IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 4, 2022 Session

SHAMS PROPERTIES, LLC ET AL. v. ALL NATURAL LAWNS AND LANDSCAPES, LLC ET AL.

Appeal from the Circuit Court for Davidson County
No. 19C1414 Kelvin D. Jones, Judge

No. M2021-01543-COA-R3-CV

A landlord entered into a commercial lease agreement with a limited liability company. When the company dissolved, one of its former members continued to occupy the leased property but never requested that the lease be assigned to her. Several years later, the landlord sent notice to the property that he was terminating the lease. When the former member of the company refused to vacate the premises, the landlord filed a detainer warrant to recover possession of the property. The former member filed a countercomplaint seeking specific performance of an option to purchase included in the lease agreement. The trial court granted summary judgment to the landlord on the specific performance claim after determining that the former member did not have the right to exercise the option to purchase because she was not the tenant under the lease. After a trial on the issue of whether the landlord terminated the lease agreement, the trial court concluded that the landlord properly terminated the lease agreement and was entitled to possession of the property. The former member appealed, challenging the trial court's summary judgment determination and the court's determination that the landlord was entitled to possession of the property. Discerning no error, we affirm the trial court's decision in all respects.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the Court, in which JOHN W. MCCLARTY and JEFFREY USMAN, JJ., joined.

Nancy Krider Corley, Hendersonville, Tennessee, for the appellant, Tanya Hans.

Mary Beth Hagan, Murfreesboro, Tennessee, for the appellees, Shams Properties, LLC, and Mohammed Reza Shams.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

This case involves a dispute between a landlord and a tenant. In 2007, Mohammed Shams and All Natural Lawns and Landscapes, LLC ("All Natural"), a landscaping and garden business, entered into a written lease/purchase agreement ("the Lease") for commercial real estate located at 4088 Murfreesboro Pike, Nashville, Tennessee ("the Property" or "the Premises"). The opening sentence of the Lease identifies the parties thereto as follows: "**THIS LEASE/PURCHASE AGREEMENT** ('Lease'), made this 30th day of March 2007, between Mohammed Shams ('Landlord'), and All Natural Lawn and Landscapes, LLC ('Tenant')." The following eight pages set forth the rights and obligations of the Landlord and the Tenant. Throughout those eight pages, no one other than All Natural is identified as the Tenant.

The Lease provides that the Property is "leased to Tenant . . . for a term of (36) months, commencing on April 1, 2007 and ending on the last day of the month which shall be 36 months from such commencement date, unless the term be sooner terminated or canceled as provided herein." At the end of the three-year term, the Lease would automatically renew "from year-to-year." Section 2 of the Lease allows either party to prevent renewal by giving notice of termination of the Lease "not less than sixty days" before the lease term ends—March 31 of a given year. When a party gives notice of termination, the Lease requires that the notice

> shall be in writing and shall be sent to the other party by registered or certified mail to the address specified on the first page of this Lease, or to such other address as either party shall have designated in writing to the other, and the time of the rendition of such shall be when same is deposited in an official United States Post Office, Postage prepaid.

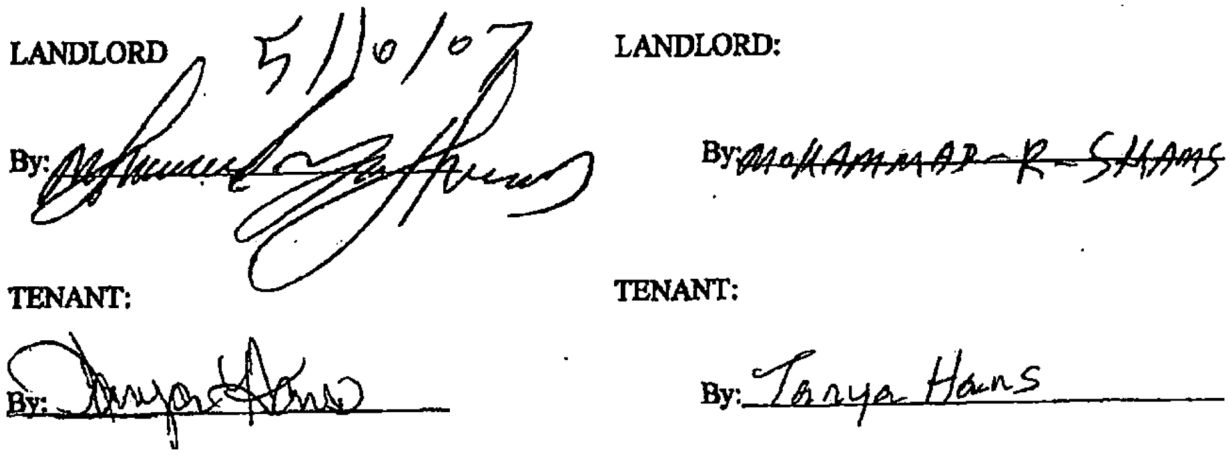
The Lease also contains a provision granting the Tenant an option to purchase the Property:

