UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED AS TO ENTITLEMENT: March 31, 2020

CBCA 6093

HPI/GSA-4C, L.P.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Maureen C. McDonald, Scott M. Heimberg, and Elise A. Farrell of Akin Gump Strauss Hauer & Feld, LLP, Washington, DC, counsel for Appellant.

Alexander C. Vincent, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Judges **VERGILIO**, **KULLBERG** and **RUSSELL**.

RUSSELL, Board Judge.

Appellant, HPI/GSA-4C, L.P. (HPI), appeals the contracting officer's decision to deny its claim for unpaid rent under a lease agreement between appellant and respondent, the General Services Administration (GSA, Government, or agency). HPI contends that GSA did not provide proper notice to terminate the lease agreement and seeks rental payment of $821,943.20 for the period of August 20, 2016 through March 6, 2017, and other costs.

The parties filed cross-motions for summary judgment. Based upon the plain language of the lease, we find that GSA failed to provide proper notice as required under the

termination provision of the lease and remained obligated to pay rent. Therefore, we grant HPI's motion for summary judgment as to entitlement and deny GSA's motion.

Background

On May 2, 2002, GSA awarded a lease (lease) to HPI's predecessor in interest, Aardex Properties IV, LLC (Aardex), for a property at 1950 G Street, Fresno, California (the property). On May 22, 2003, those parties entered into supplemental lease agreement (SLA) number 5. The SLA added two pertinent provisions. The first provided that GSA would "have" and "hold" the property through April 30, 2018, subject to termination rights of the lease. The second enacted the following termination provision:

> 4. The Government may terminate this lease after April 30, 2013, in whole or in part, at any time, by giving at least 180 days notice in writing to the Lessor and no rent[] shall accrue after the effective date of termination. Said notice shall be computed after the date of mailing.

HPI acquired the property from Aardex in 2006.

In October 2015, California filed a condemnation action in state court against GSA and other parties with an interest in the property. GSA and California entered into a stipulation dated February 9, 2016, pursuant to GSA's decision not to oppose California's use of the property. HPI opposed the condemnation action separately and did not sign the stipulation, but received a copy of it by mail.

GSA's tenant agency, the Internal Revenue Service (IRS), vacated the property on August 19, 2016. GSA ceased making rental payments after that date.

Pursuant to a settlement agreement between California, HPI, and the owner of the land on which the property sat, California took possession of the property on March 7, 2017.

On October 9, 2017, HPI submitted a certified claim to GSA's contracting officer, seeking rent of $821,943.20 for the period August 20, 2016, through March 6, 2017, and other costs. The contracting officer denied the claim. HPI filed a notice of appeal with the Civilian Board of Contract Appeals on April 6, 2018, and filed its complaint on May 7, 2018.

Discussion

A. Standard of Review

Rule 56(a) of the Federal Rules of Civil Procedure mandates the entry of summary judgment upon motion after there has been adequate time for discovery "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also P&C Placement Services, Inc. v. Social Security Administration*, CBCA 391, 07-1 BCA ¶ 33,492, at 166,010 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)). Any doubt on whether summary judgment is appropriate is to be resolved against the moving party. *Celotex Corp*., 477 U.S. at 325.

"The fact that both parties have moved for summary judgment does not mean that the [Board] must grant judgment as a matter of law for one side or the other. . . ." *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1391 (Fed. Cir. 1987). Rather, "each motion is evaluated on its own merits and reasonable inferences are resolved against the party whose motion is being considered." *Marriott International Resorts, L.P. v. United States*, 586 F.3d 962, 968-69 (Fed. Cir. 2009); *see also Turner Construction Co. v. Smithsonian Institution*, CBCA 2862, et al., 15-1 BCA ¶ 36,139, at 176,392.

B. Contract Interpretation

The issue presented involves the interpretation of the termination provision in the SLA. "Pure contract interpretation is a question of law that may be resolved on summary [judgment]." *Portillo v. General Services Administration*, CBCA 2516, 12-1 BCA ¶ 34,925, at 171,737 (citing *Electronic Data Systems, LLC v. General Services Administration*, CBCA 1552, 10-1 BCA ¶ 34,316 (2009)).

