Motion for Rehearing Overruled, and Dissenting Opinion filed February 1, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-98-01427-CV &
14-99-00222-CV

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GRAND OVERSEAS DESTINATIONS, INC., Appellant

V.

A.P. KELLER, INC., et al., Appellees

On Appeal from the 269th District Court
Harris County, Texas
Trial Court Cause No. 95-44471-A & 95-44471B

D I S S E N T I N G O P I N I O N O N R E H E A R I N G

Because a majority of the panel declines to grant rehearing, I respectfully dissent. I would grant the appellees' motion for rehearing and affirm the summary judgments in their favor. Because I joined the court's opinion on original submission, I write to explain my reasons for believing that we should now grant appellees' motion for rehearing and reach a different result.

Neither the lease nor the Landlord's Conditional Consent to Lease Agreement ("LCCLA") are ambiguous. In discussing the LCCLA, we focused only on paragraph B, concluding that the language

stating "pay all rent . . . hereafter coming due . . ." rendered it ambiguous. In the opinion we did not discuss paragraphs A or D of the LCCLA. Both of these provisions must be read in conjunction with paragraph B. *See Ohio Cas. Group v. Chavez*, 942 S.W.2d 654, 658 (Tex. App. – Houston [14th Dist.] 1997, writ denied) (holding court must review a contract as a whole, not by isolating sentences or sections).

Paragraph A states:

> TOT confirms that it has heretofore assigned all its rights, titles and interests in the Lease to [Grand Overseas], and [Grand Overseas] confirms that it has accepted such assignment and agrees to timely perform all obligations of [TOT] thereunder and to otherwise perform its obligations set forth herein.

Paragraph D states, in part:

> If [Baker Hughes] exercises its termination rights pursuant to the immediately preceding subparagraph, the Lease will terminate on January 9, 1996.

Under paragraph A, Grand Overseas confirmed the assignment of the lease and its obligation "to timely perform all obligations"of the original tenant under the lease. Under paragraph D, Grand Overseas agreed that even if Baker Hughes terminated the lease in January 1996, Grand Overseas remained obligated "for *all obligations* of [TOT] under the Lease arising or accruing after January 9, 1995 . . ." (emphasis added). These obligations included the obligation to pay monthly rent. Grand Overseas' commitment in paragraph B "to pay all rent and other sums hereafter coming due under the Lease" should not be read so as to render paragraphs A and D meaningless; rather, the provisions should be harmonized and construed as a whole. Applying this well established principle, the word "hereafter" in paragraph B means that from April 5th forward, Grand Overseas was responsible for rent in its own right. For rent and other payment obligations owing before April 5th, Grand Overseas was responsible, as assignee, based on its contractual commitment to pay the prior tenant's obligations.

It is not reasonable to interpret paragraph B as implicitly releasing Grand Overseas from all prior obligations to pay rent because the lease requires all rent abatements to be expressly stated. Moreover, the language in paragraph B does not create an ambiguity because it is not inconsistent with any other term in the agreement.

Construing the LCCLA and lease as a whole, the only reasonable conclusion is that Grand Overseas was obligated to pay March and April rent. When it failed to do so, it defaulted under the terms of the lease. Based on this default, Baker Hughes was within its rights to proceed with the lockout. Because the lockout did not breach the lease, summary judgment was proper.

/s/ Kem Thompson Frost
Justice

Judgment rendered and Dissenting Opinion filed February 1, 2001.

Panel consists of Justices Yates, Fowler, and Frost.

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