Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

DENIED: January 27, 2003

GSBCA 15724, 15884

JAMES A. PRETE,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

David J. Straface of Angotti and Straface, L.C., Morgantown, WV, counsel for Appellant.

Robert M. Notigan, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **BORWICK,** and **NEILL**.

NEILL, Board Judge.

Appellant in these two cases, Mr. James A. Prete, is the owner of an office building in Morgantown, West Virginia. He leased the building to the General Services Administration (GSA) in 1992. A dispute has arisen between Mr. Prete and GSA regarding the Government's termination of the lease in 2001. Mr. Prete contends that the Government failed to act in accordance with the terms of the lease's termination provision and that, as a result, GSA remains indebted to him for rental payments for an additional two months. GSA denies that the contract provision has been misapplied and, consequently, also denies the claim for additional rent. For the reasons set out below, we conclude that the lease was properly terminated and that no further rent is due appellant.

Findings of Fact

1. On March 16, 1992, GSA and appellant entered into lease no. GS-03B-20082 (the lease) for premises located at 3040 University Avenue, Morgantown, West Virginia. Appeal

File, Exhibit 1 at 1. The term of the lease was seven years with the first five of those years being non-cancelable. The termination provision of the lease read as follows:

> 4. The Government may terminate this lease at any time* by giving at least 90 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 mailing. * after the fifth (5th) full year of occupancy[.]

Id.

2. By supplemental lease agreement (SLA) number three, the parties agreed that the seven-year lease term would begin on September 26, 1992, and run through September 25, 1999. Appeal File, Exhibit 4.

3. In July 1998, GSA and appellant entered into SLA number nine, which extended the lease beyond its original seven-year term. SLA number nine amended the lease to provide for a twelve-year term "beginning September 26, 1992 through September 25, 2004. This amendment further provided: "The Government shall have the right to terminate this lease anytime after September 25, 2001[,] after giving the lessor 90 days[']' prior written notice." Appeal File, Exhibit 10 at 1.

4. By letter dated July 25, 2001, a GSA contracting officer gave appellant written notice of the Government's intent to terminate the lease on October 25, 2001, "as per Paragraph 4 of Lease Number GS-03B-20082, as amended by Supplemental Lease Agreement Number 9." Appeal File, Exhibit 12.

5. By letter dated August 1, 2001, Mr. Prete acknowledged receipt of the July 25 notice. He noted, however, that, after conferring with counsel, he was of the opinion that, under the contract, as amended by SLA number nine, "the effective starting date for the 90 day notice period shall not start until September 25, 2001 thence going forward 90 days." Based on this reading of the contract, Mr. Prete advised the contracting officer that GSA would be responsible for rent of the premises through December 25, 2001. Appeal File, Exhibit 13.

6. By letter dated October 5, the GSA contracting officer rejected Mr. Prete's interpretation of the contract's termination provision and insisted that his termination notice of July 25 was proper and effective. Under cover of the same letter, the contracting officer provided appellant with a copy of a previous Board decision which, according to the contracting officer, supported his interpretation of the contract's termination provision. Appeal File, Exhibit 14.

7. The contracting officer's letter of October 5 did not specifically advise Mr. Prete that the letter was a final decision from which appeal could be taken, Appeal File, Exhibit 14. Mr. Prete, nonetheless, subsequently appealed that decision. The case was duly docketed as GSBCA 15724.

8. Following an exchange of pleadings and the Government's submission of a proposed appeal file in GSBCA 15724, the Board convened a prehearing conference with counsel. At that conference, the presiding judge noted that, although appellant's notice of appeal (subsequently designated as appellant's complaint) demanded payment of additional rent in the amount of $168,860.16, no specific monetary claim for that amount had previously been presented to the contracting officer. Rather, the dispute between appellant and the contracting officer had, until that time, been one solely regarding the interpretation of the contract termination provision. The Board suggested, therefore, that, if appellant wished to obtain a ruling on the actual amount said to be due as well as interest on that amount, a specific claim should be submitted to the contracting officer for decision. Counsel for appellant accepted the Board's suggestion. A claim was submitted to the contracting officer and denied. Appeal from the contracting officer's decision was, thereafter, docketed as GSBCA 15884. This case was then consolidated with GSBCA 15724 by order of the Board on May 31, 2002.

Discussion

_____ The decision of this Board which the contracting officer provided to appellant in his letter of October 5 and which he considered to be controlling in this case was Gustafson Partnership, GSBCA 6701-COM, 84-1 BCA ¶ 17,086. That case does, in fact, involve an issue strikingly similar to the one confronting us here. The lease termination clause in Gustafson read:

> 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.

Id. at 85,063. As in the instant case, the dispute in Gustafson was whether the advance notice could be given effectively before the expiration of the firm period – in that case after an eight-month period. The conclusion reached by the Board was that the termination provision was in no way ambiguous and that the notice requirement in that provision was not understood as being tied to the time of termination in any way other than to precede the termination by sixty days. Id. at 85,065.