> Landlord hereby grants to Tenant an exclusive option to purchase the Premises described herein during the term of the Lease, including the optional and renewing lease years, subject to the Purchase Price (as defined herein) and other conditions set forth. Tenant will notify Landlord of the intent to exercise their option during the term, or any additional term, of the Lease. Landlord may not offer the Premises for sale to any third party during the term or any additional term of the Lease.
>
> DEPOSIT: $1,500 (To be applied towards purchase price if tenant is ready to perform on the purchase option of this contract) Down Payment: Landlord

agrees to apply 10% of the lease payments towards the purchase price of property at closing due to the amount of rehab expense tenant will have on property to do their specific use.

With respect to the first three years of the Lease, Section 4 of the Lease lists three purchase prices: $330,000 if the option is exercised in 2007; $335,000 if exercised in 2008; and $340,000 if exercised in 2009. Although the option to purchase provision contains language indicating that the option could be exercised during "any additional term" after the initial three-year term, the Lease contains no purchase price or method for calculating a purchase price beyond 2009.[1]

On the last page of the Lease, the signatures of Mr. Shams and Tanya Hans, a member of All Natural,[2] appear as shown below:



On May 18, 2009, Mr. Shams quitclaimed the Property to Shams Properties, LLC ("Shams"), an entity of which he and his wife were members. Shams then assumed the Lease and became the landlord of the Property. That same year, the Tennessee Secretary of State administratively dissolved All Natural, but Ms. Hans continued to pay rent and operate a landscaping and gardening business at the Property. On August 28, 2013, Ms. Hans incorporated that landscaping and gardening business as A Greener Way, LLC ("Greener Way"). After the dissolution of All Natural in 2009, Ms. Hans never requested or received written consent from Shams to assign the Lease to her or Greener Way.[3]

[1] It is undisputed that All Natural never exercised the option to purchase.

[2] According to incorporation documents in the record, Ms. Hans formed All Natural with Ed Jones, II.

[3] According to the Lease, "Tenant shall not make any assignment of this Agreement nor sublet the same or any part thereof without the prior written consent of the Landlord, which consent shall not be unreasonably withheld."

In 2019, Shams sought to terminate the Lease by sending 60-days' notice. Mr. Shams mailed the termination notice at the U.S. Post Office on January 28, 2019, and pre-paid $28.30 for postage. He sent the notice via overnight mail with a signed return receipt requested and a tracking number. That same day, to ensure actual delivery, Mr. Shams's wife, Sonia Shams, hand-delivered a copy of the termination notice to the Property. Ms. Shams claimed that she left the notice with Jennifer Jones, the primary person in the office at the Property. Thereafter, Ms. Hans refused to vacate the Property, and Shams filed a detainer warrant in the Davidson County General Sessions Court.

After hearing the matter, the general sessions court entered an order denying the detainer warrant and dismissing the case. Shams timely appealed to the Davidson County Circuit Court. Ms. Hans filed a counter-complaint in the circuit court seeking specific performance of the option to purchase provision in the Lease. She claimed that she sent notice to Shams of her intent to exercise the option to purchase the Property in her individual capacity in 2017 and in 2019. Shams filed an answer to the counter-complaint and an amended petition that added a claim for declaratory judgment regarding whether the Lease gave Ms. Hans a contractual right to exercise the option to purchase in her individual capacity.

