[Cite as *Gibson Real Estate Mgt., Ltd. v. Ohio Dept. of Admin. Servs.*, 2006-Ohio-620.]

IN THE COURT OF CLAIMS OF OHIO
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GIBSON REAL ESTATE MANAGEMENT, LTD.	:	
Plaintiff	:	CASE NO. 2005-07658
	:	Judge J. Craig Wright
v.		
	:	DECISION
OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES, et al.	:	
	:	Defendants

: : : : : : : : : : : : : : : : :

{¶ 1} On September 23, 2005, plaintiff filed a motion for summary judgment pursuant to Civ.R. 56. On October 18, 2005, defendants timely filed both their memorandum contra to plaintiffs' motion and cross-motion for summary judgment. On November 14, 2005, plaintiff timely filed its memorandum in opposition to defendants' cross-motion. Upon defendants' motion for leave to file a reply to plaintiff's motion in opposition and for good cause shown, defendants' motion is GRANTED, instanter. The case is now before the court for a non-oral hearing on the motions. Civ.R. 56(C) and L.C.C.R. 4.

{¶ 2} Civ.R. 56(C) states, in part, as follows:

{¶ 3} "*** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No

evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. ***" See, also, *Gilbert v. Summit County*, 104 Ohio St.3d 660; 2004-Ohio-7108; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317; *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150.

{¶ 4} It is not disputed that plaintiff was awarded a contract by the Ohio Bureau of Workers' Compensation to construct a three-story building (the Gibson Building) in Warren, Ohio, and that on November 1, 1996, the parties entered into a lease agreement (the lease) whereby defendants agreed to lease the second, third, and portions of the first floor for a two-year term beginning July 1, 1997, and ending June 30, 1999. The lease was renewable, at defendants' option, for up to five successive two-year terms. Defendants twice exercised the option. Prior to exercising an option for a third time, the parties negotiated a reduction in rent, which memorialized in a written addendum to the lease which states in relevant part:

{¶ 5} "*** Lessee shall have the option to renew this lease for up to one (1) successive and continuous term of (2) years each (the 'Renewal Terms') upon the same terms and conditions set forth herein except that the Base Rent during said Renewal Terms shall be as follows: Renewal Term 7/01/03 to 6/30/05, Annual Rent $517,968.00, Quarterly Rent $129,492.00, Monthly Rent $43,164.00,

Square Foot Rent $13.46. The remaining renewals set forth in the Lease are hereby rescinded. *** *All other terms and provisions of said lease shall remain unchanged.*" (Emphasis added.)

{¶ 6} On December 30, 2004, defendants notified plaintiff, in writing, of their intention to terminate the lease effective April 30, 2005.[1] The termination clause, found in Article XVI of the lease, states that:

{¶ 7} "During any renewal term of this lease, except the first two renewal terms, 7/01/99 through 6/30/01 and 7/01/01 through 6/30/03, this lease may be terminated by the Lessee by written notice of cancellation given to the Lessor at least one hundred and twenty days (120) prior to the effective date of such cancellation."

{¶ 8} Defendants admit that they owe plaintiff the sum of $43,164 for April 2005 rent. Accordingly, judgment shall be rendered in favor of plaintiff in that amount. In addition, the affidavit of John C. Gibson and exhibits attached thereto demonstrate that payment was made by defendants for April 2005 utilities. Thus, the motions for summary judgment shall take into consideration only the matter of the rent and utilities from May 1, 2005, through June 30, 2005.

{¶ 9} Plaintiff argues that under the lease and addendum defendants were obligated to pay rent and utilities up to and including June 30, 2005. According to plaintiff, it was the understanding of the parties in negotiating the addendum that the reduction in rent was conditioned upon defendants' promise to

[1]The affidavit of Sheneise Landrum and the attached exhibits establish that the notice of termination was sent to plaintiff via certified mail on December 30, 2004.

occupy the leased premises for the entire two-year term. However, the written addendum does not evidence any such understanding. The addendum merely reduces the rental obligation for July 1, 2003, thru June 30, 2005, and rescinds the two remaining renewals. The addendum does not evidence any intention to alter or amend provisions of the lease pertaining to termination. Indeed, the addendum specifically states that "[a]ll other terms and provisions of said lease shall remain unchanged."

{¶ 10} In *Shifrin v. Forest City Ents., Inc.*, 64 Ohio St.3d 635, 1992-Ohio-28 the court stated:

{¶ 11} "Generally, courts presume that the intent of the parties to a contract resides in the language they chose to employ in the agreement. Only when the language of a contract is unclear or ambiguous, or when the circumstances surrounding the agreement invest the language of the contract with a special meaning will extrinsic evidence be considered in an effort to give effect to the parties' intentions. When the terms in a contract are unambiguous, courts will not in effect create a new contract by finding an intent not expressed in the clear language employed by the parties." (Citations omitted.)

{¶ 12} In this case, the language of the addendum is clear and unambiguous, as a matter of law. The addendum simply does not obligate defendants to occupy the premises through June 30, 2005, nor does the addendum alter or amend the provisions of the lease pertaining to termination. Extrinsic evidence is therefore not admissible to contradict the plain language of the agreement. Because there is no dispute in this case that defendants gave plaintiff adequate notice of termination under the relevant

provisions of the lease, the only reasonable conclusion to draw from the evidence is that defendants did not breach the lease.

{¶ 13} Plaintiff argues in the alternative that defendants should be estopped from denying their obligation to pay rent through June 30, 2005, because of representations regarding occupancy allegedly made by defendants prior to the construction of the Gibson Building. However, promissory estoppel is not available as a remedy where the legal relationship between the parties is governed by a valid and enforceable contract. *Warren v. Trotwood-Madison City Sch. Dist. Bd. of Educ.* (Mar. 19, 1999), Montgomery App. No. 17457. ("Promissory estoppel is inconsistent with the existence of an express written contract.") To reiterate, the relationship between the parties is contractual and the terms of the contract control any dispute. Thus, defendants are entitled to judgment on the estoppel claim, as a matter of law.

{¶ 14} For the foregoing reasons, plaintiff's motion for summary judgment shall be granted, in part, as to the stipulated sum of $43,164 for the April 2005 rent. Plaintiff's motion for summary judgment shall be denied in all other respects. Defendants' cross-motion for summary judgment shall be granted, in part, as to plaintiff's remaining claims.

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GIBSON REAL ESTATE MANAGEMENT, LTD.	:	
Plaintiff	:	CASE NO. 2005-07658
	:	Judge J. Craig Wright
v.	:	JUDGMENT ENTRY

OHIO DEPARTMENT OF
ADMINISTRATIVE SERVICES, :
et al.
: Defendants

: : : : : : : : : : : : : : : : :

A non-oral hearing was conducted in this case upon plaintiff's motion for summary judgment and defendants' cross-motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, plaintiff's motion for summary judgment is GRANTED, in part, and defendants' cross-motion for summary judgment is GRANTED, in part. Judgment is rendered in favor of plaintiff in the amount of $43,164. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

_____
J. CRAIG WRIGHT
Judge

Entry cc:

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