

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
WESTERN DIVISION

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DAVID CIARLONI,

Claimant

DEC 21 2009
Tennessee Claims Commission
CLERK'S OFFICE

v.

~~CLAIM NO. 20-090-059~~

STATE OF TENNESSEE,

Defendant

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS
AND/OR FOR SUMMARY JUDGMENT
AND DENYING CLAIMANT'S MOTION TO STRIKE

I.

INTRODUCTION

This case grows out of an agricultural lease dated March 3, 2004, between Claimant, David Ciarloni, and a state agency, the Chickasaw Basin Authority, hereinafter referred to as CBA. Claimant leased the land from CBA in order to grow cotton. (*Amended Complaint*, para. 8)

Claimant alleges his crops were damaged in 2006 and 2007 by an overpopulation of deer in the area. (*Amended Complaint*, para. 13) He contacted CBA for help then contacted the Tennessee

Wildlife Resources Agency, hereinafter referred to as TWRA, for a hunting permit to help deal with the deer population. (*Amended Complaint*, para. 15) TWRA recommended that a permit be issued, but told Claimant he would need the landowner's permission. (*Amended Complaint*, paras. 15-16)

Claimant alleges that CBA wrongfully withheld its permission by failing to schedule a vote on the hunting permit, though it had granted permits to neighboring landowners. (*Amended Complaint*, para. 17) Claimant further alleges that in July, 2007, CBA finally voted to allow Claimant to have a fourteen (14) day hunting permit. (*Amended Complaint*, para. 19) Claimant says that four days after the permit finally was issued, CBA revoked the permit without giving Claimant an opportunity to be heard. (*Amended Complaint*, para. 20) Claimant alleges that when the permit was revoked, CBA knew that deer had destroyed between thirty percent (30%) and fifty percent (50%) of Claimant's crop. (*Amended Complaint*, para. 22) Claimant further alleges that by October, 2007, almost all of the CBA land Claimant had under cultivation had been damaged by the deer. (*Amended Complaint*, para. 24)

Claimant also alleges that in February, 2008, CBA voted to cancel the lease agreement, thereby depriving him of an unconditional right to renew the lease for an additional five-year term. (*Amended Complaint*, para. 26)

II.

PROCEDURAL BACKGROUND

In March, 2009, Defendant filed a motion to dismiss under Rule 12.02, Tenn. R. Civ. P., for lack of subject matter jurisdiction and failure to state a claim on which relief can be granted. In its motion and memorandum in support thereof, Defendant averred that the Commission does not have jurisdiction over claims because they do not "fall within any of the category of claims set forth in §9-8-307 (a)(1)(A)-(V)" (*Memorandum in Support of Motion to Dismiss*, p. 7) and that §9-8-307 (a)(1)(G) specifically excludes damages for the negligent control of wild animals. (*Memorandum in Support*, p. 7) Defendant further averred that Claimant did not have an unconditional right to renew the agricultural lease. (*Memorandum in Support*, p. 4)

In May, 2009, Claimant filed its *Response in Opposition to Defendant's Motion to Dismiss*. In this response, Claimant insisted

that the Commission has jurisdiction under §9-8-307(a)(1)(B) for creating or maintaining a nuisance. Claimant also alleged that the Commission has jurisdiction under §9-8-307(a)(1)(L) because CBA's February, 2008 decision not to renew the lease for another five year term was a breach of their written contract.

Claimant further argues that CBA's actions with respect to the overpopulation of deer breached the implied covenant of quiet enjoyment in the lease agreement and amounted to a constructive eviction of Claimant from the property.

On June 29, 2009, a telephonic hearing was held on CBA's motion. When CBA's counsel pointed out that Claimant's original complaint did not include a cause of action for nuisance or allegations that CBA breached an implied covenant of quiet enjoyment, Claimant asked to be allowed to amend the original Complaint before the Commission ruled on CBA's motion to dismiss. The Commission granted this oral motion and Claimant's *Amended Complaint* was filed on July 10, 2009.

On August 12, 2009, CBA filed a second motion to dismiss the amended complaint for failure to state a claim upon which relief can

be granted. Claimant has filed a motion to strike the second motion to dismiss.

Where matters outside the pleadings have been considered, Defendant's motion to dismiss will be treated as a motion for summary judgment pursuant to Rule 56, Tenn. R. Civ. P. See, e.g. *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 835 (Tenn. 2008).

III.

RULES OF STATUTORY CONSTRUCTION

Because suits against a sovereign are in derogation of the common law, jurisdictional statutes governing suits against a sovereign ordinarily are given strict construction. *Stewart v. State*, 33 S.W.3d 785, 795 (Tenn. 2000) However, in 1985, the legislature amended the Claims Commission Act by adding the following provision: "It is the intent of the General Assembly that the jurisdiction of the claims commission be liberally construed to implement the remedial purposes of this legislation. §9-8-307 (a)(3)(emphasis added). However, the Tennessee Supreme Court has made clear that this liberal interpretation of jurisdiction is to be applied only so long as the "most favorable view in support of the petitioner's claim is not clearly contrary to the statutory language

used by the General Assembly.” *Northland Ins. Co. v. State*, 33 S.W.3d 727, 730 (Tenn. 2000).

Another principle of statutory construction which has long been the law in Tennessee is that “[s]pecific statutory provisions control over conflicting general provisions.” *Arnwine v. Union County Bd. Of Ed.*, 120 S.W.3d 804, 809 (Tenn.2003) Quoting *Woodruff v. City of Nashville*, 183 Tenn. 483, 192 S.W.2d 1013, 1015 (Tenn. 1946), the *Arnwine* court went on to say:

“[W]here the mind of the legislature has been turned to the details of a subject and they have acted upon it, a statute treating the subject in a general manner should not be considered as intended to affect the more particular provision.” *Arnwine*, 120 S.W.3d at 809.

All of the aforementioned rules of statutory construction come to play in the instant case.

IV.

NEGLIGENT CONTROL OVER WILD ANIMALS UNDER §9-8-307 (a)(1)(G)

Tenn. Code Ann. §9-8-307(a)(1)(G) states that “[d]amages are not recoverable under this section for damages caused by wild animals.” Thus, Defendant correctly avers that the Commission lacks jurisdiction over claims for negligent control of wild animals. However, Claimant correctly argues that a claimant’s claim may fall

under more than one of the jurisdictional categories found in §9-8-307 (a)(1). See, e.g., *Stewart v. State*, 33 S.W.3d at 795. Therefore, the Commission must consider any applicable case law and the rules of statutory construction outlined above before deciding whether this case must be dismissed.

The Commission knows of only one case in which §9-8-307 (a)(1)(G) has been discussed. In *Cox v. State*, 844 S.W.2d 173 (Tenn. App. 1992), the Court addresses the reach of the jurisdictional section on negligent care, custody and control of persons. By way of example, the Court notes that under (a)(1)(G), the State can be sued for damages caused by tame or domesticated animals, but not for damages caused by wild animals. *Id.* at 176.

In the case at bar, it seems pretty clear that the legislature has acted specifically with regard to whether the Commission has jurisdiction over cases involving damages caused by wild animals. Such a specific provision controls the more general provision that the statute is to be liberally construed. *Arnwine*, 120 S.W.3d at 809.

Two of the claims plead by Claimant, the breach of the implied covenant of quiet enjoyment and the nuisance claim, are based on the damage done to Claimant's cotton crop by wild deer. The

Commission **FINDS** that these two claims are governed by language in subsection (G). To allow these claims would be “clearly contrary to the statutory language used by the General Assembly.” *Northland Ins. Co. v. State*, 33 S.W.3d at 730.

Defendant’s motion to dismiss the causes of action for breach of contract for breach of the covenant of quiet enjoyment and for maintaining a nuisance is, therefore, **GRANTED**.

V.

