



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: January 24, 2012

CBCA 2516

RAFAEL PORTILLO,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Rafael Portillo, pro se, Tracy, CA.

Jay N. Bernstein, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **SOMERS**, **POLLACK**, and **GOODMAN**.

SOMERS, Board Judge.

This appeal involves a claim for unpaid rent under a lease agreement between appellant, Rafael Portillo, and the General Services Administration (GSA, respondent, or the Government). Appellant contends that GSA did not have the right to terminate the lease agreement, and seeks payment of \$11,572.25 per month from July through October 2011, for a total of \$46,289.

Respondent has moved for summary relief on the ground that the terms of the lease permitted it to terminate the agreement with sixty days written notice. Appellant opposes the motion. Based upon the unambiguous terms and conditions of the lease agreement, we conclude that respondent's interpretation is correct and that the Government acted in accordance with the terms of the lease agreement when it terminated the lease.

Background

On January, 28, 1998, GSA awarded a lease to Tony J. Dossi. The lease provided that GSA would rent office space in Sonora, California. The terms of the lease called for the Government to “. . . occupy the premises for a term of ten (10) years, eight (8) years firm, subject to termination and renewal rights.”

The lease contained a termination clause, which permitted GSA to terminate the lease “. . . in full or in part at any time after 8 years by giving at least 60 days notice in writing to the lessor and no rental shall accrue after the effective date of termination.” Paragraph thirteen of the lease provided that “in the event of total vacancy, the rental rate will be reduced by \$6.80 per square foot per annum.”

Mr. Portillo purchased the property in 2006. The lease transferred to Mr. Portillo as part of the transaction. At the time of the purchase, the lease was in the final year of the eight-year firm term.

During the term of the lease, GSA issued several supplemental lease agreements (SLAs). SLA number two, issued on December 8, 1998, revised the annual rent, described the lease space, and established that the ten-year, eight-year firm lease term would commence on October 26, 1998, and would expire on October 25, 2008, subject to termination rights. SLA number five, dated August 11, 2008, extended the lease term scheduled to end on October 25, 2008, to “October 25, 2010 unless terminated earlier under the terms of this Lease.”

SLA number six, issued July 14, 2010, revised the lease term as follows:

NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is amended, effective upon execution by the Government, as follows: to extend the lease for one (1) year, six (6) month firm term.

....

TO HAVE AND TO HOLD the said premises with their appurtenances from the term beginning on October 26, 1998 through October 25, 2011, inclusive; subject to termination and renewal rights as may be hereinafter set forth.

In sum, therefore, this SLA extended the lease for an additional year (from October 25, 2010, to October 25, 2011), with the first six months identified as the firm term.

This SLA also revised the termination clause to state:

The Government shall have the right to terminate this lease at any time on or after the firm term, in part or in whole, by giving at least sixty (60) calendar days written notice to the Lessor, and no rent shall accrue after the effective date of termination.

Appellant agreed to and signed this SLA.

On January 26, 2011, GSA notified Mr. Portillo by letter of the Government's intent to terminate the lease effective April 27, 2011, more than sixty days after the date of the notice. GSA informed Mr. Portillo that the Government would totally vacate the leased space on March 11, 2011, and that in accordance with the lease, the rent would be reduced to \$6.80 per square foot per annum commencing on the date that the Government vacated (i.e., on March 12, 2011) and would expire on the termination date.

On March 4, 16, and 24, 2011, appellant wrote letters to GSA challenging the rent reduction, disputing GSA's right to terminate the lease, and claiming that GSA was responsible for paying rent until October 25, 2011, and potentially responsible for paying rent for an eighteen-month term (i.e., until April 27, 2012).

By letter dated April 5, 2011, GSA explained to appellant that GSA was acting in accordance with SLA number six. Mr. Portillo responded by a letter received by GSA on April 18, 2011, and demanded monthly rent until October 25, 2011.

The contracting officer issued a final decision on June 6, 2011, rejecting Mr. Portillo's claim. The contracting officer stated that GSA had acted consistently with the terms of the lease, and that the lease authorized GSA to terminate the lease after the firm term had expired.

Appellant filed an appeal on April 5, 2011. Appellant seeks rent for the months of July 2011 through October 2011, in the amount of \$11,572.25 per month, for a total of \$46,289.

Discussion

Respondent has submitted a motion for summary relief, seeking denial of the appeal. Summary relief is appropriate when the moving party is entitled to judgment as a matter of law, based on undisputed material facts. The moving party bears the burden of demonstrating the absence of genuine issues of material fact. All justifiable inferences must be drawn in favor of the non-movant. *Government Marketing Group v. Department of Justice*, CBCA 964, 08-2 BCA ¶ 33,955.

