NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 0556

SALMEN COMPANY, L.L.C.

VERSUS

WEYERHAEUSER COMPANY

On Appeal from the 22nd Judicial District Court
Parish of St. Tammany, Louisiana
Docket No. 2006-11689, Division "D"
Honorable Peter J. Garcia, Judge Presiding

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BEFORE: PARRO, KUHN, AND DOWNING, JJ.

Judgment rendered DEC 21 2007

PARRO, J.

A lessee appeals a trial court judgment granting its lessor's motion for summary judgment and declaring that the lessee failed to timely exercise its option to extend the lease term. For the following reasons, we affirm.

Factual Background and Procedural History

On January 1, 1955, Fred W. Salmen, as the owner of approximately 7,000 acres of immovable property located in St. Tammany Parish, entered into a lease of certain limited surface rights with Gaylord Container Corporation (Gaylord) for a primary term of 60 years. Salmen Company, L.L.C. (Salmen) is the successor-in-interest to the rights of Fred W. Salmen under the lease, and Weyerhaeuser Company (Weyerhaeuser) is the current assignee of all rights and obligations of Gaylord under the lease.

With respect to an option to extend the primary term of the lease, the lease provided, in pertinent part:

> 3. In consideration of the presents and in further consideration of further adjustment of annual rental hereinbelow stated, **First Party does hereby grant to Lessee the privilege and exclusive option of an extension of the term of lease** and rent of the lands subject to this contract for an additional period and term of thirty (30) years. Said additional term of thirty (30) years shall be upon the same terms and conditions as herein contained for the primary term of sixty (60) years, and Lessee shall continue in and enjoy the uninterrupted peaceable possession of the lands herein leased . . . .
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> * * *
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> **If on or before the 1st day of January 2005**, A.D., **Lessee shall exercise the option for extension** herein granted, **this lease shall, without further action by the parties** hereto, their heirs, successors and assigns, **be thereby extended** for the additional term of thirty (30) years, all upon the terms and conditions as provided for the primary term of sixty (60) years, except as said terms and conditions shall herein be specifically modified. **Such notice shall be in substantially the form as Exhibit X attached hereto and shall be deemed served when recorded in the office of the Clerk of the Court of St. Tammany Parish, Louisiana.** If there then be no said Clerk, said notice shall be deemed served when recorded with his successor or substitute. If Lessee shall not exercise its option as herein provided, such non-exercise shall in no way disturb Lessee's peaceable possession and enjoyment for remainder of the primary term of sixty (60) years and Lessee shall have the remaining ten (10) years of the primary term of sixty (60) years to cut and remove all trees, timber, stumps, wood and all other forest products, subject to the restrictions set out herein. If Lessee shall not exercise its option for an extension hereof, then during the remaining ten (10) years Lessee will not cut any pine trees below four (4)

> inch Diameter Breast High, except as may be necessary or convenient for the building of access roads or trails, or as may be necessary or convenient for stand improvement or as may be necessary, convenient or unavoidable in the process of removing other timber. . . . [Emphasis added.]

The lease also set forth detailed restrictions and conditions with regard to the cutting and planting of certain timber, depending on whether the option to extend the lease was exercised.

On January 7, 2005, Weyerhaeuser recorded in the St. Tammany Parish Clerk of Court's office a "Lease Extension," similar in form to Exhibit X attached to the lease, in which it purported to exercise its option to extend the primary term of the lease for an additional 30 years as provided in Paragraph 3 of the lease. This document was executed on January 6, 2005. By letter dated January 21, 2005, Salmen notified Weyerhaeuser that the lease extension was invalid because it had not been filed on or before January 1, 2005, as required by the lease.

Salmen subsequently filed suit for a declaratory judgment relative to the expiration of the primary term of the lease, contending that the "Lease Extension" did not comply with Paragraph 3 of the lease, and thus by its terms, the lease would expire on January 1, 2015. In its answer, Weyerhaeuser admitted that at no time prior to January 6, 2005, did it communicate to Salmen its decision to extend the term of the lease or record the notice of lease extension. In its answer, Weyerhaeuser further averred that it made its decision and exercised its option to extend the lease prior to January 1, 2005, and that the terms of the lease did not require communication to Salmen of its decision to extend the lease or recordation of the notice of the lease extension prior to January 1, 2005. According to Weyerhaeuser, by recording the notice of lease extension, which evidenced the fact that it had exercised its option to extend the lease, it complied with the terms of the lease and Exhibit X, which allegedly provided that the notice be filed after January 1, 2005.