"The primary objective of contract interpretation is to determine the intent of the parties at the time an agreement is created." *600 Second Street Holdings LLC v. Securities & Exchange Commission*, CBCA 3228, 13-1 BCA ¶ 35,396, at 173,666 (citing *Alvin, Ltd. v. United States Postal Service*, 816 F.2d 1562, 1565 (Fed. Cir. 1987)). Contract language must be read in accordance with its express terms, *C. Sanchez & Son, Inc. v. United States*, 6 F.3d 1539, 1543 (Fed. Cir. 1993), and should be given the plain meaning that a reasonably intelligent person, acquainted with the circumstances, would derive from that language. *Portillo*, 12-1 BCA at 171,737.

The parties do not dispute that they agreed to the terms of the SLA, nor that the SLA requires "at least 180 days notice in writing to the Lessor" to terminate the lease. GSA argues that a stipulation between itself and California, which HPI did not sign, filed in a

California state court case in February 2016, constituted written notice of termination under the provisions of the lease because it was mailed to HPI and, thus, HPI "should have been aware . . . given the context of the Eminent Domain Action" that "the Stipulation expressed GSA's intent to terminate the Lease." The stipulation does not list HPI as a party to the stipulation, nor does it discuss termination of the lease.

The terms used in the SLA provision track with commonly used GSA lease language. *E.g.*, *Prete v. General Services Administration*, GSBCA 15724, et al., 03-1 BCA ¶ 32,163 ("The Government may terminate this lease at any time after eight months with 60 days' notice in writing to the lessor and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing"). This Board's predecessor held that "the specific words of the termination provision 'are clear, unremarkable, everyday, short, common English words, none of which are individually or collectively susceptible to other than their everyday meaning.'" *Id.* (citing *Gustafson Partnership*, GSBCA 6701-COM, 84-1 BCA ¶ 17,086, at 85,065). GSA's Lease Management Guide instructs GSA employees to "[s]end a termination letter to the lessor in accordance with lease terms."

Here, the plain meaning of "written notice to terminate" does not include a court stipulation which makes no mention of "termination" of any lease and is absent of any indication that GSA's intent to terminate is being conveyed to and served on the lessor consistent with lease terms. We find GSA's interpretation unduly strained and contrary to the plain and unambiguous terms of the lease, even drawing justifiable inferences in favor of the agency. *See Celotex Corp*.

Further, GSA's assertions that a July 28, 2014, email; April 2, 2015, email and letter; April 6, 2015, email and phone call; and July 19, 2016, email constitute notice to terminate also fail to persuade. None of these indicate that the lease will be terminated on a given date.

Finally, we are unpersuaded by GSA's argument that vacating the property served as notice to terminate. The lease requires more than vacating space and relinquishing keys. *See MLJ Brookside, LLC, v. General Services Administration*, CBCA 301, 15-1 BCA ¶ 35,935 (holding that vacating property and returning keys did not constitute notice to terminate when the lease required "written notice sent by certified or registered mail").

In summary, because GSA never terminated the lease, and therefore remained obligated to pay rent under the lease until March 6, 2017, the date before California took over the property, we grant HPI's motion for summary judgment.

C. GSA's Obligation to Pay Rent

GSA contends further that it has no duty to pay rent to HPI because HPI was compensated for its interests in the property when it sold its interest to California on March 7, 2017. While the sale of the property to California relinquished HPI's rights as a property owner as of the effective date of the sale, there is no language in the settlement agreement that indicates HPI forfeited any interest it had in the Government's unpaid rent accrued prior to the date of sale. Notably, GSA was not even a party to the settlement agreement. We give contract language "the plain meaning that would be derived by a reasonably intelligent person acquainted with the contemporaneous circumstances." *Portillo*, 12-1 BCA at 171,737. The plain meaning of "claims . . . arising out of the condemnation of [the property]" does not encompass past rent that may be due to HPI from GSA, even with all inferences construed in favor of the Government.

Decision

HPI's motion for summary judgment is **GRANTED AS TO ENTITLEMENT**.[1] GSA's motion for summary judgment is denied.

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge

We concur:

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge

[1] HPI seeks damages for rental amounts adjusted by the Consumer Price Index, and reimbursement for real estate taxes on the property paid for by HPI. Additionally, HPI is seeking interest under the Prompt Payment Act, 31 U.S.C. §§ 3901-3907, and the Contract Disputes Act, 41 U.S.C. § 7109. The specific damages due will be ascertained in further proceedings.