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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

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Paradigm Investment Group, LLC, and HR IV, LLC

v.

Dewey H. Brazelton

**Appeal from Madison Circuit Court
(CV-20-900334)**

SELLERS, Justice.

Paradigm Investment Group, LLC, and HR IV, LLC ("the tenants"), entered into a written lease agreement, which was ultimately assigned to

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Dewey H. Brazelton ("the landlord"). The lease obligated the tenants to make rental payments to the landlord from the operation of a fast-food franchise on the leased premises. When the tenants failed to remit rental payments, the landlord sued the tenants in the Madison Circuit Court, asserting claims of breach of contract and unjust enrichment. The trial court entered a summary judgment in favor of the landlord, finding that the tenants had breached the lease agreement and were obligated to pay the landlord \$113,869.44. The tenants appealed. We affirm.

Facts

The lease agreement reflects a lease period beginning on September 29, 2006, and ending on October 30, 2025; the lease was assigned to the landlord in December 2013. By letter dated October 24, 2019, the tenants notified the landlord that, due to "severe financial strain," they had abandoned and surrendered the leased premises effective October 14, 2019, and that they would be discontinuing "all utility services, insurance, and the like" effective October 31, 2019. The landlord responded by letter on November 12, 2019, notifying the tenants that they were in default under the terms of the lease for their "failure to pay rent and abandoning

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the premises." The landlord further informed the tenants that, pursuant to § 12.02(d) of the lease agreement, he had terminated the tenants' right of possession to the premises, without terminating the lease, and that the lease continued until October 2025. The landlord further advised the tenants that, as a consequence of the default, they remained liable for unpaid rent, as well as damages, including attorney's fees and costs. Finally, the landlord demanded payment for all rent due under the lease. The landlord at some point thereafter listed the property for rent and began showing it to potential tenants.

After receiving the landlord's letter, the tenants took no further action with regard to their obligations under the lease; they made no attempt to respond to the landlord or to otherwise cure their default. Accordingly, in March 2020, the landlord filed a complaint against the tenants seeking damages based on claims of breach of contract and unjust enrichment. The landlord thereafter moved for a summary judgment pursuant to Rule 56, Ala. R. Civ. P., asserting that he had provided the tenants with notice of their failure to pay rent, that he had demanded payment of all rent, and that the tenants had failed to comply with his

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demand. In support of his motion for a summary judgment, the landlord submitted his affidavit demonstrating that, as of the date of his motion, the tenants owed \$113,869.44, representing unpaid rent from November 2019 through October 2020 (the landlord had leased the property to a new tenant on September 5, 2020), late charges, property taxes for the years 2018 and 2019, insurance costs, maintenance costs, utility costs, and attorney's fees and costs. The landlord also submitted the affidavit of his attorney verifying the fees and costs associated with his representation of the landlord. The tenants filed a cross-motion for a summary judgment, seeking a determination that the case was governed by common-law principles of abandonment and not the terms of the lease. Alternatively, the tenants sought a determination that the landlord was not entitled to damages under the lease because, they argued, he had failed to afford them an opportunity to cure their default within five days after written notice thereof. Following a hearing, the trial court entered an order, granting the landlord's motion for a summary judgment as to liability and denying the tenants' motion for a summary judgment. The trial court thereafter entered a summary judgment in favor of the landlord on the

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issue of damages, resulting in a final judgment against the tenants in the amount of \$113,869.44. This appeal followed.

Standard of Review

This Court reviews a summary judgment de novo, and we use the same standard used by the trial court to determine whether the evidence presented to the trial court presents a genuine issue of material fact. Rule 56(c), Ala. R. Civ. P.; Nettles v. Pettway, 306 So. 3d 873 (Ala. 2020). The movant for a summary judgment has the initial burden of producing evidence indicating that there is no genuine issue of material fact. Once the movant produces evidence establishing a right to a summary judgment, the burden shifts to the nonmovant to present substantial evidence creating a genuine issue of material fact. We consider all the evidence in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts in the nonmovant's favor. Id.

Discussion

The tenants argue that the trial court erred in entering a summary judgment in favor of the landlord because, they say, they abandoned the

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leased premises; the lease agreement does not address abandonment; and, therefore, as a matter of law, common-law principles of abandonment, rather than the terms of lease, govern the landlord's available remedies. The tenants assert that, had the trial court correctly applied common-law principles of abandonment, it would not have awarded contract damages under the lease. See Ex parte Kaschak, 681 So. 2d 197, 200 (Ala. 1996) (addressing the remedies for common-law abandonment). The tenants, however, fail to appreciate that this is a mere landlord-tenant case, governed by a written contract; thus, they misconstrue the nature of this case and the basis for the trial court's judgment. Despite the fact that the tenants abandoned the premises, that abandonment did not relieve them of their obligation to pay rent. The landlord specifically notified the tenants that they were in default under the terms of the lease based on their "failure to pay rent and abandoning the premises," and the landlord sued the tenants, alleging breach of the lease agreement. Accordingly, the landlord's remedies are governed by the lease. It is well settled that lease agreements are contracts, and the provisions of the lease are conclusive

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and govern the rights of the parties. Horne v. TGM Assocs., L.P., 56 So. 3d 615 (Ala. 2010).

Section 2.01 of the lease agreement provides that the tenants agree to pay the landlord monthly rent "in advance[,] on or before the first day of each calendar month." Section 12.01(a) provides that an "event of default" occurs when the tenants fail to pay, when due, any installment of rent, additional rent,¹ or any other obligation under the lease involving the payment of money to the landlord and such failure to pay continues "unremedied for a period of five (5) days after written notice of such failure is received" by the tenants. Section 12.02 provides that, upon the occurrence of any event of default, the landlord shall have the option to pursue various remedies under the lease. Relevant here is § 12.02(d), which provides that, in the event of default:

"Landlord may terminate Tenant's right of possession of the Premises without terminating the Lease by written notice to Tenant, in which event Tenant shall immediately surrender the Premises to Landlord. ... In addition, Tenant agrees to

¹Section 2.05 of the lease agreement defines "additional rent" to mean "all amounts payable by Tenant to Landlord under the terms of this lease other than Rent."

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pay to Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of any termination of possession effected pursuant to this subsection (d), said loss and damage to be determined as follows:

"Until Landlord is able to relet the Premises under terms satisfactory to Landlord, in its reasonable discretion, Tenant shall pay to Landlord on or before the first day of each calendar month, the Rent, Additional Rent and other charges provided in this Lease. ... If it is necessary for the Landlord to bring suit in order to collect any deficiency, Landlord shall have the right to allow such deficiencies to accumulate and to bring an action on several or all of the accrued deficiencies at one time"

(Emphasis added.)

It is undisputed that the tenants abandoned the premises effective October 14, 2019, and that they defaulted under the terms of the lease by failing to pay rent that was due on or before November 1, 2019. It is further undisputed that, by letter dated November 12, 2019, the landlord notified the tenants that they were in default under the terms of the lease based on their failure to pay rent. The landlord further informed the tenants that, pursuant to § 12.02(d) of the lease agreement, he had terminated the tenants' right of possession to the premises without

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terminating the lease; that the lease continued until October 2025; and that the tenants remained liable for all rent due under the lease, as well as damages, including attorney's fees and costs. Because the landlord terminated the tenants' right of possession to the premises without terminating the lease, the tenants had a continuing obligation to pay rent, additional rent, and other obligations under the lease until the landlord was able to "relet the Premises under terms satisfactory to Landlord in its reasonable discretion." It is undisputed that, after receiving the landlord's letter, the tenants took no further action to comply with their obligations under the lease. Accordingly, in March 2020, the landlord sued the tenants to recover damages based on the tenants' breach of the lease agreement. The trial court entered a summary judgment in favor of the landlord, finding that the tenants had breached the lease agreement and awarding the landlord damages in the amount of \$113,869.44. The tenants make no argument that the amount of damages awarded was computed improperly or was otherwise incorrect as calculated under the lease. Rather, they argue that, even if the terms of the lease govern in this case, the landlord is not entitled to damages because, they say, the

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landlord failed to comply with § 12.01(a) of the lease agreement concerning default. As indicated, § 12.01(a) provides that an "event of default" occurs when the tenants fail to pay rent, additional rent, or any other obligation under the lease involving the payment of money to the landlord and "such failure shall continue unremedied for a period of five (5) days after written notice of such failure is received" by the tenants. The tenants maintain that there can be no "event of default" under § 12.01(a) unless two events occur -- nonpayment of rent and the expiration of the five-day period in which to cure the default. The tenants point out that the landlord's November 12, 2019, letter notified them not only of their default under the lease, but also that their right to possession of the premises had been terminated. In other words, the tenants claim that the landlord could not have terminated their right to possession of the premises until on or after November 17, 2019. However, the fact that the landlord's letter informed the tenants that their right to possession of the premises had been terminated before expiration of the five-day cure period is of no consequence under the circumstances because the tenants had already legally abandoned their right to possession of the premises

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effective October 14, 2019.² "Abandonment" is defined as "[t]he relinquishing of a right or interest with the intention of never reclaiming it." Black's Law Dictionary 2 (11th ed. 2019). In their letter dated October 24, 2019, the tenants informed the landlord that they "had no choice but to abandon [the premises] effective October 14, 2019[,] and surrender the premises. Enclosed are the keys to the building. [The tenants] will be discontinuing all utility services, insurance, and the like effective October 31, 2019." In other words, that letter expressly demonstrated the tenants' intent to no longer be bound by the terms of the lease agreement; giving them a right to cure would have been superfluous. Accordingly, the trial court did not err in awarding the landlord damages based on the tenants' breach of the lease agreement.

²In any event, § 12.01(a) of the lease agreement requires only that the landlord give the tenants written notice of the default. After receiving written notice of the default, the tenants assumed the responsibility of curing that default within five days. In other words, the tenants' responsibility to cure any default within five days of receiving written notice thereof was controlled by the terms of the lease, and not the contents of the landlord's letter. In fact, the tenants never responded to the landlord's letter and made no attempt to limit their liability under the lease.

Conclusion

We affirm the summary judgment in favor of the landlord. The undisputed evidence indicates that the tenants breached the lease agreement, entitling the landlord to damages as a consequence of that breach. To hold otherwise would support a tenant's right to unilaterally terminate a lease, rendering a contract voidable by such action and depriving a landlord of the benefit of the bargain in leasing property pursuant to a valid and binding contractual agreement.

AFFIRMED.

Parker, C.J., and Bolin, Wise, and Stewart, JJ., concur.