

Office of Dispute Resolution for Acquisition
Federal Aviation Administration
Washington, D.C.

Contract Dispute of)	
)	
Prairie Land Holdings, LLC)	Docket No. 17-ODRA-00810
)	
Pursuant to Lease DTFASW-08-L-00020)	

DECISION ON CROSS MOTIONS FOR SUMMARY JUDGMENT

I. INTRODUCTION

This matter is before the Federal Aviation Administration (“FAA”) Office of Dispute Resolution for Acquisition (“ODRA”) on cross motions for summary judgment (“Motions”). On October 12, 2017, Prairie Land Holdings, LLC (“Prairie Land”) filed the instant Contract Dispute (“Dispute”) with the ODRA. The Dispute pertains to Lease Number DTFASW-08-L-00020, a lease for real property located in Fort Smith, Arkansas (“Lease”). At issue is the FAA Southwest Region’s (“Region”) continued occupation of the premises, pursuant to a holdover clause (“Holdover Clause”), after the term of the Lease. *Contract Dispute* at 3-4.

The Prairie Land and Region Motions assert varying interpretations of the Holdover Clause and the Lease. *Prairie Land’s Motion* at 1 and *Region’s Motion* at 1. Prairie Land asserts that the issue before the ODRA is “whether, under Arkansas law, the [Region] can continue to hold-over and occupy a piece of real property in the State of Arkansas for an unstated or indefinite time-period.” *Prairie Land’s Motion* at 1-2. The Region asserts that the FAA has a “valid continuing lease” with Prairie Land. *Region’s Motion* at 3-4. The Region also asserts that the ODRA lacks jurisdiction over a takings claim under the Fifth Amendment.

For the reasons discussed herein, the ODRA recommends that the Region's Motion be granted, and a summary decision be entered dismissing the Dispute. The ODRA denies Prairie Land's Motion. The ODRA finds that the Region's continued occupation is governed by federal law and the Lease's Holdover Clause and not by Arkansas law. The ODRA does not address the Fifth Amendment argument.

II. FACTUAL BACKGROUND

On July 24, 1997, the Region entered into the Lease with Southern Steel and Wire Company ("Southern") to locate a Low Level Windshear Alert System ("LLWAS") on its property in the City of Fort Smith, Arkansas. *Dispute File ("DF")*, Exhibit 2. The Lease with Southern was renewed on July 14, 2007. *Id.*, Exhibit 3 at 15. The Lease included a holdover provision in Section 11, which provides in relevant part:

If after the expiration of the lease, the Government shall retain possession of the premises, the lease shall continue in force and effect on a month-to-month basis. . . . This period shall continue until the Government shall have signed a new lease with the Lessor, acquired the property in fee or vacated the leased premises.

Id. at 12.

On June 2, 2015, the City of Fort Smith, Arkansas re-zoned the property for commercial use. *Supplemental Dispute File ("SDF")*, Exhibit D. On July 29, 2015, Prairie Land executed a Warranty Deed with Southern for the property. *Id.*, Exhibit F. Subsequently, Southern executed an Assignment of the Lease with Prairie Land, and the Region followed with a Supplemental Lease Agreement. *Id.*, Exhibits E and G; *see also DF*, Exhibit 5 (Modification). The Lease term was to expire on September 30, 2017. *Id.*

On January 18, 2017, prior to the expiration of the Lease, the Region initiated negotiations for its renewal. *SDF*, Exhibit I. However, as reflected in an email dated August 25, 2017, Prairie Land intended to build a shopping center where the LLWAS is

located. *DF*, Exhibit 6. On August 24, 2017, Ghan and Cooper Commercial Properties on behalf of Prairie Land served an “official notice of termination” on the Region with a direction to vacate the premises by September 30, 2017. *DF*, Exhibit 7; *see also* Exhibit 8 (letter from counsel for Prairie Land).

In response, the Real Estate Contracting Officer (“RECO”) sent a letter to counsel for Prairie Land providing that “the FAA has a continuing requirement for the [LLWAS] in its current location.” *DF*, Exhibit 9. The letter goes on to establish the critical need for the LLWAS. The RECO provides:

This LLWAS is part of a network of remote stations located in specific areas in and around the Fort Smith Regional Airport to gather and transmit data to a master station for processing. The conditions transmitted detect if wind shear and/or microbursts are present. This is critical data to avoid hazardous conditions for aircraft flights and for continued effective operation of the National Airspace System.

