

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 2212

SOUTHLAND INDUSTRIAL PARK

VERSUS

MATHESON TRI-GAS, INC.

Judgment Rendered: September 19, 2007

On Appeal from the Twenty-Third Judicial District Court
In and For the Parish of Ascension
State of Louisiana
Docket No.81,647

Honorable Thomas J. Kliebert, Jr., Judge Presiding

Rick Alesei
Christian T. Avery
Gonzales, LA

Counsel for Plaintiff/Appellee
Southland Industrial Park

Joseph G. Glass
Metairie, LA

Counsel for Defendant/Appellant
Matheson Tri-Gas, Inc.

BEFORE: GAIDRY, McDONALD, AND McCLENDON, JJ.

McCLENDON, J.

Defendant, Matheson Tri-Gas, Inc. (Matheson), appeals the judgment of the trial court in favor of the plaintiff, Southland Industrial Park, Inc. (Southland), awarding damages for cleanup and repair following termination of a lease. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

In February of 1977, Matheson began leasing from Southland 3,600 square feet in warehouse and office space in Gonzales, Louisiana. Since the initial lease agreement in 1977, subsequent leases were entered into on February 1, 1982, February 1, 1987 and February 1, 1996.¹ The last lease agreement in 1996 was for a term of two years, after which Matheson renewed the lease on a month-to-month basis.² By letter dated June 27, 2005, Matheson advised Southland of its termination of the lease, effective July 31, 2005. Matheson was the original tenant in the building and continuously occupied the premises from 1977 until July 31, 2005, when it vacated the building.

The current dispute between the parties arises out of the condition in which the premises were left upon termination of the lease. Unable to reach an agreement as to Matheson's obligations upon its vacancy of the leased property, Southland filed a petition for damages on September 27, 2005, asserting that over the course of the lease, Matheson made numerous alterations and modifications to the premises to accommodate its business operations, but that Matheson failed to restore the premises to their original

¹ The leases were all entered into by Matheson Gas Products, Inc. Matheson Gas Products, Inc. merged into Tri-Gas, Inc. and is currently known as Matheson Tri-Gas, Inc.

² The 1982 lease was for a five-year term, whereas the 1987 and 1996 lease agreements were for two-year terms. Each of the leases also contained a five-year option to renew.

condition as required under the terms of the lease, which diminished the value of the building and required extensive repairs.

Following a bench trial, judgment was signed on June 21, 2006, in favor of Southland and against Matheson, awarding damages in the amount of \$21,065.00. Matheson filed a suspensive appeal, asserting that the trial court erred in the following particulars:

1. By concluding that despite both parties' testimonies that the changes, improvements and alterations to the leased premises occurred before 1983, Southland's claims have not prescribed pursuant to the very terms of the contracts and as directed by Louisiana law.
2. By concluding that the evidence established that the majority of the damage to the premises was caused in 2005, or that such damage was caused by Matheson, thereby supporting the assessment of damages against Matheson.
3. By concluding that Southland established by competent evidence that any change, improvement or alteration diminished the value of the leased premises, thereby supporting the assessment of damages against Matheson.
4. By concluding that Southland established by competent evidence that it suffered a loss of rental income, thereby supporting the assessment of damages against Matheson.

APPLICABLE LAW

Interpretation of a contract is the determination of the common intent of the parties. LSA-C.C. art. 2045. When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. LSA-C.C. Art. 2046. To determine the meaning of words used in a contract, a court should give them their generally prevailing meaning. LSA-C.C. art. 2047. A provision susceptible of different meanings must be interpreted with a meaning that renders it effective and not with one that renders it ineffective. LSA-C.C. art. 2049. Furthermore, every provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by

the contract as a whole. LSA-C.C. art. 2050. A doubtful provision must be interpreted in light of the nature of the contract, equity, usages, the conduct of the parties before and after the formation of the contract, and of other contracts of a like nature between the same parties. LSA-C.C. art. 2053. When the parties made no provision for a particular situation, it must be assumed that they intended to bind themselves not only to the express provisions of the contract, but also to whatever the law, equity, or usage regards as implied in a contract of that kind or necessary for the contract to achieve its purpose. LSA-C.C. art. 2054.

A court of appeal may not set aside a trial court's finding of fact in the absence of manifest error or unless it is clearly wrong. Under the manifest error standard, in order to reverse a trial court's determination of a fact, an appellate court must review the record in its entirety and (1) find that a reasonable factual basis does not exist for the finding, and (2) further determine that the record establishes that the fact finder is clearly wrong or manifestly erroneous. **Stobart v. State through Dept. of Transp. and Dev.**, 617 So.2d 880, 882 (La. 1993).

DISCUSSION

In this matter, the 1982, 1987 and 1996 lease agreements each contained the following pertinent provision:

7. At the time of the delivery of the premises as described above, Lessee agrees to leave the premises clean and in good condition, reasonable wear and tear expected.

