UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: January 26, 2022

CBCA 6644

IEYADA M. AHRIR,

Appellant,

v.

DEPARTMENT OF STATE,

Respondent.

Simon Croft Sigler of MDK Business Law, Ottowa, ON, counsel for Appellant.

Kevin M. Gleeson and Erin M. Kriynovich, Office of the Legal Adviser, Buildings and Acquisitions, Department of State, Arlington, VA, counsel for Respondent.

Before Board Judges **GOODMAN**, **DRUMMOND**, and **SHERIDAN**.

DRUMMOND, Board Judge.

This case, between Ieyada M. Ahrir (appellant/landlord) and the Department of State (respondent/tenant), concerns appellant's claim for damage to leased property. The parties submitted this appeal on the written record pursuant to Board Rule 19 (48 CFR 6101.19 (2020)).

Background

In 2009, respondent and Bashir Bashir Ahrir entered into a lease for property to be used by respondent's diplomatic mission in Tripoli, Libya. The lease term was a fixed nine years, ending on August 31, 2018. With an effective date of April 25, 2012, a lease

amendment formally recognized Ieyada M. Ahrir as the contractor/lessor, following the death of her husband.

Article eight of the lease, titled "Tenant Rights and Responsibilities," states in part:

> A. . . . The Tenant, if required by the Landlord, shall restore the premises to the same condition as that existing at the time of entering upon the same under this Lease, except for reasonable and ordinary wear and tear, damage by elements, or by circumstances over which the Tenant has no control. . . .
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> B. The Tenant shall, unless specified to the contrary, maintain the said premises in good repair and tenantable condition . . . during the continuance of this lease, except for reasonable and ordinary wear and tear, damage by the elements, or other circumstances not under the Tenant's control.

Article eleven, titled "Insurance," states, in part:

> A. The Landlord shall bear responsibility for all risks of loss of or damage to the Premises, for the entire term of this Lease, arising from any causes whatsoever, other than Tenant fault, including but not limited to fire; lightning; storm; tempest; explosion; riot; civil commotion; malicious or criminal acts of destruction . . . .
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> B. The Landlord shall adequately insure the property against fire and all other risks enumerated above and normally insured under standard coverage . . . .

Article fourteen of the lease, "Termination," states, in part, "The tenant may, for its convenience, terminate this Lease in whole or in part at any time, if it determines that such termination is in the best interests of the Tenant . . . ."

The lease included no language requiring respondent to occupy the property continuously nor did it require respondent to notify appellant if it was not occupying the property.

In July 2014, due to escalating civil unrest, respondent ceased all operations and evacuated all personnel, including security personnel, from the property in Tripoli. It is undisputed that respondent's withdrawal from Libya was a highly publicized event. Following the evacuation in July 2014, global news outlets reported that U.S. diplomatic sites

in Tripoli were overtaken and looted by militia groups in what was referred to as the Libyan Civil War. It is also undisputed that, although respondent did not directly provide notice of its withdrawal to appellant either before or after evacuating the property, it continued to pay rent after it left, and appellant has been paid all rent owed under the lease.

Respondent did not return to the property, and in June 2018, the parties executed a Termination and Acquittance agreement (termination agreement), which expressly states that "the Lease . . . is considered cancelled and terminated effective 31st August, 2018, and the Landlord hereby acknowledges that the Premises (and furnishings) were returned by the Tenant to the Landlord on 12 June 2018, in a condition acceptable to the Landlord, free of any and all claims against [respondent]." Neither party inspected the property before executing the termination agreement.

Subsequently, on May 8, 2019, appellant submitted a certified claim to the contracting officer (CO) alleging that appellant discovered, after the termination of the lease, that the property had fallen into a state of disrepair, which appellant attributed to respondent. Appellant claimed $1,150,000 for damage to the property and its contents. Appellant provided photographic and video evidence of the alleged damage.

It is undisputed that damage to the property and its contents occurred after the Government vacated the premises and was caused by those engaged in civil unrest and rioting in Libya. There is no evidence that any damage occurred during the pre-war occupancy.

The CO denied the claim by decision dated August 15, 2019. Appellant timely appealed to the Civilian Board of Contract Appeals on October 28, 2019. After filing the appeal, appellant decreased the amount of her claim to $999,500.

On appeal, appellant argues that respondent breached the lease agreement as well as the implied duty of good faith and fair dealing. Appellant asserts that respondent failed to notify her that it was vacating the property, failed to notify her of the property's condition prior to sending her the termination agreement, and failed to mitigate the damage.

