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**IN THE
COURT OF APPEALS OF INDIANA**

L & W OUTDOOR ADVERTISING and)
LAURENCE WEAVER,)

Appellants-Defendants,)

vs.)

No. 48A05-0808-CV-497

DOUGLAS LAWSON,)

Appellee-Plaintiff.)

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-9607-MI-454

May 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

L & W Outdoor Advertising and its president, Laurence Weaver, (collectively “L & W”), appeal the judgment that its lease agreement with Douglas Lawson expired on June 7, 2008. We affirm.

FACTS AND PROCEDURAL HISTORY

On December 7, 1992, Lawson agreed to allow L & W to erect a billboard on his property. The lease provided, in pertinent part:

This agreement shall remain in full force and effect for a period of 6 years, beginning on the date any advertisement shall be placed on the first sign structure erected.

Rental shall be the sum of four hundred dollars (\$400.00) per year per sign structure erected on said premises payable annually in advance beginning on the date any advertisement shall be placed on each sign structure erected.

* * * * *

This lease may be renewed by Lessee for three (3) periods of three (3) years each, upon the same terms and conditions by Lessee delivering notice of such renewal to Lessor prior to the expiration of each term.

(Appellant’s App. at 12.)

As of July 1996, L & W had not erected a billboard on Lawson’s property. On July 9, 1996, Lawson sent L & W a letter purporting to terminate the lease. On July 17, 1996, Lawson filed a complaint seeking a declaratory judgment that the lease had no specific termination date and was terminable at will. Lawson and L & W filed cross motions for summary judgment. On February 21, 1997, the trial court granted L & W’s motion and denied Lawson’s. The order stated:

a. As a matter of law, the Court concludes that the lease which is the subject of this action is for a fixed term and is not a “perpetual” lease.

b. As a matter of law, performance under the lease must commence within a reasonable time. A “reasonable time” is a fact question. However, even if the factfinder were to conclude that there had been an unreasonable

delay in erecting a sign structure, the remedy would be to start the running of the lease from a date found to be reasonable. And, under no set of facts would the lease (and its options) expire prior to 2007.

(Id. at 75.)

Sometime in November 1997, Lawson noticed L & W had erected a billboard, on which L & W advertised the sign was for rent. On February 23, 1998, Weaver sent the following letter to Thomas Burke, who was Lawson's attorney at the time:

We agree that the completion of the sign structure was November 25, 1997.

We do not agree that our rent sign constitutes an advertiser.

However, to show our willingness to go the extra mile on this matter, we are willing to agree to November 25, 1997 as the active date of the lease dated December 7, 1992 between Douglas Lawson and L & W Outdoor Advertising.

You may inform Mr. Lawson that by his negotiation [of] L & W Outdoor Advertising check # 21177 it is agreed that the active date of said lease is November 25, 1997.

(Id. at 82.) Lawson cashed the check, which was for \$400.00, the equivalent of a year's rent.

In 1998, 2001, and 2004, Weaver sent Lawson letters notifying him of L & W's intention to exercise the options. The letters purported to extend the lease to November 25, 2012.

On October 11, 2007, Lawson filed a petition for clarification of the February 21, 1997 order, stating it was his understanding that the lease would expire in 2007. L & W filed a response, asserting the parties had agreed the lease would begin on November 25, 1997, as memorialized by the February 23, 1998, letter from Weaver to Burke. On December 17, 2007, Burke withdrew as Lawson's counsel.

The case proceeded to bench trial on May 2, 2008. Lawson testified he had anticipated a sign would be erected within three to six months of the date the lease agreement had been executed. He testified he was unaware of the February 23, 1998, letter from Weaver to Burke, and he would not have agreed to the lease beginning on November 25, 1997. Lawson acknowledged cashing the check referenced in the letter, which he stated was “merely a rent check” and was not “additional consideration for anything else.” (Tr. at 20.)

Weaver testified he believed they had agreed the lease began on November 25, 1997, because Lawson cashed the check. Weaver testified the check was for rent from November 25, 1997 to November 25, 1998. He believed the lease should not have begun until later, when L & W found an advertiser to rent the billboard; however, he agreed to begin paying rent as of November 25, 1997 “as a courtesy to [Lawson], to go the extra mile.” (*Id.* at 60.) Weaver had no explanation for the delay in erecting the sign or in finding an advertiser.

On May 23, 2008, the trial court ruled that six months would have been a reasonable time for the lease to have commenced; therefore, it held the lease would expire on June 7, 2008. The trial court rejected L & W’s argument that the parties had agreed to commence the lease on November 25, 1997:

11. Defendant argues that the plaintiff is bound [by] the terms of letters he sent after the Court Order, even though the plaintiff did not respond or agree to the new terms.

12. Defendant further argues that by the negotiation of a yearly rent check in the amount of \$400.00, plaintiff is bound by the terms of a letter sent to plaintiff’s former attorney extending the period of the contract.