CLAIMANT’S CONTRACT CLAIM: OPTION TO RENEW

Claimant has plead an additional cause of action under §9-8-307(a)(1)(L), which has nothing to do with the damage done by the wild deer. Paragraph numbered one of the *Agricultural Lease Agreement* dated March 3, 2004, states that the Lessor (CBA) agrees to lease a certain parcel of land to Claimant “for a term beginning upon the execution of this lease and ending December 2008, with the option to extend for five (5) years . . .”

Paragraph numbered twenty-five (25) of the *Agricultural Lease Agreement* reads as follows:

25. Lessee acknowledges that the leased property demised herein is property which is publicly bid by Lessors on a five (5) year basis with an option to extend for five (5) years at the Lessors (sic) request.

In the event Lessee is not the successful bidder when the subject property is rebid in 2008 or is not given the option to extend, Lessee agrees to relinquish possession of the leased premises to the successful bidder as finally approved by the Lessors in 2008, as soon as Lessee has removed its last crop, in the lease ending on December 31, 2008.

Paragraph numbered thirty (30) reads:

Lessor may cancel the Lease at any time upon thirty (30) days written notice before the end of a current crop year. The Lessee will be reimbursed for his cost for capital outlay directly related to crop production for that year and for cost of installation of conservation practices on a prorated basis for the remainder of the Lease.

Claimant insists that paragraph numbered one (1) gives the parties an unconditional right to extend the lease for five (5) years. Claimant notes that, under Tennessee law, where terms of a contract are ambiguous, they must be construed against the drafter, in this case, CBA. See, e.g., *Memphis Housing Auth. v. Thompson*, 38 S.W.3d 504, 511 (Tenn.2001), cert. denied 151 L. Ed.2d 27, 122 S. Ct. 59 (2001) (citing *Cain Partnership Ltd., v. Pioneer Inv. Services Co.*, 914 S.W.2d 452, 462 (Tenn. 1996)). Claimant further insists that because this contract provision is ambiguous, Defendant is not entitled to summary judgment on the issue of the option to renew.

The interpretation of a contract is a matter of law. *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 95 (Tenn.1995).

Claimant correctly avers that ambiguous contract terms are construed against the drafter. However, in the case at bar, the Commission **FINDS** that there was no ambiguity. Paragraphs one (1), twenty-five (25) and thirty (30), when read together, make it clear that the right to renew the lease was anything but unconditional. The Commission **FINDS** that CBA had the right to cancel the lease pursuant to paragraphs twenty-five (25) and thirty (30).

Under Tennessee law,

The moving party is entitled to summary judgment only if the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits ... show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Martin v. Norfolk Southern Railroad*, 271 S.W.3d 76 (Tenn. 2009), *citing* Tenn. R. Civ. P. 56.04; *Accord Penley v. Honda Motor Co.*, 31 S.W.3d 181, 183 (Tenn. 2000)

The Commission **FURTHER FINDS** that there are no genuine issues of material fact remaining on the issue of the cancellation of Claimant’s option to renew and that Defendant is entitled to judgment as a matter of law on this issue.

Defendant's motion to dismiss or for summary judgment on the cause of action for breach of contract for cancelling Claimant's option to renew is **GRANTED**.

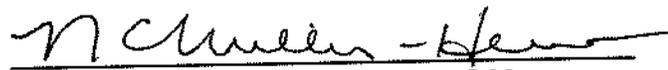
VI.

CONCLUSION

Claimant's motion to strike *Defendant's Motion to Dismiss Claimant's Amended Complaint* is hereby **DENIED**.

Defendant's motion to dismiss or for summary judgment is **GRANTED** and Claimant's claim is hereby **DISMISSED**.

IT IS SO ORDERED.



**NANCY C. MILLER-HERRON
COMMISSIONER**

CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing Order has been mailed
to:

Patrick M. Ardis, Esq.
Ronna D. Kinsella, Esq.
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Eugenia B. Whitesell, Esq.
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P. O. Box 20207
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This the 21 day of December, 2009.



MARSHA RICHESON, CLERK
TENNESSEE CLAIMS COMMISSION

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