Discussion

Standard of Review

We review this appeal de novo. *Vet4U, LLC v. Department of Veterans Affairs*, CBCA 5387, 19-1 BCA ¶ 37,336. No presumption of correctness or deference is given to the CO's final decision. *Id.* Appellant must prove entitlement by a preponderance of the evidence and must prove damages "with sufficient certainty so that the determination of the

amount of damages will be more than mere speculation." *Id.* (citing *Douglas P. Fleming, LLC v. Department of Veterans Affairs*, CBCA 3655, et al., 16-1 BCA ¶ 36,509).

Lease Interpretation

The parties do not dispute that they agreed to the terms of the lease. The dispute before us involves a question of contract interpretation. "The primary objective of contract interpretation is to determine the intent of the parties at the time an agreement is created." *600 Second Street Holdings LLC v. Securities & Exchange Commission*, CBCA 3228, 13 BCA ¶ 35,396 (citing *Alvin, Ltd. v. United States Postal Service*, 816 F.2d 1562, 1565 (Fed. Cir. 1987)). To resolve this issue of interpretation, we look first to the plain language of the contract. *LAI Services, Inc. v. Gates*, 573 F.3d 1306, 1314 (Fed. Cir. 2009) (citing *M.A. Mortenson Co. v. Brownlee*, 363 F.3d 1203, 1206 (Fed. Cir. 2004)). Contracts are read in accordance with their express terms, *C. Sanchez & Son, Inc. v. United States*, 6 F.3d 1539, 1543 (Fed. Cir. 1993), and "should be given the plain meaning that a reasonably intelligent person, acquainted with the circumstances, would derive from that language." *HPI/GSA-4C, L.P. v. General Services Administration*, CBCA 6093, 20-1 BCA ¶ 37,567 (citing *Portillo v. General Services Administration*, CBCA 2516, 12-1 BCA ¶ 34,925).

We need not go beyond the four corners of the agreement to decide this dispute. While article eight of the lease requires the tenant to restore the premises to the same condition that existed at the time of entering them, the provision clearly excepts damage caused by circumstances over which the tenant has no control. And while article eight also requires the tenant to maintain the premises in good repair and tenantable condition, it clearly excepts damage caused by circumstances not under the tenant's control. The damage to the landlord's property and furniture was caused by the destruction associated with the Libyan Civil War. Since respondent had no control over the war, it is not responsible for the damage caused.

Further, article eleven of the lease specifies that the landlord is responsible "for all risks of loss of or damage to the Premises, for the entire term of this Lease, *arising from any causes whatsoever, other than Tenant fault*." (Emphasis added.) While the provision does not provide an exhaustive list of potential causes of damage for which respondent would be exempt, it includes "riot," "civil commotion," and "malicious or criminal acts of destruction." The Libyan Civil War would fit squarely within that list. Since the damage to the landlord's property was not caused by tenant fault, article eleven explicitly assigns responsibility for it to the landlord. In addition, article eleven requires that the landlord adequately insure the property against the enumerated risks. The landlord alleges the insurance required by the lease does not exist in Libya. The landlord's argument is not persuasive. The landlord's failure to obtain insurance, regardless of whether it was available in Libya, does not make respondent liable for the damage.

Here, the plain meaning of the lease supports respondent's argument that the lease terms allocated the risk of the damage and loss that occurred to the landlord. We find appellant's interpretation contrary to the plain and unambiguous terms of the lease. The landlord alleges that respondent caused—or at least exacerbated—the damage. Again, the lease explicitly allocated the risk of damage caused by civil unrest to the landlord. The landlord also argues that had respondent notified her of the damage sooner, she could have mitigated it. While the lease required the tenant to provide the landlord notice prior to terminating the lease—which respondent did—the lease did not require the tenant to provide similar notice prior to vacating the property.

Good Faith and Fair Dealing

Appellant alleges that respondent violated the duty of good faith and fair dealing by failing to notify appellant of the condition of the property. "The [duty] of good faith and fair dealing . . . include[s] the duty not to interfere with the other party's performance and not to act so as to destroy the reasonable expectations of the other party regarding the fruits of the contract." *Metcalf Construction Co. v. United States*, 742 F.3d 984, 991 (Fed. Cir. 2014) (quoting *Centex Corp. v. United States*, 395 F.3d 1283, 1304 (Fed. Cir. 2005)) . The duty is implied in every contract. *Future Forest, LLC v. Secretary of Agriculture*, 849 F. App'x 922, 926 (Fed. Cir. 2021). The implied duty of good faith and fair dealing is limited by the contract; it "cannot expand a party's contractual duties beyond those that are expressly set forth in the contract, nor can it . . . create new duties inconsistent with the contract's provisions." *Id.* (citing *Precision Pine & Timber, Inc. v. United States*, 596 F.3d 817, 831 (Fed. Cir. 2010); *see Century Exploration New Orleans, LLC v. United States*, 745 F.3d 1168, 1179 (Fed. Cir. 2014). A party "will not be found to violate the duty 'if such a finding would . . . alter[] the contract's discernable allocation of risks and benefits or . . . conflict[] with a contract provision.'" *Future Forest*, 849 F. App'x at 926 (quoting *Metcalf*, 742 F.3d at 991).

