NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 1118

MOHSSEN AGHILI AND DISCOUNT EXPRESS, INC.
VERSUS
IRA GENE STROTHER

CONSOLIDATED WITH

NUMBER 2006 CA 1119

IRA GENE STROTHER
VERSUS
DISCOUNT EXPRESS, INC. AND MOHSSEN AGHILI

Judgment Rendered: March 23, 2007

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Appealed from the
Twenty-third Judicial District Court
In and for the Parish of Ascension, Louisiana
Trial Court Number 82636 c/w No. 82677

The Honorable Alvin Turner, Judge

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

WELCH, J.

Plaintiffs, Mohssen Aghili and Discount Express, Inc. (Discount Express), appeal the judgment of the trial court in favor of the defendant, Ira Gene Strother. For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This consolidated action involves the lease of certain commercial property owned by Strother and used as a gas station and convenience store in Gonzales, Louisiana. On June 20, 2003, Aghili, as lessee, and Strother, as lessor, entered into a commercial lease concerning the subject property. The original term of the lease was to run from July 1, 2003, through June 30, 2005, for a monthly rental of $3,000.00. The lease also contained a provision granting the lessee the option to renew the lease for an additional three-year term at a monthly rental of $3,500.00. The option was to be exercised by providing written notice to the lessor sixty days prior to the termination of the original term.[1] On August 15, 2003, Strother, Aghili, and Discount Express executed an assignment of lease, whereby Aghili assigned his interest in the lease to Discount Express and agreed to personally guarantee all obligations of Discount Express under the lease. On the same date, the parties also executed an amendment to the lease, which provided lessees with additional options to renew the lease.[2]

On April 15, 2004, during the initial term of the lease, Strother entered into a purchase agreement concerning the subject property with a third party, West Esplanade Discount Zone, LLC (Esplanade). Esplanade signed the agreement

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[1] The lease further provided the lessee with an additional option to renew the lease for a term of five years at a monthly rental of $4,000.00, upon providing written notice to the lessor sixty days prior to the expiration of the optional three-year term.

[2] On November 4, 2003, Strother executed a second amendment to the lease that purported to establish additional buy-out rights in favor of the lessees; however, no copy executed by Aghili or Discount Express was entered into the record.

through Halal Mahdi, one of its members. As part of the purchase agreement, Strother received a deposit of $50,000.00. Several months later, Esplanade sent written notice to Strother terminating the purchase agreement and requesting the return of the deposit. Strother failed to return the deposit, however, and Esplanade subsequently filed suit against Strother seeking its return.[3]

Despite the negotiations between Strother and Esplanade concerning the sale of the property, Aghili and Discount Express continued to occupy the leased premises throughout the original term of the lease and beyond. Although lessees remained on the premises beyond the expiration of the original lease term, no written notice of renewal was ever sent to Strother, and lessees continued to pay the monthly rental of $3,000.00, rather than the escalated rent required by the lease under the terms of the renewal option. Lessees paid the rent by submitting twelve postdated checks to Strother in the amount of $3,000.00 each at the beginning of the year, and Strother negotiated each check as the rent for each month became due.

In addition, Strother continued to negotiate with other parties to sell the property, and after receiving another purchase agreement from a third party, Strother delivered a notice to vacate to Aghili and Discount Express at the leased premises. The notice gave lessees until February 28, 2006, to vacate the premises. Aghili and Discount Express responded by filing a petition for declaratory judgment seeking a declaration of their rights pursuant to the lease on February 23, 2006. Subsequently, on March 2, 2006, Strother filed a rule to evict.

After the parties filed various exceptions and motions to transfer and consolidate the suits, the declaratory judgment suit and the eviction suit were

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[3] This suit, which was filed by fax on March 1, 2006, is not one of the consolidated cases before this court on appeal.

consolidated.[4] The trial court set the trial for those matters for April 10, 2006, with the declaratory judgment suit to be heard prior to the rule for eviction. Prior to the hearing, Strother filed a peremptory exception pleading the objection of no cause of action to the petition for declaratory judgment. Prior to conducting a hearing on the rule to evict, the trial court sustained the objection of no cause of action. An order to that effect was signed on April 11, 2006.

After sustaining the objection, the trial court conducted a hearing on the rule to evict, at which the parties were allowed to present testimony and evidence. Subsequently, the trial court granted Strother's rule to evict, finding that the lessees had failed to carry their burden of proving that the option to renew the lease had been exercised. The court further found that once the lease had expired by its terms, the lease was reconducted on a month-to-month basis thereafter. On April 11, 2006, the trial court signed a separate judgment ordering the lessees to vacate the premises within twenty-four hours. This suspensive appeal, filed by Aghili and Discount Express, followed.

DISCUSSION

On appeal, Aghili and Discount Express assert three assignments of error[5] in support of their contention that the trial court erred in granting the judgment of

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[4] Aghili and Discount Express filed a dilatory exception pleading the objection of prematurity, which is in the record, and a declinatory exception pleading the objection of lis pendens, which is not included in the record. On April 5, 2006, the trial court signed a judgment finding both exceptions to be moot.

