

IN THE COURT OF APPEALS OF IOWA

No. 6-274 / 95-1808

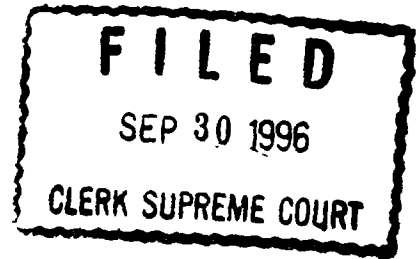
LEO'S ENTERPRISES, INC.,

Appellee,

vs.

ARROW TRANSPORTATION COMPANY,

Appellant.



Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Landlord, Arrow Transportation Company, appeals a declaratory ruling in favor of tenant, Leo's Enterprises, Inc., in which the district court concluded tenant had not breached the terms of the parties' lease. **AFFIRMED.**

Kenneth L. Butters of Dreher, Simpson & Jensen, P.C., Des Moines, for appellant.

Patrick W. Brick of Brick, Gentry, Bowers, Swartz, Stoltze, Schuling & Levis, P.C., Des Moines, for appellee.

Considered by Huitink, P.J., Streit, J., and Schlegel, S.J.*

*Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

SCHLEGEL, S.J.

Defendant, Arrow Transportation Company (Arrow), appeals the district court ruling on declaratory judgment, concluding that plaintiff, Leo's Enterprises, Inc. (Leo's), had not breached the terms of the parties' lease agreement. The court ruled that Leo's had not breached the agreement by failing to gravel or blacktop the parking lot. The court further ruled that the plaintiff had not breached the terms of the lease by failing to obtain written consent from the landlord before subleasing the premises. Arrow contends there is not substantial evidence that Leo's finished the parking lot. Arrow also contends that there is not substantial evidence that Arrow consented to the second sublease. We affirm the trial court.

Arrow and Leo's entered into a lease of a large building and a sizeable tract of land surrounding the building, effective on November 1, 1992, with the term ending on September 30, 1994, with an option to extend the lease or, after one year, to purchase the property for \$200,000. Arrow was the lessor and Leo's was the lessee. The lease provided:

Alterations [sic] to the Demised Premises. Lessee intends to make the alterations to the Demised Premises consisting of construction of offices within the current improvements, fencing the subject property and finishing the parking lot with either gravel or black top at its own cost and expense. Lessor hereby approves such alterations [sic]. Lessee shall complete the same promptly and in a workmanlike manner. Lessee shall not make any other alterations without the prior consent of Lessor, which shall not be unreasonably withheld.

A separate option to purchase was also executed. It stated that the lessor agreed to an exclusive option to the lessee to purchase the premises for \$200,000, pursuant to the following terms and conditions:

1. All terms of the Lease agreement have been fulfilled to the date of exercise of said option.
2. Completion of the improvements which the Lessee agreed to provide while using premises covered under Lease agreement. (Black topping and/or stone surfacing of parking lot, remodeling of office area and financing).

Leo's took possession of the property and made certain improvements to the inside of the building, and added certain rock to the driveway on the property around the building. Leo's decided not to install the fence that they initially intended to build. They received approval from the agent of the Lessor to omit that fence. Leo's conducted auctions of antique automobiles, but the business was not successful.

In the summer of 1993, Leo's contacted an agent for Arrow, and asked if the property could be subleased to Northwest Erection, a Des Moines truck and trailer leasing business. The agent obtained approval from Arrow and orally consented to the sublease.

On February 18, 1994, Leo's subleased the premises to PGC Repair Services, Inc., with the term of the lease to commence on May 1, 1994. Also on February 18, Larry Owens of Smithway Transport contacted Arrow's agent to inquire about Leo's Enterprises contract to buy the premises. The evidence suggests that Smithway had

been in contact with Leo's and was under the impression Leo's had exercised its option to purchase the property. The evidence suggests that Smithway was interested in assuming Leo's contract to purchase the premises, with a price of \$350,000 having been discussed between Leo's and Smithway.

On February 21, 1994 Leo's received notice of default from Arrow. The notice alleged Leo's had failed to finish the parking lot with blacktop, gravel or stone, failed to fence the premises, and subleased the premises without obtaining written consent. Leo's was given thirty days to remedy the problems or "the lease and the option shall immediately terminate without further notice."

On April 22, 1994, a temporary injunction was entered for Leo's Enterprises prohibiting Arrow from terminating the lease or option agreement. Leo's Enterprises filed an action for declaratory relief asking that the court find it had not breached the lease agreement. Leo's Enterprises tendered a cashier's check for \$25,000 to Arrow, which was refused by Arrow.

The district court ruled that Leo's Enterprises was not in default of the lease agreement terms and conditions and was entitled to continue occupying the premises. The court also concluded Arrow was to comply with the option to purchase and Leo's Enterprises was given sixty days to complete its exercise of the option to purchase.

This case was tried as an action at law. The burden of proof is upon the plaintiff. Appellant claims that there was not sufficient evidence to support the court's findings of fact. Appellant claims that the court's finding that the parking lot

was finished in accordance with the lease is not supported by substantial evidence. Further, appellant claims that the trial court's finding that Leo's did not breach the lease by subletting the premises without the landlord's consent is not supported by substantial evidence. The trial court's findings in this case are binding upon the appellate court, if those findings are supported by substantial evidence. Iowa R. App. P. 14(f)(1).

There was substantial evidence on both of those issues to support the court's findings of fact. There was evidence to the repair of the premises and the remodeling of the office space inside the building. There was evidence that rock was added to the parking lot, in various places thereon. There was evidence that the lot was rendered useable by the addition of the rock. The court was not required to believe or decide the state of the parking lot on the premises based merely upon what one witness testified would be the most desired placement of rock on the driveway. There was ample evidence that rock was placed upon the area, and there was substantial showing of a considerable amount of expense in that placement. The record shows that there was no concern by the landlord or its agents that the work done was not adequate or proper. The court could conclude that, without any complaint or attention directed to the issue of the condition of the driveway and parking area, it was accepted as properly surfaced.

There was substantial evidence that the subletting was approved by the landlord. The court could find, and apparently did find that permission was given for

the sublease to Northwest Erection. It could likewise find, from the evidence, that permission was given to sublease to PGC Repair Services Inc., as well. The record shows that the landlord did not consider the sublease of this property as a breach of the agreement. As Leo's correctly point out, the effective date of the sublease to PGC was after the service of notice upon Leo's to terminate the lease. Accordingly, no effective sublease was carried out prior to the notice of termination.

We find that there was substantial evidence to support each of the trial court's findings. We affirm the trial court's ruling that Leo's was not in default of the lease agreement; that Leo's was entitled to continue occupying the premises; and that Arrow must comply with the option to purchase which has been exercised by Leo's. We affirm the trial court's grant of sixty days from the effective date of this opinion in which to complete the exercise of the option to purchase the premises.

AFFIRMED.