Regardless of whether respondent was aware of property damage prior to the termination of the lease, the contract does not require respondent to notify the landlord upon discovery of any damage. To hold that respondent violated the implied duty of good faith and fair dealing by failing to notify appellant of the property damage would be to expand its contractual duties beyond those expressly set forth in the contract. Further, the contract allocates the responsibility for damage arising from causes other than tenant fault to the landlord. To hold that respondent violated the duty by failing to notify appellant of the property damage would alter the contract's allocation of risk by transferring the responsibility for such damage from the landlord to the tenant based on the tenant's failure to do something it was not contractually obligated to do. Respondent did not violate the implied duty of good faith and fair dealing.

Release Interpretation

Even if the terms of the lease agreement did not clearly allocate the risk of damage not caused by the tenant to the landlord, the landlord would still be without remedy since she signed a release. Releases are contractual in nature and are interpreted in the same way as any other contract. *Team Hall Venture, LLC v. Army & Air Force Exchange Service*, 797 F. App'x 539, 540 (Fed. Cir. 2020). "In order to find a release, clear, manifest intent to waive future claims is required." *Au' Authum Ki, Inc. v. Department of Energy*, 14-1 BCA ¶ 35,727 (citing *Washington Development Group–JWB, LLC v. General Services Administration*, GSBCA 15137, et al., 03-2 BCA ¶ 32,319). An otherwise effective release will only be vitiated in "special and limited circumstances," including "economic duress, fraud, or mutual mistake." *IMS Engineers–Architects, P.C. v. United States*, 92 Fed. Cl. 52, 64 (2010), *aff'd*, 418 F. App'x 920 (Fed. Cir. 2011); *see Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1395 (Fed. Cir. 1987) (citing *J.G. Watts Construction Co. v. United States*, 161 Ct. Cl. 801, 806–07 (1963)).

The release unambiguously states that the premises were returned "free of any and all claims against the United States Government or any agency, agent, or employee thereof." By signing the termination agreement, the landlord agreed to release any potential claims it may have had against respondent related to the lease.

The landlord has alleged that the signed release is invalid because respondent obtained it through duress. There is no allegation, however, that rent was withheld until the release was signed. To show economic duress, appellant must prove that "(1) it involuntarily accepted [the other party's] terms, (2) circumstances permitted no other alternative, and (3) such circumstances were the result [of the other party's] coercive acts." *IMS Engineers*, 92 Fed. Cl. at 66 (citing *Rumsfeld v. Freedom NY, Inc.*, 329 F.3d 1320, 1329 (Fed. Cir. 2003)). To demonstrate coercion, appellant must show that the Government's act was wrongful because it was "(1) illegal, (2) a breach of an express provision of the contract without a good-faith belief that the action was permissible under the contract, or (3) a breach of the implied covenant of good faith and fair dealing." *Id.* (citing *Rumsfeld*, 329 F.3d at 1330).

The landlord alleges that her acceptance of the release was involuntary because she was deprived of any meaningful ability to review or negotiate the release. The landlord claims she decided to return the release immediately because an agent of respondent asked her to return it "as soon as possible." But neither the terms of the release itself, nor the government agent, required the landlord to sign and return the release the same day. The landlord could have waited to sign and return the release until she had taken the time to review it and/or negotiate it. The landlord's choice instead to return the release immediately does not make her acceptance involuntary.

The landlord also alleges that the circumstances permitted no alternative because she could not have inspected the property herself in the time frame between her receipt and her return of the release. Again, the landlord could have waited until she had taken the time to have her own agent inspect the property. The landlord has failed to demonstrate that the circumstances permitted no alternative.

The landlord further alleges that respondent's failure to notify her about the property's condition was coercive. However, for the reasons previously articulated, respondent was not required to provide notice of damage to the property. The landlord has failed to show that respondent's behavior was coercive.

The termination agreement contained unambiguous release language, and the landlord has failed to prove that any of the special and limited circumstances for vitiating an otherwise valid release apply. The termination agreement therefore serves as a valid release of the landlord's claims against respondent in this dispute.

Decision

The appeal is **DENIED**.

Jerome M. Drummond
JEROME M. DRUMMOND
Board Judge

We concur:

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge