

**IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON**

**HAROLD R. GUNN and
PATSY R.GUNN**

Plaintiffs/Appellants,

VS.

**JENNY FIELDS, d/b/a
Q-MART STORES,**

Defendant/Appellee.

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Humboldt LawCourt No. H-2871

Appeal No. 02A01-9511-CV-00242

<p>FILED</p> <p>September 25, 1996</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>

APPEAL FROM THE HUMBOLDT LAW COURT OF GIBSON COUNTY
AT HUMBOLDT, TENNESSEE
THE HONORABLE DICK JERMAN, JR., JUDGE

HAROLD R. GUNN
Humboldt, Tennessee
Attorney for Appellants

ROBERT KINTON
Trenton, Tennessee
Attorney for Appellee

AFFIRMED

ALAN E. HIGHERS, J.

CONCUR:

DAVID R. FARMER, J.

HOLLY KIRBY LILLARD, J.

In this unlawful detainer action, Plaintiffs, Harold R. Gunn and Patsy R. Gunn, filed suit in general sessions court seeking possession of the property in question and eviction of the Defendant, Jenny Fields. The general sessions court ruled in favor of the Defendant, holding that the lease expired on July 31, 2000, and not on April 14, 1995 as the Plaintiffs contend. An appeal was filed in circuit court, and the circuit court dismissed the Plaintiffs' appeal from general sessions court. Plaintiffs have appealed the circuit court's dismissal of the Plaintiffs' appeal from general sessions court arguing that the lease expired on April 14, 1995 because the Defendant did not exercise the fourth option to extend the lease in writing within sixty days prior to the expiration of the previous lease period. For the reasons stated hereafter, we affirm.

FACTS

On April 15, 1970, D. C. Mitchell, the lessor, and Leon and Randy Fields, the lessees, signed the original lease agreement. Under the original lease agreement, the lease was for a period of ten years, beginning on April 15, 1970 and ending on April 14, 1980.¹ The Defendant was to pay \$425.00 in rental payments under the original lease agreement. The original lease agreement provided for three additional five year extension periods which could be exercised by written notice at least sixty days prior to the expiration of the lease period. The option periods under the original lease agreement were as follows:

Option One: April 15, 1980 through April 14, 1985;
Option Two: April 15, 1985 through April 14, 1990;
Option Three: April 15, 1990 though April 14, 1995.

The Defendant properly exercised the first option to extend the lease by a letter dated November 29, 1979, which was more than sixty days prior to the expiration of the original lease.

On August 1, 1980, the Plaintiffs, lessors, and the Defendant, lessee, signed a lease addendum which incorporated the original lease by reference and included an additional fourth option. The fourth option provided for an extension of the lease from a period

¹The Plaintiffs state in their brief that they purchased the building and the lease on February 19, 1979.

beginning on April 15, 1995 and ending on July 31, 2000.

The Defendant exercised the second option to extend the lease from a period beginning on April 15, 1985 and ending on April 14, 1990 by a letter dated January 10, 1985. Defendant, similarly, exercised the third option to extend the lease from a period beginning on April 15, 1990 and ending on April 14, 1995 by a letter dated January 2, 1989.

On June 6, 1990, the Plaintiffs, lessors, and the Defendant, lessee, signed a Second Addendum and Amendment to the original lease agreement which stated that the lease would expire on July 31, 2000 and granted four additional five year options to extend the lease period.

The Second Addendum and Amendment to the lease provides as follows:

1. Term of Lease. The termination of said Lease shall be amended to expire on July 31, 2000.
2. Rental. For the period up to the termination date of July 31, 2000, the monthly rental payment shall be amended to the sum of Six Hundred Dollars (\$600.00), commencing on the 1st day of July, 1990.
3. Options. Lessor hereby grants unto Lessee an additional four (4) five (5) year option periods, commencing with the expiration of said Lease. For the first two (2) five (5) year options, commencing on August 1, 2000 and ending July 31, 2010, the rental payment shall be the sum of Seven Hundred Dollars (\$700.00) per month. For the second two (2) five (5) year options, commencing on August 1, 2010 and ending July 31, 2020, the rental payment shall be the sum of Eight Hundred Dollars (\$800.00) per month.