The phrase "as described above" referred to the "termination of the tenancy" as described in the preceding paragraph. Also relevant to the issues presented herein was the second paragraph of Section 13 in each of the leases, which provided:

Lessee may make those leasehold improvements which it shall require for the conduct of its business, however, such improvements shall not substantially alter the exterior appearance of the leased premises, structurally damage the leased premises, nor diminish the value of the leased premises. Upon termination of this lease, Lessee may remove any of its fixtures or leasehold improvements, provided that, in so doing, the Lessee makes the necessary repairs and alterations to return the leased premises to their original condition.

Matheson initially argues that based on the above lease language, any of Southland's claims that pre-dated the 1996 lease have prescribed. Specifically, Matheson asserts that when the property was vacated, it was returned to Southland in its February 1, 1996 condition. In other words, Matheson contends that according to the terms of the 1996 lease, it had no obligation to remove any improvements, as it is undisputed that the alterations were made in 1982 and 1983.

Nicky Prejean, an owner of Southland, testified at trial that Matheson originally leased the building in 1977 as a terminal facility. The building was constructed as a typical metal commercial building, sixty feet by one hundred feet, with a fourteen-foot eave height, with two offices and two restrooms. Also part of the premises was a standard twenty-foot loading dock with ample parking. Prejean testified that after entering into the lease, Matheson decided to turn the premises into a gas-mixing facility and asked Southland for modifications to the premises of approximately \$250,000 to \$300,000. Prejean stated that Southland would not pay for the modifications, but that it allowed Matheson to make its own improvements. Prejean testified that Matheson converted one of the bathrooms into a laboratory and put in other small rooms for painting, mixing and cylinder storage. Matheson partitioned the rooms by cinder block walls filled with sand to protect the area in the event of explosions. Part of the back wall to the warehouse was also removed and replaced with cinder blocks. Prejean

further testified that the electrical system was altered. Heavy duty explosion-proof electrical conduit, wires and switch panels were added to accommodate Matheson's business. Additionally, parking space was removed to allow for the expansion of the loading dock to two and one-half times its original size. Lastly, some fencing and exterior facilities were added.

Prejean testified that the improvements had no value to him as an owner of the building. Although Matheson removed a few of the improvements when it vacated the premises, very little was done to restore the building to its 1977 condition. Specifically, some of the walls were removed but large amounts of sand remained. The heavy duty explosion-proof electrical system was not necessary for an ordinary commercial rental building, parts of which were on walls that had to be removed. The bathroom that had been removed needed to be replaced. Matheson had cut a hole in the roof for venting in the spray painting area, which also had to be repaired. Cylinders, carts, fixtures, and a large amount of trash and debris remained.

Nevertheless, Matheson maintains that because the alterations were made prior to the 1996 lease, it thereby returned the premises in the same condition as at the commencement of the 1996 lease. Matheson's argument, however, ignores its continuous possession of the premises, as well as the intent of the parties and the common usage and ordinary meaning of the language used in the lease contracts. Our review of the principles of contract interpretation and the language of the documents at issue indicate that the words of the lease can only have meaning if the termination of the lease refers to the termination of the tenancy, and not only the most recent lease. Any other interpretation would lead to an illogical consequence.

While it is undisputed that the alterations were completed by 1983, the premises were not delivered back to Southland until July 31, 2005. Thus, there was no “termination of the tenancy” and no delivery of the premises to Southland following the alterations until 2005, there being no break in the tenancy of the lease and with Matheson exercising continuous and uninterrupted possession. Therefore, the failure to return the premises to its original condition could not and did not occur until Matheson vacated the premises in 2005, and the trial court so found. The trial court further determined that the evidence was clear and uncontradicted that Matheson failed to leave the premises clean and in good condition, reasonable wear and tear expected, and concluded that there was a violation of the terms of the lease. After a thorough review of the record, we find no manifest error in these factual findings of the trial court.

In its remaining assignments of error, Matheson asserts that the evidence does not support the assessment of damages against Matheson, including damages for the loss of rental income. We disagree. Prejean’s testimony was clear and uncontradicted that the modifications diminished the value of the property and that the repairs were necessary to restore the premises to normal commercial rental property. Further, Southland submitted a quote for repair damages in the amount of \$27,045. The trial court did not award to Southland the \$9,800 it requested to replace the additional parking area that was removed for the dock, finding insufficient evidence that this alteration substantially altered the exterior appearances of the premises, structurally damaged the leased premises, or diminished the value of the leased premises. Nor did the trial court award damages to reinstall bumpers on the dock and to repair gates, finding those items to be part of the wear and tear of the premises after more than twenty-five years of

use. The trial court did make an additional award of \$1,425 for the clean-up and hauling away of trash. Thus, the trial court awarded to Southland \$18,065 in repair and clean-up damages, together with \$3,000 in damages for three months of lost rental income while the repairs were being completed. After a thorough review of the record, we find that there is a reasonable factual basis for the trial court's damage award, and that the award is not clearly wrong when viewed in light of the record. Accordingly, we find no manifest error in the trial court's award of damages.

CONCLUSION

For the above reasons, the judgment of the trial court is affirmed. All costs of this appeal are assessed to Matheson Tri-Gas, Inc.

AFFIRMED.