[5] In their brief to this court, appellants have asserted a fourth assignment of error challenging the trial court's ruling on Strother's peremptory exception pleading the objection of no cause of action. However, we determine that the appellants have failed to properly appeal the judgment to this court. The trial court signed two separate rulings on April 11, 2006. One addressed only the peremptory exception, and the other addressed the rule to evict. On May 27, 2006, the trial court signed a motion and order for suspensive appeal, which granted an appeal from the judgment of eviction. The motion and order, which had been prepared by appellants, made no mention of the ruling sustaining the peremptory exception. In addition, in its brief to this court, the appellants have attached only the judgment of eviction to the brief in compliance with Uniform Rules-Courts of Appeal Rule 2-12.4. Accordingly, we conclude that appellants have not properly appealed the judgment on the peremptory exception, and we do not address the arguments concerning the objection in the brief.

eviction in favor of Strother, essentially contending that the trial court erred in not finding that Aghili and Discount Express had orally exercised the option to renew. It is uncontested that the lease required that the option to renew be exercised in writing, and it is further uncontested that appellants did not exercise the option in writing. Nevertheless, appellants contend that the actions of the parties demonstrate that all parties were operating under the assumption that the option to renew had been exercised orally.

Contracts have the effect of law for the parties. La. C.C. art. 1983. Courts are obligated to give legal effect to contracts according to the common intent of the parties. La. C.C. art. 2045. When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. La. C.C. art. 2046. However, a written lease may be orally modified by consent of the parties. See **Maryland Casualty Company & Southern Equipment, Inc. v. Watson Marine Repair & Cleaning Service, Inc.**, 416 So.2d 194, 197 (La. App. 1 Cir.), writ denied, 421 So.2d 249 (La. 1982). While modification can be presumed by silence, inaction, or implication, one party may not change the terms of the contract unilaterally. **Cajun Constructors, Inc. v. Fleming Construction Co., Inc.**, 2005-2003, p. 8 (La. App. 1 Cir. 11/15/06), _____ So.2d _____, _____. It is a question of fact as to whether there were oral agreements that modified the written contract. Id. (quoting **Pelican Electrical Contractors v. Neumeyer**, 419 So.2d 1, 5 (La. App. 4 Cir.), writ denied, 423 So.2d 1150 (La. 1982). The party asserting the modification of the obligation must prove the facts or acts giving rise to the modification. La. C.C. art. 1831.

A court of appeal may not set aside a trial court's finding of fact in the absence of manifest error or unless it is clearly wrong. Under the manifest error standard, in order to reverse a trial court's determination of a fact, an appellate

court must review the record in its entirety and (1) find that a reasonable factual basis does not exist for the finding, and (2) further determine that the record establishes that the fact finder is clearly wrong or manifestly erroneous. The reviewing court must give great weight to factual conclusions of the trier of fact; where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. **Bonin v. Ferrellgas, Inc.**, 2003-3024, pp. 6-7 (La. 7/4/04), 877 So.2d 89, 94-95.

At the hearing, appellants contended that their intent to exercise the option to renew was demonstrated when they sent twelve postdated checks to Strother at the beginning of 2005, because the checks were postdated to apply to several months beyond the expiration date of the original term of the lease. Appellants asserted that Strother accepted these checks and continued to negotiate them each month, until February 2006, when he first made a notation on the check that he considered the lease to be on a month-to-month basis. Appellants acknowledged that the rent checks were for the original $3,000.00 monthly rent, instead of the $3,500.00 monthly rent required by the renewal option, but they argued that the parties had agreed to keep the rent at the lesser amount because Strother had not yet returned the deposit given to him in connection with the purchase agreement with Esplanade.

Strother contended that the lease had expired by its terms on June 30, 2005, and had been reconducted on a month-to-month basis thereafter. He acknowledged that he had received and accepted the postdated checks, but stated that he had accepted payment in that manner simply as a courtesy to the lessees. He further acknowledged that he had not returned the $50,000.00 deposit after the purchase agreement with Esplanade was cancelled, but he denied that there had

been any agreement to extend the lease or lower the monthly rent payments in connection with this deposit. He further introduced evidence demonstrating that Esplanade had sent him demand letters seeking the return of the deposit, which stated that the deposit had been given to him in connection with the purchase agreement only. In addition, Strother introduced a copy of the separate suit filed by Esplanade seeking return of the deposit, in which Esplanade did not mention the lease agreement at issue.

After hearing this evidence, the trial court found that appellants failed to meet their burden in proving that the option to renew was exercised. The court specifically found that the delivery of the postdated checks was a mere business practice of the lessees and did not demonstrate an intent to exercise the option to renew the lease. The court further found that the amounts spent by the lessees on the property were expended for repairs and maintenance as required by the lease, and not on reliance that the option to renew had been exercised. Finally, the court found that the $50,000.00 deposit was not relevant to the question of whether the option to renew had been exercised.

After a thorough review of the entire record, we find there is a reasonable factual basis for the trial court's findings, and that the findings are not clearly wrong when viewed in light of the record. Accordingly, we affirm the judgment of the trial court.[6] All costs of this appeal are assessed to Mohssen Aghili and Discount Express, Inc.

MOTION FOR SUMMARY DISPOSITION DENIED; JUDGMENT AFFIRMED.

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[6] Strother filed a motion with this court seeking a summary disposition of the appeal in this matter pursuant to Uniform Rules-Courts of Appeal Rule 2-16.2. The motion is denied.