13. The Court cannot find for the defendant on either of these contentions. First, a unilateral statement made in a letter in which there is no response or “meeting of the minds” cannot constitute an amendment to the agreement. Second, the negotiation of a rent check to which plaintiff is already entitled is not sufficient consideration to modify the terms of the agreement. I.L.E. “Accord and Satisfaction.”

(Appellant’s App. at 102.)

On June 20, 2008, L & W filed a motion to correct error and attached a new exhibit, which purports to be a letter from Burke to Weaver dated February 11, 1998.

The letter states:

I have been asked to respond to your letter of February 1, 1998, to Douglas Lawson. Mr. Lawson disputes your claim that the lease period began February 1, 1998. In fact, the sign structure was erected and advertising placed on it in the month of November, 1997. We are unsure of the exact date, but know it was prior to Thanksgiving. Unless you retract your effort to establish the lease period beginning date of February 1st and instead establish the beginning of the lease period in November of 1997 as is the fact, I have been instructed to initiate litigation to cancel the lease for your nonpayment. I shall await your kind response.

(*Id.* at 121.) L & W argued the letter demonstrated it had not unilaterally chosen the beginning date of November 25, 1997. Further, according to L & W, the letter demonstrated Burke was acting at Lawson’s request and had authority to bind him. The trial court did not rule on the motion, and L & W filed a notice of appeal after the motion was deemed denied.

DISCUSSION AND DECISION

It appears the trial court entered findings of fact and conclusions of law *sua sponte*. Under such circumstances, the findings and judgment will not be set aside unless clearly erroneous. *Piles v. Gosman*, 851 N.E.2d 1009, 1012 (Ind. Ct. App. 2006). A

judgment is clearly erroneous if there is no evidence supporting the findings, the findings do not support the judgment, or the wrong legal standard was applied. *Id.* While findings of fact are reviewed for clear error, we do not defer to the trial court's conclusions of law, which are reviewed *de novo*. *Id.*

A trial court's findings control only the issues they cover, and we will apply a general judgment standard to any issues about which the court did not make findings. "We may affirm a general judgment based on any legal theory supported by the evidence."

Id. (citations omitted).

The trial court found for Lawson on two grounds:

First, a unilateral statement made in a letter in which there is no response or "meeting of the minds" cannot constitute an amendment to the agreement. Second, the negotiation of a rent check to which plaintiff is already entitled is not sufficient consideration to modify the terms of the agreement.

(Appellant's App. at 102.)

L & W makes two primary arguments on appeal: (1) Burke had implied or apparent authority to bind Lawson, and (2) the February 11, 1998, letter demonstrates L & W did not unilaterally choose November 25, 1997, as the beginning date of the lease. Assuming *arguendo* these two assertions are correct, they do not undermine the trial court's finding the rent check was not new consideration that would support a modification of the lease agreement.

The lease did not establish a beginning date. The trial court's ruling in 1997 was that the lease had to begin within a reasonable time, but it did not establish a time. *See Harrison v. Thomas*, 761 N.E.2d 816, 819 (Ind. 2002) ("When the parties to an agreement do not fix a concrete time for performance, the law implies a reasonable

time.”). Lawson was not obligated to agree the lease began on any particular date, and new consideration was required to make a binding agreement. *See Henthorne v. Legacy Healthcare, Inc.*, 764 N.E.2d 751, 759 (Ind. Ct. App. 2002) (modification of a contract requires all the elements of a contract, including offer, acceptance, and consideration).

L & W offered no explanation for the delay in commencing the lease and does not argue the trial court erred by finding six months was a reasonable time. At the latest, Lawson was entitled to rent by February 1, 1998, when L & W first rented the sign.¹ The check was enclosed in Weaver’s February 23, 1998 letter, and Weaver acknowledged the check was for rent. Even using the latest possible starting date for the lease, Lawson was entitled to rent by the time he cashed the check. Therefore, the rent check was not new consideration for an agreement to begin the lease on November 25, 1997. *See Archem, Inc. v. Simo*, 549 N.E.2d 1054, 1062 (Ind. Ct. App. 1990) (“[A]ny promise to do what an existing contract has already bound the promisor to do lacks consideration.”), *reh’g denied, trans. denied, cert. dismissed*. Because there was no consideration, the trial court did not err by finding the parties did not have a binding agreement as to the beginning date of the lease. Furthermore, because L & W does not challenge the finding that six months was a reasonable time within which to begin the lease, we cannot say the trial court erred by determining the lease began on June 7, 1993 and ended June 7, 2008.

¹ The February 11, 1998, letter from Burke to Weaver refers to Weaver’s contention that the lease began on February 1, 1998, which apparently was the date L & W first rented the sign to an advertiser.

We note Lawson argues the letter was not properly before the trial court or this court because it was not admitted at trial and was not newly discovered after trial. Lawson also disputes L & W’s interpretation of the letters. He suggests the letters are discussing the beginning date of each year of the lease, not the beginning date of the entire lease term. We need not resolve these issues, as the February 11, 1998, letter does not support reversal in any event.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.