IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 17, 2014 Session

BRINGLE FARMS PARTNERSHIP v. STATE OF TENNESSEE

Appeal from the Tennessee Claims Commission
No. 20090796 Robert N. Hibbett, Commissioner, Tenn. Claims Commission
(Middle Division)

No. M2013-02278-COA-R3-CV - Filed September 26, 2014

This is a breach of contract case arising from a crop lease entered into between a farming entity and the Tennessee Wildlife Resources Agency ("the TWRA"). The five-year lease required the lessee to pay rent for the right to farm the land; however, the lessee would receive a credit provided he timely planted and harvested an agreed upon amount and type of waterfowl food crop to feed wildlife. The lessee would also receive a credit for providing agreed upon "in-kind services." After the second year, the TWRA terminated the lease for, *inter alia*, non-payment of rent, failure to timely plant crops, and failure to remove trash. The lessee filed this claim alleging the TWRA wrongfully terminated the five-year lease with three years remaining for which it sought damages for lost profits. The TWRA counterclaimed for unpaid rent and damage to the property. The claims commission found the TWRA did not terminate the lease for cause; therefore, the lessee was entitled to seek damages for lost profits; however, the commission found the lessee failed to prove its damages. As for the TWRA's counterclaims, the commission found the lease ambiguous regarding the payment of rent, and after considering parol evidence, it determined the parties intended the performance of in-kind services would reduce the rent to zero. Therefore, the commission denied the TWRA's counterclaim for unpaid rent. As for damage to the property, the commission found the lessee damaged the property for which it awarded the TWRA $1,743.30. Both parties appealed. We have concluded the TWRA terminated the lease for cause due to material breaches by the lessee; therefore, the lessee is not entitled to damages. We have also concluded that the lease provision regarding rent and in-kind services is unambiguous and that the lessee failed to provide in-kind services sufficient to offset all of the rent that was owing; therefore, the TWRA is entitled to recover the balance owed on the rent. Accordingly, we affirm in part and reverse in part, and remand for further proceedings consistent with this opinion.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Claims Commission Affirmed in Part and Reversed in Part

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which RICHARD H. DINKINS and W. NEAL MCBRAYER, JJ., joined.

Allan Wilson Wages, Millington, Tennessee, for the appellant, Bringle Farms Partnership.

Robert E. Cooper, Jr., Attorney General and Reporter, Joseph F. Whalen, Acting Solicitor General, and Melissa Brodhag, Assistant Attorney General, Nashville, Tennessee, for the appellee, State of Tennessee.

OPINION

On March 5, 2007, Bringle Farms Partnership ("Bringle Farms") entered into a crop lease agreement with the TWRA for a term of five years with an end date of December 31, 2011. Under the lease, Bringle Farms agreed to "properly prepare, plant and harvest crops . . . according to TWRA specifications as listed below, in order to provide food and/or developing habitat for wildlife." The specifications were listed as follows:

> Lessee shall be required to plant annually 100 acres to 200 acres of corn or other waterfowl food as determined by the Wildlife Manager. The waterfowl food will be left in the field and the cost of planting will be deducted from the lessee's end of the year payment to TWRA . . . [and] [o]ther in-kind services etc., as agreed upon by the lessee and the Wildlife Manager, will also be deducted from the end of the year payment.

Bringle Farms further agreed to pay rent set at $136 per acre, with the tract of land consisting of 510 acres. In regards to the payment of rent, an Addendum to the crop lease further required that:

> Lessee agrees to make first installment of one-half (½) the cost of the total lease payment by April 1 of each cropping season.
>
> Lessor agrees to refund the initial installment and not require final payment in the event that said property is inundated by the Mississippi River continually from April 1st to July 31st so as to prevent Lessee from planting a crop. Lessor further agrees to reduce the cost per acre to one-fourth (1/4) the value of the crop on any acres damaged by flooding during the production period as determined by Lessor and Lessee.