While the language in the instant case is not identical to that in Gustafson, we agree with respondent that it is sufficiently similar as to render our prior decision controlling.

Contract interpretation is said to "begin with the plain language" of the contract. McAbee Construction, Inc. v. United States, 97 F.3d 1431, 1435 (Fed. Cir. 1996); Foley Co. v. United States, 11 F.3d 1032, 1034 (Fed. Cir. 1993). That language must be read in accordance with its express terms and plain meaning. C. Sanchez and Son, Inc. v. United States, 6 F.3d 1539, 1543 (Fed. Cir. 1993); Alaska Lumber & Pulp Co. v. Madigan, 2 F.3d 389, 392 (Fed. Cir. 1993); Hills Materials Co. v. Rice, 982 F.2d 514, 516 (Fed. Cir. 1992); Hol-Gar Manufacturing Corp. v. United States, 351 F.2d 972, 976 (Ct. Cl. 1965).

In this case we find the plain language of the amended termination provision to be clear and unambiguous. The provision provides the Government with the "right to terminate" the lease at any time. Two conditions or requirements regarding the exercise of that right are expressed through prepositional phrases which modify "the right to terminate." The first prepositional phrase indicates when this right shall become operative, namely, "after September 25, 2001." The second prepositional phrase sets out a precondition to the exercise of the right, namely, "after giving the lessor 90 days[']prior written notice." As we concluded in Gustafson, we find 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." Gustafson, 84-1 BCA at 85,065.

Counsel for appellant argues that there is a notable difference in the notice requirement of the termination provision in Gustafson and the notice requirement in the instant case. Counsel notes that in Gustafson, the lease could be terminated "at any time after eight months *with* 60 days notice" while, in the instant case, the lease may be terminated "anytime after September 25, 2001 *after* giving the lessor 90 days prior written notice." Counsel argues that there is a significant difference between the prepositional phrases dealing with notice in the two termination provisions. He notes that the phrase in Gustafson is introduced with the preposition "with" while that regarding notice in this case is introduced with the preposition "after." "After," argues counsel, has an unmistakably temporal significance and, unlike "with," which appears in the Gustafson provision, indicates that the notice must be given at a time following, i.e. "after," the September 25 date mentioned in the immediately proceeding phrase. See Appellant's Brief at 9-10.

We find appellant's interpretation unduly strained and contrary to the obvious intent of both parties as evidenced in the lease itself. Initially the lease was entered into with the understanding that it would be for seven years with a firm or non-cancelable term of five years. Finding 1. The lease expiration date was subsequently extended from September 25, 1999, to September 25, 2004, with a firm or non-cancelable term running from September 25, 1999, to September 25, 2001. Appellant himself states that the lease renewal was "predicated on the notion that the first two years of the renewal lease were 'non-cancelable'." Appellant's Brief at 2-3. This is likewise the understanding of respondent. Respondent's Brief at 4. SLA number nine evinces the agreement of the parties on this point. Finding 3.

The interpretation of the notice requirement of the termination provision which appellant now urges us to accept runs contrary to the intent of the parties and the contract amendment reflecting it by extending the agreed-upon firm term of the renewed lease from two years or twenty-four months to a minimum of twenty-seven months. It is well settled that:

> an interpretation which gives a reasonable meaning to all parts of an instrument will be preferred to one which leaves a portion of it useless, inexplicable, inoperative, void, insignificant, meaningless or superfluous.

Hol-Gar Manufacturing Corp., 351 F.2d at 979; see also Granite Construction Co. v. United States, 962 F.2d 998, 1003 (Fed. Cir. 1992); United States v. Johnson Controls, Inc., 713 F. 2d 1541, 1555 (Fed. Cir. 1983). Accordingly, even if we should determine that the notice provision of the termination provision is ambiguous (which of course is not our conclusion here), appellant's interpretation would still have to be rejected as unreasonable and, therefore, unacceptable, because it renders useless or void the obvious contractual intent of the parties as reflected in SLA number nine.

We remain convinced, therefore, that the use of the preposition "after," as opposed to "with," in describing the notice requirement for lease termination in this case is of no special significance. Either preposition conveys the notion with equal clarity that such notice must precede any actual termination by the specified number of days. Only this interpretation does justice to the intent of the parties that the firm term of the renewed lease be two years or twenty-four months – nothing more and nothing less.

Decision

The contracting officer's interpretation of the termination provision, as challenged in GSBCA 15724, is affirmed. Mr. Prete's appeal of that decision is **DENIED**. Mr. Prete's appeal, under GSBCA 15884, of the contracting officer's denial of a claim for additional rent based upon that interpretation is likewise **DENIED**.

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EDWIN B. NEILL
Board Judge

We concur:

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STEPHEN M. DANIELS
Board Judge

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ANTHONY S. BORWICK
Board Judge