After a period of discovery, the parties filed cross-motions for partial summary judgment. Ms. Hans filed three separate motions for partial summary judgment. In her first motion, she contended she was entitled to summary judgment on the issue of whether she had a right to exercise the option to purchase because her signature on the Lease showed that she signed in her individual capacity rather than as a representative of All Natural. In her second motion, Ms. Hans contended that she was entitled to summary judgment on the issue of whether Shams terminated the Lease because Shams did not send the termination notice via registered mail or certified mail, as required by the Lease. In her third motion, Ms. Hans contended that she was entitled to summary judgment on the issue of whether she properly exercised the option to purchase. She argued that she properly exercised the option to purchase the Property by sending notice to Shams via certified mail on two separate occasions—September 29, 2017, and January 28, 2019.

Shams sought summary judgment on its request for declaratory judgment on the issue of whether Ms. Hans had the right to exercise the option to purchase. Specifically, Shams asserted that it was entitled to summary judgment because: (1) "the Tenant under the Agreement is [All Natural] and not Tanya Hans," (2) "Tanya Hans has no individual right to exercise the option to purchase the Property at issue," and (3) "[All Natural] never exercised the option to purchase the Property at issue." In other words, Shams contended, Ms. Hans could not have properly exercised the option because she had no right to do so under the Lease.

Following arguments on the cross-motions for partial summary judgment, the trial court entered an order granting Shams's motion and denying Ms. Hans's motion on the issue of whether she had the right to exercise the option to purchase. The court based its decision on two findings: (1) that Ms. Hans, in her individual capacity, was not a party to the Lease because the Lease clearly showed "that the parties to the lease agreement were intended to be Mr. Shams and [All Natural]" and that the option to purchase was never assigned to Ms. Hans. Thus, the court concluded that she did not have the right to exercise the option to purchase in her individual capacity. Based, in part, on that conclusion, the court denied Ms. Hans's motion for partial summary judgment on the issue of whether she properly exercised the option to purchase. Lastly, the trial court concluded that Ms. Hans was not entitled to partial summary judgment on the issue of whether Shams terminated the Lease because genuine disputes of material fact existed regarding how the notice was delivered and whether it complied with the Lease's notice requirements.

The case then proceeded to trial on one issue: whether Shams properly terminated the Lease. On November 24, 2021, the court entered an order concluding that Shams properly terminated the Lease and awarding Shams possession of the Property.

Ms. Hans appealed and presents several issues that we consolidate and restate as follows: (1) whether the trial court erred in concluding that Shams was entitled to partial summary judgment on the issue of whether she had a right to exercise the option to purchase, (2) whether the trial court erred in concluding that she was not entitled to partial summary judgment on the issue of whether she properly exercised the option, and (3) whether the trial court erred in concluding that Shams properly terminated the Lease.

STANDARD OF REVIEW

Some of the issues Ms. Hans presents require us to review the trial court's decisions on the parties' motions for partial summary judgment. We review a trial court's summary judgment determination de novo, with no presumption of correctness. *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). This means that "we make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied." *Id.* We "must view the evidence in the light most favorable to the nonmoving party and must draw all reasonable inferences in that party's favor." *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002); *see also Acute Care Holdings, LLC v. Houston Cty.*, No. M2018-01534-COA-R3-CV, 2019 WL 2337434, at *4 (Tenn. Ct. App. June 3, 2019).

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." TENN. R. CIV. P. 56.04. A disputed fact is material if it is determinative

of the claim or defense at issue in the motion. *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 84 (Tenn. 2008) (citing *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn. 1993)). When a party moves for summary judgment but does not have the burden of proof at trial, the moving party must submit evidence either "affirmatively negating an essential element of the nonmoving party's claim" or "demonstrating that the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the nonmoving party's claim or defense." *Rye*, 477 S.W.3d at 264. Once the moving party has satisfied this requirement, the nonmoving party "'may not rest upon the mere allegations or denials of [its] pleading.'" *Id.* at 265 (quoting TENN. R. CIV. P. 56.06). Rather, the nonmoving party must respond and produce affidavits, depositions, responses to interrogatories, or other discovery that "set forth specific facts showing that there is a genuine issue for trial." TENN. R. CIV. P. 56.06; *see also Rye*, 477 S.W.3d at 265. If the nonmoving party fails to respond in this way, "summary judgment, if appropriate, shall be entered against the [nonmoving] party." TENN. R. CIV. P. 56.06. If the moving party fails to show that he or she is entitled to summary judgment, however, "'the non-movant's burden to produce either supporting affidavits or discovery materials is not triggered and the motion for summary judgment fails.'" *Martin*, 271 S.W.3d at 83 (quoting *McCarley v. W. Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn. 1998)).