In addition, the lease also contained a cancellation and termination provision:

> This agreement may be canceled by either party upon thirty (30) days written notice. This agreement may be terminated by the TWRA at any time upon evidence that said above named Lessee has failed to fulfill any of the obligations set forth in this agreement; in which case, any crop(s) on the property shall become the property of TWRA in total.

For the calendar year 2007, Bringle Farms was obligated to pay rent of $69,360, of which it was to remit one-half by April 1, 2007; however, Bringle Farms made no rental payments in 2007. Nevertheless, it received credit of $31,061.40 for the in-kind services it provided in 2007. As for the calendar year 2008, once again Bringle Farms made no rental payments. In addition to its failure to pay rent, several issues arose regarding Bringle Farms' non-compliance with other terms of the lease. As a result, the TWRA decided to terminate the lease, and, by letter dated December 15, 2008, the TWRA notified Bringle Farms that it was terminating the lease as of January 18, 2009. In the letter the TWRA informed Bringle Farms that the lease was being terminated for numerous violations of the lease agreement including: (1) failure to pay rent; (2) disking and planting on levees without permission; (3) planting and harvesting crops late in 2007 and 2008; (4) failing to plant corn in 2008 for the wildlife; (5) failure to remove bean trailers on refuge; and (6) failure to remove trash on refuge on numerous occasions.

On December 16, 2008, Chris Park, the Wildlife Manager of the property, held a meeting with Van Bringle, the representative of Bringle Farms, to discuss the issues presented in the letter. Mr. Bringle and the TWRA came to an agreement for the outstanding balance of 2007; specifically, the parties agreed to use in-kind services performed in 2008 towards 2007 rent. As a result, the TWRA was able to close out the 2007 invoice and remove its delinquent status. However, a remaining balance still existed for 2008, which totaled $29,771.90. On January 13, 2009, Bringle Farms made its one and only payment of rent totaling $9,054.98, thereby reducing the rental balance to $20,716.92; nevertheless, the termination of the lease agreement took effect on January 18, 2009.

Thereafter, Bringle Farms timely filed this breach of contract claim alleging that the lease was improperly terminated by the TWRA and seeking damages for lost profits for the remaining three years of the lease. The TWRA answered alleging that it properly terminated the lease for cause because Bringle Farms did not pay its rent and breached other material terms of the lease. In addition, the TWRA asserted two counterclaims, one for the unpaid rent and another for destruction of the property in violation of the lease.

After a hearing on April 17, 2012, the claims commission found that the TWRA "cancelled" the lease pursuant to the 30 days written notice of cancellation without cause provision, and not pursuant to the termination for cause provision; therefore, either party was entitled to recover damages sustained, if any, due to the early "cancellation" of the lease. As for Bringle Farms' claim for loss of profits for the three years remaining on the lease, the commission found its proof to be speculative, and, therefore, the commission denied Bringle Farms' claim for lost profits. In regards to the TWRA's counterclaims, the commission determined that the lease was ambiguous concerning the payment of rent and "in-kind services," and looked to parol evidence to determine the intent of the parties as to rent. Relying on the testimony of Mr. Bringle, the commission found that the parties intended to negate the payment of rent through in-kind credit and, therefore, held that Bringle Farms did not owe any additional rent. As for the property damages claim, the commission awarded the TWRA $1,743.40. Both parties present issues for our consideration on appeal.

STANDARD OF REVIEW

The matters at issue on appeal arise from a written lease agreement. The interpretation of a written agreement is a question of law and not of fact, *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 95 (Tenn. 1999); accordingly, our review of the lease is de novo with no presumption of correctness accorded to the decisions of the courts below. *Angus v. W. Heritage Ins. Co.*, 48 S.W.3d 728, 730 (Tenn. Ct. App. 2000). With regard to findings of fact by a claims commission, we review the record de novo and presume that the findings of fact are correct unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d). Where the claims commission does not make findings of fact, there is no presumption of correctness, and "we must conduct our own independent review of the record to determine where the preponderance of the evidence lies." *Brooks v. Brooks*, 992 S.W.2d 403, 405 (Tenn. 1999).

