



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED IN PART: May 7, 2018

CBCA 5543

PJP BUILDING SIX, LC,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

S. Sadiq Gill of DuretteCrump, PLC, Richmond, VA, counsel for Appellant.

Jennifer L. Hedge, Office of General Counsel, Department of Veterans Affairs, Pittsburgh, PA, counsel for Respondent.

Before Board Judges **SOMERS** (Chair), **BEARDSLEY**, and **VERGILIO**.

BEARDSLEY, Board Judge.

Appellant, PJP Building Six, LC (PJP), appeals the denial of its certified claim for damages resulting from the early termination of a lease by the Department of Veterans Affairs (VA). The parties disagree as to the interpretation of the lease termination provision. The parties submitted this appeal for a decision on the written record pursuant to CBCA Rule 19 (48 CFR 6101.19 (2017)) on the question of entitlement only. Determination of the amount of any recovery will be decided, if necessary, in further proceedings.

Background

On January 27, 2007, the VA solicited for 4100 net usable square feet in Charlottesville, Virginia, to be used for a community-based outpatient clinic for veterans.

The parties executed lease agreement no. VA 246-R-0019 on November 13, 2007.¹ The lease term commenced on February 1, 2008, and continued “through the end of 120 months [ten years] after the commencement date inclusive,” or until January 31, 2018. The lease stated that the “Government may terminate this lease effective on the last day of the month that is 60 months after the commencement date by giving at least 180 days notice in writing to the Lessor. No rental shall accrue after the effective date of termination.” The typed words “effective on the last day of the month that is” replaced the words “at any time on or after” that had been crossed out with typed xxx.² The lease also included a table with a breakdown of rent per rentable square foot, monthly installments, and annual fixed rent in twelve-month increments for a total of ten years.

The VA did not terminate the lease after five years. Instead, more than seven years into the lease, on September 18, 2015, the VA notified PJP of its intent to vacate the premises. The VA terminated the lease and vacated the space on March 18, 2016. The VA referenced section 1.3 of the lease and Federal Acquisition Regulation (FAR) 52.217-9 (48 CFR 52.217-9) as its basis for vacating the premises and terminating the lease. The lease, however, did not include or even reference section 1.3 or FAR 52.217-9. PJP responded that the VA was “precluded from terminating the lease prior to its expiration on January 31, 2018.”³

PJP filed a certified claim for damages in the amount of \$348,956.34 for breach of the lease, arguing that the VA did not understand the lease and missed its opportunity for early termination. The contracting officer denied PJP’s claim, concluding that the “VA properly

¹ The lease consisted of four typed pages without handwritten notations, including “(a) this GSA Form 3626, (b) Representations and Certifications, (c) the Government’s General Clauses, and (d) the following changes or additions made or agreed to by you: See Attachment A.” The lease and the record fail to identify the representations, certifications, or Government’s general clauses. The lease did not include a document identified as “Exhibit B, Confirmation of Lease Terms,” which was dated almost three months after the lease was executed and was not signed by PJP.

² The VA lease provision, some of which was crossed out, read in full, “The Government may terminate this lease at any time on or after _____ by giving at least _____ days notice in writing to the Lessor.”

³ The VA suggests that the lease became an option contract after the first five years and that it decided not to exercise the remaining options. However, there is nothing in the lease to suggest that it was or became an option contract.

exercised its right to terminate the Lease because it provided PJP 180 days' notice." PJP timely submitted its appeal to this Board.

Discussion

I. Standard of Review

The parties have elected to submit this case for a decision on the written record without a hearing pursuant to Rule 19 of the Board's rules. The parties are entitled, under Board Rule 19, to include in the written record "(1) any relevant documents or other tangible things they want the Board to admit into evidence; (2) affidavits, depositions, and other discovery materials that set forth relevant evidence; and (3) briefs or memoranda of law that explain each party's positions and defenses." *1-A Construction & Fire, LLP v. Department of Agriculture*, CBCA 2693, 15-1 BCA ¶ 35,913, at 175,551 (citing 48 CFR 6101.19). Based on the parties' submissions, the Board is authorized to make findings of fact, even if such findings require "credibility determinations on a cold [paper] record, without the benefit of questioning the persons involved," and can decide issues of law based on those factual findings. *Bryant Co.*, GSBCA 6299, 83-1 BCA ¶ 16,487, at 81,967.

