Michigan Law Review

Volume 48 | Issue 5

1950

LANDLORD AND TENANT-INTERPRETATION OF CLAUSE IN A LEASE PROVIDING FOR TERMINATION IN EVENT OF DESTRUCTION OF PREMISES

Alan C. Boyd
University of Michigan Law School

LANDLORD AND TENANT—INTERPRETATION OF CLAUSE IN A LEASE PROVIDING FOR TERMINATION IN EVENT OF DESTRUCTION OF PREMISES—The plaintiff leased property from the defendant for a term of years. The lease provided that the lessor should repair damage from fire and that "the tenancy shall not be terminated unless such repairs shall require more than ninety days." A fire occurred which damaged the property so badly that it could not be repaired within ninety days. The lessor took the position that the tenancy had automatically terminated with

the occurrence of the fire. The lessee filed a bill for a declaratory judgment, claiming that under the terms of the lease he had the option either to terminate or to insist on the reconstruction of the building and the continuance of the lease. On appeal from judgment for the defendant dismissing the bill, *held*, affirmed. The language used was construed as effecting automatic termination. The provision, though framed in the negative, expresses an affirmative intention that, should the building be damaged by fire so that it cannot be rebuilt or repaired within ninety days, the lease shall automatically come to an end. *Molofsky v. Sigal*, (Va. 1949) 54 S.E. (2d) 865.

There is a real question as to whether the language of the provision actually is that of automatic termination. The words, "the tenancy shall not be terminated unless..." need not mean, "the tenancy shall terminate if..." but may merely indicate that, if the event occurs, it is possible to end the lease by affirmative action. Under such a construction the option to terminate should be in the lessee if the provision is held to have been included for his benefit. The lessee's contention that the provision was for his benefit is persuasive in view of the common law rule that, even when the building on the leased property is totally destroyed without the fault of the lessee, the lessee is liable for the full amount of the rent until the term ends.[1] Very extreme and harsh results were often reached, and it is a reasonable conclusion that the parties intended to avoid such results by giving the lessee an option to terminate the lease in the event specified. The situation may be analogized to cases in which a lease provides for termination on lessee's breach of covenant. However clearly the language is that of automatic termination, most courts interpret it as giving an option to terminate to the lessor, because the provision is included for his benefit and the lessee should not be allowed to escape the liabilities of the lease by his own breach of covenant.[2] Another analogy may be found in cases where a negotiable instrument provides for automatic acceleration of maturity on the maker's default. Again, a majority of the courts hold that such a provision merely gives an option to the holder,[3] because it was included for his benefit as a protection to his investment and the obligor should not be allowed to take advantage of his own wrong by causing an automatic

[1] "A lease for years is a sale of the demised premises for the term.... The rent is, in effect, the price or purchase money to be paid for the ownership of the premises during the term, and their destruction or any depreciation of their value, happening without fault of the lessor, is no abatement of his price, but entirely the loss of the purchaser." Fowler v. Bott, 6 Mass. 63 at 67 (1809); White v. Molyneux, 2 Ga. 124 (1847); 2 UNDERHILL, LANDLORD AND TENANT §788 (1909).

[2] 32 AM. JUR., Landlord and Tenant §§825, 849 (1941); 26 Am. St. Rep. 911 (1890); Lowenthal v. Newlon, 138 Minn. 248, 164 N.W. 905 (1917); Cochran v. Lakota Land & Water Co., 171 Wash. 155, 17 P. (2d) 861 (1933); Ray v. Western Pennsylvania Natural Gas Co., 138 Pa. 576, 20 A. 1065 (1891).

[3] Chafee, "Acceleration Provisions in Time Paper," 32 HARV. L. REV. 747 at 767 (1919); 8 AM. JUR., Bills and Notes §286 (1937); 159 A.L.R. 1077 at 1087 (1945); Keene Five Cent Sav. Bank v. Reid, (C.C.A. 8th, 1903) 123 F. 221; Core v. Smith, 23 Okla. 909, 102 P. 114 (1909); Sullivan v. Shannon, 25 Cal. App. (2d) 422, 77 P. (2d) 498 (1938).

change of maturity of an instrument which was intended as an investment over a given period.[4] There may be less basis in the principal case for holding that the parties intended the provision to benefit the lessee. Since the event specified as giving rise to termination was not under the control of the lessor, the lessee needed no protection against an act of the lessor. The court admits, however, that the provision was included for the lessee's benefit, at least to the extent of relieving him of the obligation to pay rent in case the premises were damaged. The primary purpose of the clause as a whole[5] was to protect the lessee from the normal consequences of a fire loss. This should be sufficient reason for construing the provision as giving the lessee an option to terminate, especially since the language did not clearly provide for automatic termination.

Alan C. Boyd

[4] Courts taking the contrary view are in the minority. They proceed, however, on the same basis as those of the majority but hold that the provision exists for the benefit of the obligor as well as the obligee; therefore, no option should be given the latter. 159 A.L.R. 1077 at 1079 (1945); Green v. Frick, 25 S.D. 342, 126 N.W. 579 (1910); Hodge v. Wallace, 129 Wis. 84, 108 N.W. 212 (1906); San Antonio Real Estate Bldg. & Loan Assn. v. Stewart, 94 Tex. 441, 61 S.W. 386 (1901).

[5] "'If during the term the demised premises shall be damaged by fire or the elements they shall be repaired by the lessor with all reasonable diligence; and in case they shall be so badly injured that they cannot be repaired with such diligence so as to be fit for occupancy within 30 days from such injury the rent shall cease from the date of the injury until they shall be so repaired *and the tenancy shall not be terminated unless such repairs shall require more than 90 days* provided always, that there shall be no cessation of rent if the damages shall have been the result of the negligence, default, or willful act of the tenant or his agent or employees.'" (Italics the court's). Principal case at 865.