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Landlord and Tenant

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concluded that the majority of the employees desired that no union represent them; a rather airy method of finding a labor dispute to be nonexistent.

The court's own statement of the facts suggests much that would have amounted to unfair practice on the part of the employer under the terms of the Labor Management Relations Act. In this connection it may be worth noting that the *Fairlawn Meats* decision,[12] quoted at length and heavily relied upon, was overruled by the United States Supreme Court.[13] In an event, the *Anderson* decision does not seem to afford a reliable precedent.

EDWIN R. TEPLE

LANDLORD AND TENANT

An important construction of a common leasehold cancellation clause was decided in the case of *Fox v. The Churngold Corp.*[1] Plaintiff leased a tractor under written agreement on February 1, 1954. On July 8, 1954, plaintiff received a cancellation notice and the lease was cancelled on July 14, 1954. The cancellation clause provided:

"It is further agreed that this agreement shall cancel all previous lease agreements between the parties and shall remain in effect for a period of one year from the date executed and from year to year thereafter, but may be cancelled on five (5) day's written notice from one party to the other."

After first determining that the clause was unambiguous so that the parol evidence rule applied,[2] the court then concluded that the right to terminate applied to the *first* of successive terms. The plaintiff had contended that he had a non-cancellable lease for the first year and sought damages for cancellation within the first year term.

Does a general statute create a leasehold interest? In *Drugan v. Flaler*[3] the plaintiff had the newsstand and confectionary concession in the State Office Building. Plaintiff was advised that her lease would not be renewed. Defendant wanted to give the concession to the blind under Revised Code Section 5109.11. But that statute provides in part as follows:

"... the present operator shall not be removed...."

Defendant's argument that a literal interpretation of the statute creates a perpetual lease was rejected. The court noted that the legislature at its

[12] Fairlawn Meats, Inc. v. Amalgamated Meat Cutters, 99 Ohio App. 517, 135 N.E.2d 689 (1955).

[13] Amalgamated Meat Cutters v. Fairlawn Meats, Inc., 353 U.S. 20 (1957). According to the Ohio court, the facts were quite similar.

pleasure could enact subsequent legislation to modify or terminate plaintiff's rights. The existing statute was construed to create for plaintiff a tenancy at will.[4]

The standard "untenantability" clause[5] was construed to not exclude a tenant from sharing in the proceeds of condemnation proceedings for highway purposes.[6] The court opinioned that such a clause contemplates such hazards as could be abated so as to be able to restore the property to occupancy. The court noted several examples of phraseology which would constitute a contracting away by the tenant of his right to damages for loss of interest in the premises.[7] The court also set forth the rule of damages to the tenant as the market value of the use and occupancy of the leasehold for the remainder of the term minus the agreed rent.[8]

In *Berner v. Gelman*,[9] the plaintiff-tenant had a fire clause in the lease which required the lessor to repair with reasonable speed and complete such repairs within thirty days from the time of any such fire. There was a fire on December 27, 1952. The lessor died testate on March 9, 1954. The plaintiff surrendered possession on October 31, 1954 and sought damages from the devisees for the rental value of the property from March 9, 1954 to October 31, 1954. The plaintiff had failed to present a claim against the estate under the claims statutes,[10] hence the action was of necessity limited to a direct action against the devisees. The court noted that the covenant was clearly broken before the present owners came into ownership, and that performance of the covenant required of the lessor a single act or contemporaneous acts as distinguished from acts at different subsequent times. On this distinction the court concluded

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[1] 101 Ohio App. 368, 136 N.E.2d 754 (1956).

[2] Burton v. Durkee, 158 Ohio St. 313, 109 N.E.2d 265 (1952).

[3] 74 Ohio L. Abs. 188, 139 N.E.2d 704 (Ohio C.P. 1956).

[4] Defined under Ohio Law in Brown v. Fowler, 65 Ohio St. 507, 523, 63 N.E. 76, 78 (1901).

[5] "... if ... the demised premises ... be rendered untenantable by public authority ... and ... cannot by reasonable efforts be restored to their former condition within ninety (90) days, either the Lessor or the Lessee shall have the option of terminating this lease by written notice to the other."

[6] City of Columbus v. Huntington National Bank, 75 Ohio L. Abs. 215, 143 N.E.2d 874 (Ohio Ct. App. 1956).

[7] An approved form would be "If the whole or any part of the demised premises shall be taken by Federal, State, county, city, or other authority for public use, or under a statute, or by right of eminent domain, the the lease terminates."

[8] Not to be confused with the damage liability of the condemning body. See Queen City Realty Co. v. Linzell, 166 Ohio St. 249, 142 N.E.2d 219 (1957).

[9] Berner v. Gelman, 102 Ohio App. 319, 143 N.E.2d 605 (1956).

[10] OHIO REV .CODE §§ 2117.06-.07.