Id. To that end, the RECO stated that because the Region and Prairie Land were unable to reach agreement on a renewal, “the expiring lease will be placed in holdover” under Section 11 of the Lease. *Id.* The RECO also notified Prairie Land of the Region’s “action to obtain the services of a professional real estate appraiser to estimate the fair market fee value of the land rights required by the Government for the LLWAS facility.” *Id.* The instant Contract Dispute filed with the ODRA followed.

III. DISCUSSION

A. Standard of Review

The ODRA Procedural Regulations provide that any party may request that a summary decision be entered where “there are no material facts in dispute and a party is entitled to a summary decision as a matter of law.”¹ 14 C.F.R. § 17.31(b); *Contract Dispute of*

¹ Summary decisions before the ODRA are governed by 14 C.F.R. § 17.31 as opposed to the Federal Rules of Civil Procedure. However, the ODRA may consider the Federal Rules of Civil Procedure and related decisions as persuasive authority.

Huntleigh USA Corporation, 06-ODRA-008 and 025 (Decision Denying Cross Motions for Summary Judgment, dated March 30, 2009). The Procedural Regulations further require that “[p]rior to recommending or entering either a dismissal or a summary decision, either in whole or in part, the ODRA shall afford all parties against whom the dismissal or summary decision would be entered the opportunity to respond.” 14 C.F.R. § 17.31(f). As in courts and other fora, there is a strong preference for deciding cases on the merits. *Protest of Water & Energy Systems Technology Inc.*, 06-ODRA-00373.

The moving party bears the burden of establishing that there are no issues of material fact, and that the movant is entitled to a decision as a matter of law. *Contract Dispute of Astornet Technologies, Inc.*, 08-ODRA-00466 (Decision on Summary Judgment dated July 10, 2009). Summary judgment is appropriate in instances where “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). In reviewing a motion for summary decision, “the ODRA will consider any material facts in dispute in a light most favorable to the party against whom the dismissal or summary decision would be entered, and draw all factual inferences in favor of that party.” 14 C.F.R. § 17.31(c); *Protest of Northrop Grumman Corporation*, 00-ODRA-00159 (Decision on Motion to Dismiss dated August 17, 2000). In the instant case, the Parties have agreed that there are no material facts in dispute. *Prairie Land’s Motion* at 1 and *Region’s Motion* at 5.

It is well established that an issue of “pure contract interpretation is a question of law which may be resolved by summary judgment.” *Crown Laundry and Dry Cleaners, Inc. v. United States*, 29 Fed.Cl. 506, 515 (1993). However, “the question of interpretation of language, the conduct, and the intent of the parties, *i.e.*, the question of what is the meaning that should be given by a court to the words of a contract, may sometimes involve questions of material fact and not present a pure question of law.” *Id.* To this end, summary decision is inapplicable in cases where extrinsic evidence is required to interpret ambiguities. *Beta Systems, Inc. v. United States*, 838 F.2d 1179, 1183 (Fed. Cir.

1988).

B. The Lease's Holdover Clause

Section 11 of the Lease expressly provides for the Region to continue to occupy the premises after the end of the Lease term, on a monthly basis at the same rent and terms. *DF*, Exhibit 12. The holdover period is limited to the period between the FAA's "[signing of] a new lease with the Lessor, [acquiring] the property in fee or [vacating] the leased premises." *Id.* The Region has stated its intent to acquire the property at issue rather than indefinitely occupy it under the Holdover Clause. *DF*, Exhibit 9; *Region's Legal Analysis* at 3; and *Region's Motion* at 4 ("[T]he FAA has initiated the process to acquire this property in fee via Eminent Domain."). Thus, the sole issue before the ODR in this Dispute is whether the Region may continue its current holdover until it either acquires the property in fee or vacates the premises.²

In its Motion, Prairie Land argues that the FAA does not have a unilateral right to remain as a holdover tenant. Prairie Land cites to Arkansas law, which provides, "the hold-over provision requires consent from the landowner to exercise the option." *Prairie Land's Motion* at 9 citing *M.L. Sigmon Forest Prod., Inc. v. Scroggins*, 250 Ark. 385, 389, 465 S.W.2d 673, 676 (1971) ("We do not agree that the reasons enumerated justified Scroggins in holding over, and we have reached the conclusion that the holding over by appellee, under the law, was entirely 'wilful.'"). Prairie Land asserts that "Arkansas [State] law governs the interpretation of the instant lease agreement."³ *Prairie Land's Motion* at 2-3 citing *Coleman v. Regions Bank*, 364 Ark. 59, 65, 216 S.W.3d 569, 574 (2005); *Bank of Oak Grove v. Wilmot State Bank*, 279 Ark. 107, 110, 648 S.W.2d 802, 804 (1983) ("It is clear that we apply the laws of Arkansas to transactions involving lands within our boundaries."). Prairie Land also notes that it is a Limited Liability Company

² Prairie Land did not bring a claim for any unpaid rent pursuant to the Region's holdover as part of its Dispute filing.

³ "Arkansas has a long legislative and jurisprudential history of protecting rights to real property." *Prairie Land's Motion* at 2 quoting *Bill's Printing, Inc. v. Carder*, 357 Ark. 242, 255, 161 S.W.3d 803, 811 (2004) (citing Ark. Const. Art. 2 § 22).

under the laws of Arkansas, and a copy of the Lease was filed with the Circuit Clerk and Ex Officio Recorder of Sebastian County, Arkansas. *Id.*

Contrary to Prairie Land's arguments, federal law, not state law, governs the interpretation of leases entered into by the United States Government. *Prudential Ins. Co. of Am. v. United States*, 801 F.2d 1295, 1298 (Fed. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987) ("It is well settled that contracts to which the government is a party – and though a lease may concern and convey a property interest it is also very much a contract – are normally governed by federal law, not by the law of the state where they are made or performed."). Only where federal law is silent on an issue may a forum look to state law for guidance. *Ginsberg v. Austin*, 968 F.2d 1198, 1200 (Fed. Cir. 1992); *see also Cal. Or. Broad., Inc. v. United States*, 74 Fed. Cl. 394, 399 ("Since federal law does not answer the issue, the court first looks to the law of the state of California for guidance because this is the state in which the property is located.").


The FAA Administrator possesses broad federal statutory authority to enter into leases "necessary to carry out the functions of the Administrator and Administration." 49 U.S.C. §106(l)(6). This also includes federal statutory authority to enter into leases requiring appropriated funds for up to 20 years, 49 U.S.C. §40110, and acquire "by purchase, lease, condemnation, or otherwise" real property. 49 U.S.C. §106(n). This statutory authority is implemented through the FAA's Acquisition Management System ("AMS"). AMS 3.5 (Leases) and 4.2 (Real Property). Consistent with established federal case law, where the lease is silent, the AMS looks to state law to "determine the FAA's right of occupancy." AMS Real Estate Guidance 2.2.4.1 ("If the expired lease does not have a "holdover" clause, the laws of the state in which the facility is located will determine FAA's rights of occupancy."). In the instant matter, it is undisputed that the Lease includes a holdover clause. *DF*, Exhibit 3 at 12. Accordingly, under both established federal law and the statutorily authorized AMS, the plain language of the Lease controls over Arkansas State law on the holdover issue.

In its Motion, the Region asserts that because of “the clear and unambiguous language of the ‘Holdover’ clause, the FAA had no duty to vacate the premises.” *Region’s Motion* at 4. It is well established that the interpretation of “unambiguous, express terms” of a contract or lease must reflect their plain meaning. *Contract Dispute of Astornet Technologies, Inc.*, 08-ODRA-00466; *see also Southway Corp. v. Metro. Realty & Dev. Co., LLC*, 90 Ark. App. 51, 56, 206 S.W.3d 250, 254 (2005) (“When contracting parties express their intention in a written instrument in clear and unambiguous language, it is the court’s duty to construe the writing in accordance with the plain meaning of the language employed.”). The lease provision in question expressly provides that the FAA may become a holdover tenant upon expiration until “the Government shall have signed a new lease with the Lessor, acquired the property in fee or vacated the leased premises.” *DF*, Exhibit 3 at 12. The AMS confirms this as a unilateral right to continue occupancy of the leased premises “[i]f a continuing need has been determined and it appears the lease will expire without a Supplemental Lease Agreement for a short term extension, or succeeding lease has not been awarded.” AMS 2.2.4.1 (“In those instances where FAA continues to occupy leased facilities after the expiration of the lease term, the FAA is considered a “holdover tenant.”).

It is uncontroverted that the Region continues to occupy the premises under the Holdover Clause, and has established a continuing need for the LLWAS. *DF*, Exhibit 9. Thus, the ODRA finds that, as a matter of law, the Region is within its rights under Section 11 of the Lease to holdover on the property until either a new lease is agreed upon or it acquires the property in fee.

IV. CONCLUSION

For the reasons stated above, the ODRA finds that there are no material issues of fact and the Region is entitled to a summary decision as a matter of federal law based on the unambiguous language of the Holdover Clause of the Lease. The ODRA therefore grants the Region's Motion and recommends dismissal of this Contract Dispute. The ODRA denies Prairie Land's Motion.



C. Scott Maravilla
Dispute Resolution Officer and
Administrative Judge
FAA Office of Dispute Resolution for Acquisition