ISSUE PRESENTED FOR REVIEW

The only issue before this Court is whether the Second Addendum and Amendment to the original lease agreement extended the lease until July 31, 2000.

It is the Plaintiffs' contention that the Second Addendum and Amendment to the original lease agreement did not extend the lease until July 31, 2000. The Plaintiffs argue that the Defendant had to exercise the fourth option in writing sixty days prior to April 14, 1995 or the end of the previous lease period in order to extend the lease until July 31, 2000. Because the Defendant did not exercise the fourth option in writing sixty days prior

to the end of the previous lease period, the Plaintiffs contend that the lease expired on April 14, 1995 and does not extend until July 31, 2000.

Interpretation of a written agreement is a matter of law and not of fact. APAC-Tennessee, Inc. v. J.M. Humphries Const. Co., 732 S.W.2d 601 (Tenn. Ct. App. 1986).

In APAC, this Court said:

The cardinal rule for interpretation of a contract is to ascertain the intention of the parties in consideration of the instrument as a whole. Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth, Inc., 521 S.W.2d 578 (Tenn. 1975); Rodgers v. Southern Newspapers, Inc., 214 Tenn. 335, 379 S.W.2d 797 (1964). In construing contracts, the words expressing the parties' intentions should be given their usual, natural and ordinary meaning, and neither party is to be favored in their construction. Brown v. Tennessee Auto. Ins. Co., 192 Tenn. 60, 237 S.W.2d 553 (1951); Ballard v. North American Life & Casualty Co., 667 S.W.2d 79 (Tenn. Ct. App. 1983).

In the absence of fraud or mistake, a contract must be interpreted and enforced as it is written, even though it contains terms which may be thought harsh and unjust. Ballard v. North American Life & Casualty Co., supra; E.O. Bailey & Co. v. Union Planters Title Guaranty Co., 33 Tenn. App. 439, 232 S.W.2d 309 (1949).

732 S.W.2d at 604.

Under Tennessee law, parties may modify the terms of an existing contract at any time. V. L. Nicholson Co. v. Transcon Inv. and Financial Ltd., Inc., 595 S.W.2d 474 (Tenn. 1980); Cronbach v. Aetna Life Ins. Co., 284 S.W. 72 (Tenn. 1926); Co-operative Stores Co. v. United States Fidelity & Guaranty Co., 195 S.W. 177 (Tenn. 1917); Arcata Graphics Co. v. Heidelberg Harris, Inc., 874 S.W.2d 15 (Tenn. Ct. App. 1993); Batson v. Pleasant View Utility Dist., 592 S.W.2d 578 (Tenn. Ct. App. 1979); Bonastia v. Berman Bros., Inc., 914 F. Supp. 1533 (W.D. Tenn. 1995).

Both the Plaintiffs and the Defendant agreed to modify the terms of the original lease agreement and the first lease addendum as is evidenced by the parties' signatures attached to the Second Addendum and Amendment to the lease agreement. Thus, the parties are bound by the terms of the Second Addendum and Amendment. Because the Second Addendum and Amendment expressly provided that "[t]he termination of said Lease shall be amended to expire on July 31, 2000" and because the *first* option period

under the Second Addendum and Amendment begins on August 1, 2000, we conclude that the lease expires on July 31, 2000 and that the Defendant did not have to exercise an option in writing sixty days prior to the end of the previous lease period in order to extend the lease until July 31, 2000.

The judgment of the trial court is hereby affirmed. Costs on appeal are taxed to the Appellants, for which execution may issue if necessary.

HIGHERS, J.

CONCUR:

FARMER, J.

LILLARD, J.