The issue presented to us involves the interpretation of various provisions of the lease agreement. Pure contract interpretation is a question of law that may be resolved on summary relief. *Electronic Data Systems, LLC v. General Services Administration*, CBCA 1552, 10-1 BCA ¶ 34,316 (2009).

In interpreting the language of a contract, reasonable meaning must be given to all parts of the agreement so as not to render any portion meaningless, or to interpret any provision so as to create a conflict with other provisions of the contract. *Parkview Engraving LLC v. Department of Veterans Affairs*, CBCA 1564, 10-1 BCA ¶ 34,372, at 169,729 (citing *Fortec Constructors v. United States*, 760 F.2d 1288, 1292 (Fed. Cir. 1985); *United States v. Johnson Controls, Inc.*, 713 F.2d 1541, 1555 (Fed. Cir. 1983); *Electronic Data Systems*, 10-1 BCA at 169,505). An interpretation that gives reasonable meaning to all parts will be preferred to one which leaves a portion of the contract useless, inoperative, inexplicable, void, insignificant, meaningless, superfluous, or achieves a weird and whimsical result. *Id.* (citing *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991); *Johnson Controls*, 713 F.2d at 1555; *Arizona v. United States*, 575 F.2d 855, 863 (Ct. Cl. 1978); *Electronic Data Systems*, 10-1 BCA at 169,505). Contract language should be given the plain meaning that would be derived by a reasonably intelligent person acquainted with the contemporaneous circumstances. *Id.* (citing *Firestone Tire & Rubber Co. v. United States*, 444 F.2d 547, 551 (Ct. Cl. 1971); *Hol-Gar Manufacturing Corp. v. United States*, 351 F.2d 972, 975 (Ct. Cl. 1965); *Electronic Data Systems*, 10-1 BCA at 169,505).

In defining the lease term, the original solicitation specified that the Government had sixty days notice termination rights, “in whole or in part on or after the firm term.” The original lease clarified the language of the solicitation, which indicated that the parties agreed that the term of the lease would be through ten years, eight years firm, subject to termination and renewal rights as detailed in the lease. The lease stated in a subsequent paragraph that the Government could terminate the lease in full or in part at any time after eight years by giving at least sixty days notice in writing.

When the parties entered into SLA number six, they extended the term of the lease for one year, from October 26, 2010, through October 25, 2011, and included a termination clause. Appellant does not dispute that he agreed to the terms of SLA number six. Nor does appellant dispute the fact that GSA gave him written notice on January 26, 2011, that GSA would terminate the lease on April 26, 2011, more than sixty calendar days after January 26. Rather, appellant contends that SLA number six extended the lease for a firm term of one year and six months (meaning a firm term of eighteen months), and that GSA had no right to terminate during the lease period.¹

We find that appellant's interpretation is contrary to the plain and unambiguous terms of the lease agreement.² As noted above, paragraph 2 of SLA number six extended the lease for one year subject to termination rights. Paragraph 4 of the SLA states that the Government shall have the right to terminate the lease at any time on or after the firm term. The firm term as identified in the SLA is for the period of six months, after which the Government had the option to terminate the lease upon sixty days notice.

The contract is clear and unambiguous. The Government complied with the terms of the contract. Appellant has not established that he is entitled to any greater compensation than he received under the terms of the lease agreement.³

¹ Appellant appears *pro se* in this appeal. In correspondence presented by an attorney representing appellant prior to the filing of this appeal, the attorney suggested that the language could be considered ambiguous. Appellant has neither clarified nor pursued this argument in this appeal.

² Under appellant's current interpretation, the original lease, which provided for a term of "ten (10) years, eight (8) years firm," would have created an eighteen-year lease term. The fact that the Government issued SLA number five to extend the original lease term to October 25, 2010, and thereafter issued SLA number six to extend the lease term to October 25, 2011, reflects the parties' understanding that the stated term was not cumulative, but, instead, included a "firm" period (eight years in original lease), and a subsequent period during which the Government could terminate the agreement with sixty days notice.

³ In his opposition to respondent's motion for summary relief, appellant alleged that the Social Security Administration owes him overtime related to utilities, but provides no information, facts, or other evidence concerning this allegation. To this extent that appellant opposes the motion for summary relief, he must do more than present bare allegations. He must present specific evidence which sets forth a genuine issue of material fact. See *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1562-63 (Fed. Cir. 1987). This he did not do.

Decision

Respondent's motion for summary relief is granted and the appeal is **DENIED**.

JERI KAYLENE SOMERS
Board Judge

We concur:

HOWARD A. POLLACK
Board Judge

ALLAN H. GOODMAN
Board Judge