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# Civil Code and Related Subjects: Lease

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show the kinship and which are found in the chain of title—for example, succession proceedings? Such situations are apt to be more frequent. The footnote partially quoted may raise some conjecture as to whether or not such record entries place third parties on notice of the potential claims of heirs.

#### LEASE

*Alvin B. Rubin\**

#### *Lessor's Privilege and Right of Pledge*

In the case of *Burgin v. Jumonville Pipe & Machinery Company, Incorporated*,<sup>1</sup> the plaintiff was a sublessor of a tract to the defendant. The oral lease under which plaintiff held had expired on December 30, 1944, but he had remained in possession under assurances that his lease would be renewed. The lease was in fact renewed in writing for the calendar year 1945, on March 23, 1945. Meanwhile defendant had been informed that his sublease would terminate at the end of 1945, but defendant also remained in possession. On March 27, 1945, plaintiff seized the defendant's effects on the land in question asserting a lessor's privilege and right of pledge.

The defendant contended that the plaintiff had no privilege because the property in question was not "leased" by the plaintiff from plaintiff's lessor, nor, in turn, by the plaintiff to defendant at any time after January 1, 1945, and the fifteen day period prescribed for exercise of the lessor's privilege after the property is removed from the leased premises had elapsed.<sup>2</sup>

The court mentioned Civil Code Article 2688 dealing with tacit reconduction of a lease. But "regardless of whether plaintiff's lease was reconducted, . . . a written lease was executed by the landowner in favor of Burgin [the plaintiff] for the calendar year 1945, and therefore, . . . Burgin had the full right to possession of the premises . . . for the entire year 1945, including the months of January, February, and March, and defendant, insofar as the year 1945 is concerned, is without any right whatsoever to contest the occupancy or possession of the premises by Burgin, this being a matter solely and entirely between the landowner . . . and Burgin."<sup>3</sup>

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1. 211 La. 148, 29 So. (2d) 595 (1947).

2. Art. 2709, La. Civil Code of 1870.

3. 211 La. 148, 157, 29 So. (2d) 595, 598.

Therefore the plaintiff's right to a privilege was recognized.

### *Damage to Leased Premises*

Civil Code Article 2697 provides that if the thing leased be totally destroyed by an unforeseen event, the lease is at an end. "If it be only destroyed in part, the lessee may either demand a diminution of the price, or a revocation of the lease." In *Treigle Sash Factory v. Saladino*,<sup>4</sup> the court held that where property is only partially destroyed, only the lessee may terminate the lease (or ask reduction of the price), and, if he does not wish to exercise his option to do so, the lessor may not insist upon termination.<sup>5</sup> So long as many current leases executed at relatively low rentals remain in force, this will block an avenue which might otherwise be open to lessors who wish an opportunity to escape from existing leases in order to take advantage of present high rental rates.

In the *Treigle* case, the property leased was damaged by a fire which occurred during a lease which had about two months to run. However a new lease for an additional three year period had already been executed. The lessee lost his life in the fire, and the lessor demanded acceleration of the rental for the entire three year period under a clause in the new lease providing for such acceleration, at lessor's option, if the lessee died. The court stated that, since the new lease had not yet gone into operation when the suit was filed, this was in effect a request for a declaratory judgment. This the court refused to grant.

### *Interpretation*

Plaintiff, a landowner, and defendant, a grocery store operator, conducted negotiations for a lease. A proposed lease was prepared, calling for a rental based on a percentage of defendant's sales, with a minimum monthly rental of \$350. Thereafter the parties agreed that defendant would also lease a service station located on a portion of the same premises. A new lease was drawn stating that the monthly rental was to be a percentage of defendant's sales, subject to a minimum of \$585 monthly. The percentage, however, was to

4. 31 So. (2d) 172 (La. 1947).

5. The court intimated that, in considering the question of whether the property is wholly or only partially destroyed, the question of whether repairs could or could not be made without disturbing the lessee's occupancy, is not important in application of the first sentence of Article 2697, that distinction is relevant primarily in determining whether *the lessee* is entitled to have his lease terminated or not, in the exercise of his option under the *second* sentence of Article 2697.

be computed on gross sales excluding the sales of petroleum products and other products sold from the service station.

In *Weber v. H. G. Hill Stores, Incorporated*,<sup>6</sup> the plaintiff contended that under this lease he should be paid a minimum of \$585 monthly, but that the \$235 additional minimum paid for the service station should be excluded in determining the excess rental to which he was entitled under the percentage clause. On exception of no cause of action, the court stated that the lease was "clear and unambiguous, and we do not think it is susceptible of the construction and interpretation placed thereon by plaintiff."<sup>7</sup> However, the plaintiff had alleged in the alternative that, if this was not the proper interpretation of the lease, there was mutual error in preparing it and had asked for reformation of the document. The court found a cause of action stated in this regard and remanded the case for trial of the issue of mutual error.

### *General*

As the court noted, the issues presented in *Pittman Contracting Company, Incorporated v. City Home Builders, Incorporated*<sup>8</sup> boiled down to a question of fact: was a crane leased by the plaintiff to the defendant in good working order when delivered? The court sustained a finding by the trial court that the plaintiff's evidence "clearly preponderated over that of the defendant" and awarded the rental prayed for. The evidence supporting certain items of damages claimed by plaintiff was found to be "too vague and uncertain to sustain a judgment in plaintiff's favor," and the trial court was affirmed in this regard as well.

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6. 210 La. 977, 29 So. (2d) 33 (1946).

7. 210 La. 977, 990, 29 So. (2d) 33, 37 (1946).

8. 211 La. 549, 30 So. (2d) 426 (1947).