The interpretation of lease terms is governed by traditional rules of contract construction. *Planters Gin Co. v. Federal Compress and Warehouse Co.*, 78 S.W.3d 885, 889 (Tenn. 2002). When construing contracts, the words contained within the instrument should be given their plain, ordinary meaning, and, "in the absence of fraud or mistake, a contract must be interpreted and enforced as written, even though it contains terms which may be thought harsh or unjust." *Heyer-Jordan & Assoc., Inc. v. Jordan*, 801 S.W.2d 814, 821 (Tenn. Ct. App. 1990) (citing *Ballard v. N. Am. Life & Cas. Co.*, 667 S.W.2d 79 (Tenn. Ct. App. 1983)). If the contract language is unambiguous, the written terms control, not the "unexpressed intention of one of the parties." *Sutton v. First Nat'l Bank of Crossville*, 620 S.W.2d 526, 530 (Tenn. Ct. App. 1981). The rights and obligations of parties to a contract are determined by the terms written in the agreement. *Cookeville Gynecology & Obstetrics, P.C. v. Se. Data Sys.*, 884 S.W.2d 458, 461-62 (Tenn. Ct. App. 1994). Courts cannot make

contracts for parties but can only enforce the contract that the parties themselves have made. *McKee v. Cont'l Ins. Co.*, 234 S.W.2d 830 (Tenn. 1950).

ANALYSIS

Bringle Farms contends on appeal that the claims commission erred by denying its claim for loss of profits for the remaining three years on the lease. The TWRA contends Bringle Farms breached the lease agreement and, therefore, is not entitled to recover any damages. The TWRA also contends the rent provision of the lease is unambiguous and that it is entitled to recover unpaid rent. We shall address each issue in turn.

I. BRINGLE FARMS' CLAIM FOR LOST PROFITS

In its Complaint, Bringle Farms alleged that the TWRA wrongfully terminated the lease in violation of its express terms, seeking damages for lost profits for the remaining three years. Although the lease provides that either Bringle Farms or the TWRA may cancel the lease upon 30 days notice, Bringle Farms claims it is entitled to damages in the form of lost profits due to the "early cancellation" by the TWRA. For its part, the TWRA contends that it properly exercised its right to terminate the lease for cause, and, therefore, Bringle Farms is precluded from recovering damages because Bringle Farms breached the lease.

The relevant portions of the lease illustrating Bringle Farms' obligations under the terms of the agreement reads as follows:

> RENT:
>
> LESSEE agrees to pay to TWRA $136.00 per acre;
> . . .
>
> LESSEE agrees to make first installment of one-half (½) the cost of the total lease payment by April 1 of each cropping season.
> . . .
>
> SPECIAL REQUIREMENTS: Lessee shall remove Lessee's share of the total crop(s) at harvest time. . . . Fertilizer bags, chemical containers, and other refuse shall be removed from TWRA property at the end of each day.
> . . .
>
> SPECIFICATIONS: Lessee shall be required to plant annually 100 to 200 acres of corn or other waterfowl food as determined by the Wildlife Manager.

. . . Other in-kind services etc., as agreed upon by the lessee and the Wildlife Manager will also be deducted from the end of the year payment.

There is no ambiguity in the language of the lease regarding Bringle Farms' obligations. Bringle Farms was required to pay one-half of the annual rent by April 1 of each year. It was also obligated to remove refuse from the property by the end of each day, to remove its share of crops at harvest time, and to leave the remaining crops for wildlife to feed upon. Concerning its fulfillment of these obligations, the facts are undisputed. Mr. Bringle admitted that Bringle Farms did not pay rent in 2007 or 2008, and the only time it paid rent was in January 2009, after receiving notice that the lease was being terminated. He also admitted that Bringle Farms was late in planting and harvesting crops in 2007 and that it failed to plant corn in 2008. He also does not dispute that Bringle Farms left trailers filled with rotting beans on the property. Nevertheless, he did not pay rent because he believed the parties intended rent to be negated by the performance of in-kind services; he also claimed the Mississippi River flooded the property in 2007 and 2008, which prevented the timely planting of crops.