Salmen filed a motion for summary judgment, which was granted, decreeing that the lease would expire on January 1, 2015, due to Weyerhaeuser's failure to exercise its option to extend the lease term on or before January 1, 2005. In oral reasons, the trial

court agreed with Salmen's position and concluded that the lease clearly provided that the only way to exercise the option was by filling out the notice and filing it in the public records by January 1, 2005.

Weyerhaeuser appealed, contending that the trial court erred in concluding that it failed to timely exercise its option to extend the primary term of the January 1, 1955 lease, in concluding that the lease language was clear and unambiguous with respect to how the option was to be exercised, and in granting Salmen's motion for summary judgment when material facts exist concerning the intent of the original parties to the lease.

Discussion

A contract is formed by the consent of the parties established through offer and acceptance. Unless the law prescribes a certain formality for the intended contract, offer and acceptance may be made orally, in writing, or by action or inaction that under the circumstances clearly indicates consent. LSA-C.C. art. 1927.[1] When, in the absence of a legal requirement, the parties have contemplated a certain form, it is presumed they do not intend to be bound until the contract is executed in that form. LSA-C.C. art. 1947.[2] A party claiming the existence of a contract has the burden of proving that the contract was perfected between himself and his opponent. Pennington Construction, Inc. v. R A Eagle Corp., 94-0575 (La. App. 1st Cir. 3/3/95), 652 So.2d 637, 639.

Laws existing at the time a contract is entered into are incorporated into and form a part of the contract as though expressly written. Green v. New Orleans Saints, 00-0795 (La. 11/13/00), 781 So.2d 1199, 1203. Since the lease agreement was executed in 1955, the law on lease that was in existence at that time is controlling.

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[1] Although the law on this subject was amended and reenacted by 1984 La. Acts, No 331, §1, effective January 1, 1985, LSA-C.C. art. 1927 reproduced the substance of LSA-C.C. arts. 1798, 1812, 1816, and 1817 (1870). Article 1927 did not change the law. LSA-C.C. art. 1927, Revision Comments—1984, comment (a).

[2] Although the law on this subject was amended and reenacted by 1984 La. Acts, No 331, §1, effective January 1, 1985, LSA-C.C. art. 1947 did not change the law. LSA-C.C. art. 1947, Revision Comment—1984.

Lease or hire is a synallagmatic contract, to which consent alone is sufficient, and by which one party gives to the other the enjoyment of a thing, or his labor, at a fixed price. LSA-C.C. art. 2669 (1870). Leases may be made either by written or verbal contract. LSA-C.C. art. 2683 (1870).

To let out a thing is a contract by which one of the parties binds himself to grant to the other the enjoyment of a thing during a certain time, for a certain stipulated price which the other binds himself to pay. LSA-C.C. art. 2674 (1870). The duration and the conditions of leases are generally regulated by contract, or by mutual consent. LSA-C.C. art. 2684 (1870). The parties must abide by the agreement as fixed at the time of the lease. LSA-C.C. art. 2686 (1870).

The interpretation of a contract is the determination of the common intent of the parties. LSA-C.C. art. 2045.[3] Each provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole. LSA-C.C. art. 2050.[4] 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. LSA-C.C. art. 2046.[5] In such a case, a court must interpret the contract solely by reference to the four corners of the document. Woolf & Magee v. Hughes, 95-863 (La. App. 3rd Cir. 12/6/95), 666 So.2d 1128, 1130, writ denied, 96-0073 (La. 3/15/96), 669 So.2d 427; see LSA-C.C. art. 1848.[6] Whether the terms of a contract are ambiguous is a question of law. Borden Inc. v. Gulf States Utilities Co., 543 So.2d 924, 928 (La. App. 1st Cir.), writ denied, 545 So.2d 1041 (La. 1989).

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[3] Although LSA-C.C. art. 2045 was enacted by 1984 La. Acts, No. 331, §1, effective January 1, 1985, it did not change the law. LSA-C.C. art. 2045, Revision Comments—1984, comment (a).

[4] Although LSA-C.C. art. 2050 was enacted by 1984 La. Acts, No. 331, §1, effective January 1, 1985, it did not change the law, as it reproduced the substance of LSA-C.C. art. 1955 (1870). LSA-C.C. art. 2050, Revision Comment—1984.

[5] Although LSA-C.C. art. 2046 was enacted by 1984 La. Acts, No. 331, §1, effective January 1, 1985, it did not change the law. LSA-C.C. art. 2046, Revision Comments—1984, comment (a).

