



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-16-00296-CV

GARY S. BALL AND SANDRA K. BALL, APPELLANT

V.

FLEETPRIDE, INC., APPELLEE

On Appeal from the 99th District Court
Lubbock County, Texas
Trial Court No. 2014-512,729, Honorable William C. Sowder, Presiding

April 11, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

This appeal involves an award of attorney's fees by the trial court. The latter awarded the fees to FleetPride, Inc. The fees were payable by Gary and Sandra Ball. And, the award emanated from a dispute between the Balls and FleetPride regarding whether FleetPride had opted to extend a property lease for five years per the terms of the original written lease. The Balls (i.e., the landlords) argued that it did. FleetPride (i.e., the tenant) argued that it did not. Given the controversy, the Balls sued FleetPride for damages and alleged various causes of action, one of which was breached contract.

FleetPride answered and counterclaimed for declaratory relief. Trial was held to the court. The court ruled in favor of FleetPride, thereby denying the Balls any recovery. It also awarded FleetPride attorney's fees approximating \$117,000. The sole issue before us is whether the award of fees was proper. According to the Balls, it was not because FleetPride had neither a contractual or statutory basis for recovering them. We affirm.

Generally, attorney's fees are not recoverable unless provided for by statute or contract. *Dallas Cent. Appraisal Dist. v. Seven Inv. Co.*, 835 S.W.2d 75, 77 (Tex. 1992); *Tex. Farm Bureau Cas. Ins. Co. v. Sampley*, No. 07-13-00151-CV, 2015 Tex. App. LEXIS 5280, at *12 (Tex. App.—Amarillo May 26, 2015, pet. denied) (mem. op). Paragraph 15.3 of the original lease executed at bar contained a provision stating that “[i]f there is any legal action . . . between Landlord and Tenant **to enforce this Lease or to protect or establish any right or remedy under this Lease**, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees and disbursements, incurred by such prevailing party.” (Emphasis added). It also contained two other relevant provisions. The first, paragraph 17.1, allowed the tenant to renew the lease for an additional five years. The other, paragraph 3.1, specified the amount of monthly rent payable during the renewed term; that is, the rent increased from \$3500 to \$3750 per month.¹

Believing that FleetPride had renewed the lease and then breached its agreement to renew, the Balls sued to recover their damages suffered by the breach. With that in mind, Mr. Ball explained, at trial, how the rent increased from \$3500 to \$3750 once the lease was renewed. He also informed the trial court of the damages he

¹ Paragraph 3.1 specifically refers to the “Basic Lease Information” addendum to the lease. That addendum was expressly incorporated into the lease and outlined the amount of the rent payment.

sought to recover. They included, among other things, the present value of the rental income that should have been paid over the extended five-year term, or as Mr. Ball testified: “I’m asking the Court to give me the value of the lease as it’s [sic] 280-something thousand dollars.” Simply put, the Balls wanted, among other things, the rent due them for the next five years at the rate specified in the lease, which amount would be converted to its present value.

So, what the trial court had before it was, in part, the Balls suing to receive what they would have received during the renewed period as dictated by the terms of the original lease. Thus, it cannot be denied that they initiated a “legal action . . . to enforce this Lease or . . . establish [a] right or remedy under this Lease.” Viewing the circumstances in that light, we cannot but say that FleetPride, as the “prevailing party,” had a contractual basis upon which to recover its attorney’s fees and that the trial court had a contractual basis upon which to award them.

The sole issue is overruled. We affirm the judgment.

Brian Quinn
Chief Justice