in 2004, and at all times when the leases were in place.

The leases contained the statutorily-mandated statement that "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature." Nevertheless, the parties also agreed to a contractual addendum contrary to section 255.2502, as follows:

> The following is added to Article XVIII: "In the event an annual appropriation is not made by the Legislature as contemplated in the first sentence of this Article, Lessee, on 30 days' written notice to Lessor, may defer payment of rent on such portion of the premises as to which an annual appropriation is not made by the Legislature (the "Defunded Space"). All rent so deferred and not paid currently (the "Deferred Rent") shall accrue and bear

interest at the Prime Rate from time to time plus 400 basis points."

Against this statutory and contractual backdrop, Landlord sued the State agencies for failing to pay "dark space" rent for unoccupied space that the agencies leased, vacated, and did not back-fill with other State tenants. It was undisputed that the Florida Legislature never defunded payments due under the subject leases. The complaint sought recovery of $1,459,000 in rent payments.

Appellees moved for summary judgment, asserting sovereign immunity, and arguing that section 255.2505 rendered the contract void ab initio because of the unauthorized addendum. The trial court agreed with Appellees and entered final summary judgment in their favor, holding that section 255.2505 expressly made the contract "null and void" because of the unauthorized addendum. § 255.2502, Fla. Stat.

We must affirm in light of the clear and unambiguous language of section 255.2502. That section expressly makes void any contract containing language that amends, supplements, or waives the operative language of section 255.2502. The leases at issue did exactly that, rendering them void. The State's sovereign immunity protects it from liability under a void contract. *See DeSantis v. Geffin*, 284 So. 3d 599, 602 (Fla. 1st DCA 2019) (reiterating authority to enter the contract at issue (explicit or implicit) is required before sovereign immunity is waived as to that contract); *Cf. Fla. Dep't of Transp. v. Schwefringhaus*, 188 So. 3d 840, 844 (Fla. 2016) ("We have previously held that the defense of sovereign immunity will not protect the State from a cause of action arising from its breach of an express, written contract into which it had statutory authority to enter.") (citing *Pan-Am Tobacco Corp. v. Dep't of Corr.*, 471 So. 2d 4, 5–6 (Fla. 1984)); *see Pan-Am*, 471 So. 2d at 6 ("We would also emphasize that our holding here is applicable only to suits on express, written contracts into which the state agency has statutory authority to enter.").

We are not unmindful of the Landlord's equitable arguments. In another context, not involving State tenants and not directly

controlled by statute, those arguments might prevail. But it remains true and undisputed that the leases at issue plainly violated section 255.2502, a statute that was expressly cited and quoted on the face of the leases themselves. The law dictates this result.

AFFIRMED.

KELSEY, JAY, and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

M. Stephen Turner of M. Stephen Turner, P.A., Tallahassee; Jennifer Winegardner of Winegardner Law, Tallahassee; Robert J. Powell of Moorhead Law Group, PLLC, Pensacola, for Appellant.

Erik M. Figlio and Alexandra E. Akre of Ausley McMullen, Tallahassee, for Appellees Florida Department of Management Services and Florida Department of Financial Services; James Leigh Richmond, Deputy General Counsel, Department of Education, Tallahassee, for Appellee Florida Department of Education.