[6] Although LSA-C.C. art. 1848 was enacted by 1984 La. Acts, No. 331, §1, effective January 1, 1985, it did not change the law, as it reproduced the substance of LSA-C.C. art. 2276 (1870) and incorporated exceptions recognized by Louisiana jurisprudence. LSA-C.C. art. 1848, Revision Comments—1984, comment (a).

Weyerhaeuser submits that outside of its "exercising" the option, nothing further was required by the parties as between themselves to extend the lease. Based on the language of Paragraph 3, Weyerhaeuser argued that acceptance of the option could be accomplished simply by the making of an internal decision by itself by January 1, 2005, without communication to the lessor. It maintained that the notice requirement was included simply to inform third parties. Alternatively, Weyerhaeuser asserted that the method for acceptance of the option to extend the lease term was not clearly set forth in the lease contract, and, therefore, the summary judgment procedure was not appropriate.

The trial court found no ambiguity in the language employed by the original parties to the lease, and neither do we. Weyerhaeuser did not dispute that the option to extend had to be exercised on or before January 1, 2005. However, the terms of the lease clearly required more than the making of an internal decision to extend the lease. In this regard, manifest actions by the lessee were clearly required. The lease provided that "**[s]uch notice** . . . shall be deemed **served** when recorded in the office of the Clerk of the Court of St. Tammany Parish, Louisiana." (Emphasis added.) We conclude that the terms "[s]uch notice" and "served" as used in Paragraph 3 pertain to the exercise of the option for extension. Who more than the lessor would have been interested in being "served" with the notice of the lessee's decision to accept the option? Had the parties intended that the required notice apply only to third parties, it would have been unnecessary to include the term "served." Furthermore, it would be absurd to think that the parties felt that it was more important to provide for notice to third parties than it was to provide for notice to the lessor. Certainly, the lessor wanted to know if the option had been exercised.

Moreover, Exhibit X, which was referenced in, and attached to, the lease, provided, in pertinent part:

> BEFORE ME, the undersigned Notary Public, duly qualified and commissioned for the above State and Parish, personally appeared ____________________, who declared that he is the duly authorized ____________________ of Gaylord Container Corporation, a Maryland corporation, with its Louisiana domicile in the City of Bogalusa, said Parish

and State, and declared that he does by these presents, for and on behalf of said corporation accept the option to renew, for an additional term of thirty years, the following described lease: . . .

And appearer further declared that the instrument is executed pursuant to and in accordance with Paragraph 3 of the above described lease.

Thus executed at ____________, Louisiana, on this ____________ day of __________________, 2005, in the presence of the undersigned competent witnesses.

In reading Paragraph 3 of the lease together with Exhibit X, we conclude that by the inclusion of Exhibit X in the lease agreement, the original parties provided the means by which the lessee had to accept the option to renew or extend the lease. According to the terms of the lease, the lessee's acceptance of the option to extend the lease had to be effected by notice in substantially the form as Exhibit X. Therefore, until the required documentation had been executed, the lessee and lessor were not legally bound to an extension of the lease. See LSA-C.C. art. 1947.

Interpreting the provisions of Paragraph 3 in light of the other provisions of the contract as a whole, we conclude as a matter of law that the option was to be exercised by filing a notice of the lease extension in substantially the form of Exhibit X with the St. Tammany Parish Clerk of Court on or before January 1, 2005. Since the execution and recordation of the required documentation did not occur until January 6, 2005, and January 7, 2005, respectively, we find no error in the trial court's conclusion that Weyerhaeuser's exercise of the option to extend the lease did not comply with the lease requirements.[7]

Decree

For the foregoing reasons, the judgment of the trial court is affirmed. Costs of this appeal are assessed to Weyerhaeuser Company.

AFFIRMED.

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[7] When the lessee provides written notice of his intention to renew, but that notice is untimely, renewal of the lease under an option to renew is not valid. Sizeler Hammond Square Ltd. Partnership v. Gulf States Theatres, Inc., 02-759 (La. App. 5th Cir. 12/11/02), 836 So.2d 256, 260, writ denied, 03-0070 (La. 3/21/03), 840 So.2d 552; Hidalgo Motors, Inc. v. Opelousas Courtesy Motors, Inc., 576 So.2d 1086, 1088 (La. App. 3rd Cir. 1991); see Southern Ventures Corp. v. Texaco, Inc., 372 So.2d 1228, 1230 (La. 1979).