On the issue of non-payment of rent, the record reflects that Bringle Farms owed the TWRA $31,061.40 at the end of 2007, and, by the end of 2008, Bringle Farms had failed to make any rental payments. The lease clearly and unequivocally states that Bringle Farms was required to make one-half of the rental payment by April 1 of each year, and it failed to remit any rent payment prior to the TWRA giving notice that the lease was being terminated; therefore, Bringle Farms breached the lease by its non-payment of rent for 2007 and 2008.

As for failing to timely plant and harvest crops in 2007 and failing to plant corn in 2008, Mr. Bringle contends that the flooding of the Mississippi River prevented the timely planting and harvesting of crops; however, Mr. Parks, the Wildlife Manager overseeing the property, testified that while the river flooded in 2008 in early spring and summer, the water did not continually flood from April 1 to July 31 and it quickly dissipated. After receding, Mr. Parks testified that Mr. Bringle assured him he would quickly plant corn, but Bringle failed to do so. Mr. Bringle testified that where the TWRA wanted corn planted was under water, but it was not continually inundated from April to July. Furthermore, in his report, Dr. Parrott noted that Bringle Farms "practiced suboptimal and careless farming techniques." Specifically, Dr. Parrott stated that soybeans were planted extremely late in 2007 and 2008, sometime around early July, and that the soybeans during those years were harvested late. The clear terms of the lease require Bringle Farms to timely plant and harvest crops, and to plant 100 to 200 acres of corn for wildlife.

The lease agreement contains two provisions by which either party may "cancel" the lease or by which the TWRA may "terminate" the lease. The first reads as follows: "This

agreement may be *canceled* by either party upon thirty (30) days written notice." (Emphasis added). This "cancellation" provision is immediately followed by the "termination" provision: "This agreement may be *terminated* by the TWRA at any time upon evidence that said above named Lessee has failed to fulfill any of the obligations set forth in this agreement; in which case, any crop(s) on the property shall become the property of TWRA in total." (Emphasis added).

In its December 15, 2008 letter, the TWRA stated that it was terminating the lease due to Bringle Farms breach of the lease agreement by, *inter alia*, failing to pay rent, disking and planting on levees without permission, planting and harvesting crops late in 2007 and 2008, failing to plant corn in 2008 for the wildlife, and failing to remove trash. The evidence in this record clearly supports the finding that Bringle Farms materially breached the lease agreement by failing to pay any rent in 2007 and 2008, failing to plant and harvest crops timely, and failing to maintain the property as the lease required. Because Bringle Farms was in material breach of the lease, the TWRA acted within its rights under the lease agreement when it terminated the lease and subsequently filed its counterclaim seeking damages. *See Bayrock Inv. Co. v. Blankenship*, No. W2013-01091-COA-R3-CV, 2014 WL 1478082, at *5 (Tenn. Ct. App. Apr. 15, 2014) (finding that landlord within its rights in bringing suit for damages when tenant failed to pay rent); *see also Johnson v. Hopkins*, 432 S.W.3d 840, 845 n.6 (Tenn. 2013) (citing *Cain P'ship, Ltd. v. Pioneer Inv. Servs. Co.*, 914 S.W.2d 452, 459 (Tenn. 1996)) ("Where a tenant fails to perform 'a valid promise contained in the lease,' such as to pay rent, and that promise was a 'significant inducement to the making of the lease,' the landlord may choose either to 'terminate the lease and recover damages'. . . or to continue the lease and seek 'appropriate equitable and legal relief. . .'").

