NO. COA05-1635

NORTH CAROLINA COURT OF APPEALS

Filed: 17 October 2006

KENLEY FAMILY PARTNERSHIP
and SEUNG OK KIM,

Plaintiffs,

v. Mecklenburg County
No. 05 CVD 011517

OK J. YU,

Defendant.

Appeal by defendant from judgment entered 16 August 2005 by Judge Fritz Y. Mercer, Jr., in District Court of Mecklenburg County. Heard in the Court of Appeals 13 September 2006.

Goodman Carr Laughrun Levine & Murray, by Miles S. Levine, for the defendant-appellant.

The Odom Firm, PLLC, by Thomas L. Odom, Jr., for the plaintiff-appellee.

ELMORE, Judge.

Kenley Family Partnership (Kenley) leased the premises located at 5101-A Nations Ford Road, Charlotte, North Carolina (premises), to Seung Ok Kim (Kim) on 12 August 2003. On 12 October 2004, Kim subleased the premises with Kenley's permission to Ok J. Yu (defendant). Their sublease agreement states that all terms, covenants, and conditions of the original lease applied to defendant. Three paragraphs from this lease are applicable to the

case at hand:

Paragraph 8 provides in part: "The premises shall be used for Massage Therapy, sale of equipment, purposes only and no other. The Premises shall not be used for any illegal purposes . . . ."

Paragraph 19 outlines events which will constitute default; one such event, given in 19(c), is tenant's failure to "comply with or abide by and perform any . . . obligation imposed upon Tenant under this Lease" other than failure to pay rent.

Paragraph 20 states the landlord's various remedies upon the happening of an event from paragraph 19 and specifies that the landlord "may pursue any one or more of the following remedies separately or concurrently, without prejudice to any other remedy herein provided or provided by law." One remedy, per 20(a), requires that the landlord give 15 days' written notice to the tenant in the case of any "default in performing any of the terms or provisions of this Lease," including nonpayment of rent. For any other type of default, under 20(b), the landlord may terminate the lease by written notice without giving tenant time to cure the default.

On 12 January 2005, defendant's employee Pok Cha Brewer (Brewer) was arrested for operating a massage establishment without a license, massaging a person of the opposite sex without a license, and massaging the private parts of another in violation of N.C. Gen. Stat. §§ 90-623 and 634 and Section 6-403(b) and (c) of the Charlotte City Code. Brewer pled guilty to massaging without a license, and the other two charges were dismissed. On 22 March

2005, defendant was arrested for violating the same statutes. These charges were later dismissed.[1]

On 30 April 2005, Kenley gave written notice to defendant voiding the sublease based on the illegal activities being conducted on the premises in violation of paragraph 8 of the lease. On 1 June 2005, Kenley again gave written notice to defendant that the sublease was void. Defendant refused to surrender possession of the property, and plaintiffs Kenley and Kim brought an action for summary ejectment. After a bench trial, the court entered a judgment for plaintiffs and ordered defendant to vacate the property. Defendant appeals.

"[W]hen the trial court sits without a jury, the standard of review on appeal is whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts." *Shear v. Stevens Building Co.*, 107 N.C. App. 154, 160, 418 S.E.2d 841, 845 (1992).

Defendant argues that the trial court's findings of fact regarding paragraphs 8, 19, and 20 of the lease agreement were incorrect. Specifically, defendant claims that competent evidence does not exist to support the trial court's findings that, first, illegal activities were performed by defendant or defendant's

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[1] Although defendant makes much of the fact that Yu was not convicted of any illegal activities, it appears from the transcript that the charges were dismissed due to procedural errors rather than lack of evidence. According to Officer Whitesell's uncontradicted testimony, the court dismissed the case when at a hearing the district attorney asked for a third continuance and, having it denied, was not prepared to prosecute the case.

employees on the premises and, second, no 15-day notice was required by the lease. We disagree.

An abundance of evidence was presented as to the commission of illegal acts on the premises by defendant or defendant's employees, including testimony from Charlotte-Mecklenburg police officers and certified copies of criminal records. Defendant argues that the default caused by Brewer's arrest was "cured" by defendant's firing of Brewer thereafter, and that defendant's testimony at trial regarding her own arrest conflicted with that of the arresting officer. The latter assertion is irrelevant to the trial court's determination that illegal activities occurred on the premises, and the former is essentially an admission that such activity occurred. Between this admission and the evidence offered by plaintiffs, competent evidence existed to support the trial court's findings of fact that illegal activities occurred on the premises.

Defendant's only support for the assertion that 15 days' notice was required by the lease is that a strict interpretation of paragraphs 19 and 20 would make paragraph 20(a), the only portion of the lease requiring a 15-day notice, inapplicable to the situation at issue. This contention is without merit.

"When the language of a contract is plain and unambiguous, its construction is a matter of law for the court." *Marsh Realty Co. v. 2420 Roswell Ave.*, 90 N.C. App. 573, 576, 369 S.E.2d 113, 115 (1988). As the trial court found, paragraph 20 by its express terms states that the landlord "may pursue any one or more of the following remedies separately or concurrently." This language

states plainly and unambiguously that the landlord was permitted to take *any* of the remedies listed in paragraph 20 in the event of default, including 20(b), which required only written notice of termination and not time to cure the default. The court's proper construction of this language constitutes competent evidence for its finding that no 15-day notice was required.

Defendant makes no arguments as to the conclusions of law drawn by the trial court. Because the trial court's findings of fact were supported by competent evidence, we affirm its judgment.

Affirmed.

Judges McGEE and BRYANT concur.

Report per Rule 30(e).