II. Contract Interpretation

The issue before the Board is one of contract interpretation. "[C]ontracts are not necessarily rendered ambiguous by the mere fact that the parties disagree as to the meaning of their provisions." *Community Heating & Plumbing Co. v. Kelso*, 987 F.2d 1575, 1578 (Fed. Cir. 1993) (citing *Brunswick Corp. v. United States*, 951 F.2d 334, 337 (Fed. Cir. 1991)). "A contract is ambiguous if it is susceptible of two different and reasonable interpretations, each of which is found to be consistent with the contract language." *Id.* at 1579.

The VA contends that it properly terminated the lease because the lease allowed it to terminate at any time after the five-year "base term" as long as it provided at least 180 days notice. By contrast, PJP argues that the termination language only provided for an opportunity to terminate the lease after the first five years (or at the end of sixty months from the commencement date); otherwise, the VA was locked into the lease for the entire ten years. We find that the VA's interpretation of the lease's termination provision is not reasonable. Instead, we agree with PJP that the plain and unambiguous meaning of the termination provision is that the VA could terminate the lease only at the end of five years with proper notice, and if it did not take advantage of this early termination option, the lease term lasted for ten years.

The primary goal of contract interpretation is to “determine the intent of the parties at the time an agreement is created.” *Belle Isle Investment Co. v. General Services Administration*, CBCA 4734, 16-1 BCA ¶ 36,416, at 177,555. In order to understand the parties’ intent, the contract must be read as a whole and in a way that gives reasonable meaning to all of its parts. *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991). In this case, the parties’ intention to limit the ability to terminate was clear when they crossed out termination language that would have allowed the VA to terminate the lease “at any time on or after” a certain date. The inserted termination language entitled the VA to terminate the lease “effective on” not “effective on or after” a given date. The VA’s interpretation of the termination provision is not reasonable because it would read back in the deleted language and render the inserted termination language meaningless.

Asserting that the term “effective date” is defined as the date on which a lease provision “becomes enforceable or otherwise takes effect,” the VA argues that the plain meaning of the lease termination provision is that the agency’s termination rights began after the first five years and continued to the end of the lease. We reject the VA’s argument and find that the effective date was the day on which the lease termination would have taken effect had the VA provided the requisite notice, not the day on which the right to terminate began.

We disagree with the VA’s contention that PJP’s interpretation is nonsensical and, therefore, unreasonable, because it results in “only one day – one day out of a total possible 3,650 – within which the VA could terminate.” The VA had a window of over four years—not just one day—in which to decide to terminate the lease. PJP’s interpretation that termination could only take effect at the end of the first five years of the lease is reasonable.

The VA relies on “external documents,” including Exhibit B, handwritten notes found on copies of the lease, four earlier versions of the lease with different lease terms, and a declaration of the contracting officer, to support its interpretation of the contract. We generally examine extrinsic evidence only if the lease language is ambiguous. “[T]he rule of *contra proferentem* applies only when a contract is susceptible of two different interpretations, each of which is consistent with the contract language, and only when the two different interpretations were not obvious and glaring at the time of contracting.” *Grunley Construction Co. v. General Services Administration*, GSBCA 13476, 98-2 BCA ¶ 29,950, at 148,179 (citing *Community Heating & Plumbing Co.*). Having found that the termination provision of the lease is not ambiguous, we decline to consider extrinsic evidence in interpreting the lease provision.

Decision

For the reasons discussed above, the appeal is **GRANTED IN PART**, and, if necessary, the Board will decide the amount of any damages owed PJP after further proceedings.

Erica S. Beardsley

ERICA S. BEARDSLEY

Board Judge

We concur:

Jeri Kaylene Somers

JERI KAYLENE SOMERS

Board Judge

Joseph A. Vergilio

JOSEPH A. VERGILIO

Board Judge