Ordinarily a party who first materially breaches may not recover under the contract. *White v. Empire Exp., Inc.*, 395 S.W.3d 696, 716 (Tenn. Ct. App. 2012), *appeal denied* (Feb. 19, 2013) (citing *United Brake Sys., Inc. v. Am. Envtl. Prot., Inc.*, 963 S.W.2d 749, 756 (Tenn. Ct. App. 1997)); *see also Hogan v. DiCicco*, 1991 WL 139719 (Tenn. Ct. App. July 31, 1991) (citing *Santa Barbara Capital Corp. v. World Christian Radio Foundation, Inc.*, 491 S.W.2d 852 (Tenn. App. 1972)). Bringle Farms has failed to prove that it comes within an exception to this general principle; thus, it is not entitled to recover pursuant to the lease.[1]

II. THE TWRA'S CLAIM FOR RENT

The TWRA asserted a claim for unpaid rent for the amounts specified in the lease, minus agreed upon in-kind credits. The claims commission denied any relief upon finding

[1]Moreover, as the commission correctly determined, the proof of lost profits provided by Bringle Farms was speculative and insufficient.

that "the intent of the parties under the Contract was that there would be sufficient in-kind work and services provided to abrogate rent payments for each year of the lease so accordingly, rent due at the end of the lease term would have a zero balance." The TWRA contends this was error and insists it is entitled to recover the unpaid rent minus the value of agree upon in-kind services provided by Bringle Farms.

The lease specifically sets forth the rental payments at $136 per acre, with the property containing 510 acres. Thus, annual rent totaled $69,360. Bringle Farms agreed "to make [the] first installment of one-half (½) the cost of the total lease payment by April 1 of each cropping season," regardless of the amount of in-kind services performed. When the remainder became due, credit for the in-kind service of planting costs for the waterfowl food as well as "[o]ther in-kind services etc., *as agreed upon* by the lessee and the Wildlife Manager will . . . be deducted from the end of the year payment." (Emphasis added). This provision allowing additional in-kind credit to reduce rent is clearly limited by an agreement between the Wildlife Manager and lessee, and there is no disagreement concerning the type and value of in-kind services Bringle Farms was authorized to do.

Based upon the foregoing and our review of the entire lease agreement, we have concluded that no ambiguity exists concerning the payment of rent and credits for in-kind services; therefore, we are obligated to enforce the lease as written. *See Cookeville Gynecology & Obstetrics, P.C.*, 884 S.W.2d at 462.

The lease requires Bringle Farms to pay rent, and any in-kind services performed will be deducted *as agreed upon* between Bringle Farms and the Wildlife Manager. Mr. Bringle admitted that the balance owed for rent was $20,716.92, and Bringle Farms failed to establish that it was entitled to any additional credits for in-kind services that had not already been awarded. Therefore, we reverse and remand with instructions to award the TWRA damages for unpaid rent in the amount of $20,716.92.

III. THE TWRA'S CLAIM FOR PROPERTY DAMAGE

The TWRA brought a second counterclaim against Bringle Farms, alleging that TWRA property was negligently damaged by the lessee. The trial court awarded the TWRA damages for the negligent disking of a levee, repair of an irrigation device known as an alfalfa valve, and expenses for a hose in lieu of the alfalfa valve, totaling $1,743.30. The trial court found that Bringle Farms did not refute these claims. Bringle Farms contends this was error.

Mr. Bringle admitted that he damaged the alfalfa valve with his farm equipment, that he disked the levee without permission, and that the costs advanced by the TWRA to repair

the damages were reasonable. Based on this and other evidence in the record, the evidence does not preponderate against the commission's findings that the TWRA was entitled to recover damages to its property. Therefore, we affirm the damages award of $1,743.30 for Bringle Farm's negligent destruction of the leased property.

IN CONCLUSION

The judgment of the trial court is affirmed in part and reversed in part, and this matter is remanded with costs of appeal assessed against Bringle Farms.

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FRANK G. CLEMENT, JR., JUDGE