Because any party may move for summary judgment under Tenn. R. Civ. P. 56, cases sometimes involve cross-motions for summary judgment. *CAO Holdings, Inc. v. Trost*, 333 S.W.3d 73, 82 (Tenn. 2010). As the Tennessee Supreme Court explained in *CAO Holdings v. Trost*:

> Cross-motions for summary judgment are no more than claims by each side that it alone is entitled to a summary judgment. The court must rule on each party's motion on an individual and separate basis. With regard to each motion, the court must determine (1) whether genuine disputes of material fact with regard to that motion exist and (2) whether the party seeking the summary judgment has satisfied Tenn. R. Civ. P. 56's standards for a judgment as a matter of law. Therefore, in practice, a cross-motion for summary judgment operates exactly like a single summary judgment motion.

Id. at 83 (citations omitted).

In reviewing the trial court's decisions on the motions for partial summary judgment, we will be required to interpret the Lease, which is a contract. Our Supreme Court has explained the principles of contract interpretation as follows:

> The interpretation of a contract is a matter of law and therefore is reviewed de novo. *See Hamblen County v. City of Morristown*, 656 S.W.2d 331, 335-36 (Tenn. 1983). "When resolving disputes concerning contract interpretation, our task is to ascertain the intention of the parties based upon

> the usual, natural, and ordinary meaning of the contractual language." *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 95 (Tenn. 1999). If a contract's language is clear and unambiguous, then the literal meaning of the language controls the outcome of the contract dispute. *See Planters Gin Co. v. Fed. Compress & Warehouse Co.*, 78 S.W.3d 885, 890 (Tenn. 2002). Additionally, "all provisions in the contract should be construed in harmony with each other, if possible, to promote consistency and to avoid repugnancy between the various provisions of a single contract." *Guiliano*, 995 S.W.2d at 95.

Teter v. Republic Parking Sys., Inc., 181 S.W.3d 330, 342 (Tenn. 2005); *see also Bynum v. Sampson*, 605 S.W.3d 173, 180 (Tenn. Ct. App. 2020) (citing *84 Lumber Co. v. Smith*, 356 S.W.3d 380, 383 (Tenn. 2011)).

Lastly, one of the issues raised by Ms. Hans requires us to review a decision the trial court made after conducting a bench trial. When a matter is tried before the trial court without a jury, we review the trial court's findings of fact de novo upon the record, with a presumption that the trial court's findings are correct, unless the evidence preponderates otherwise. TENN. R. APP. P. 13(d); *Williams v. City of Burns*, 465 S.W.3d 96, 108 (Tenn. 2015).

ANALYSIS

I. Whether Ms. Hans Had a Right to Exercise the Option to Purchase

Ms. Hans contends that the trial court erred in granting partial summary judgment to Shams on the issue of whether she had a right to exercise the option to purchase. The parties agree that the Lease is not ambiguous, making it unnecessary to look beyond the four corners of the document to determine their intent in regard to this issue, but they dispute the meaning of that unambiguous language. Ms. Hans argues that it is clear from the four corners of the Lease that the parties intended for her to have a personal right to exercise the option because she signed her name on the Lease without including any language indicating that she was signing in a representative capacity as one of All Natural's members. In response, Shams argues that the Lease unambiguously communicates that Ms. Hans signed as a representative of All Natural rather than as an individual party to the Lease because she is not named anywhere in the body of the document. Therefore, Shams asserts, the Lease gave the right to exercise the option to All Natural only.

Tennessee courts have previously considered the issue of whether a person signed a document in a representative capacity or in an individual capacity. The Tennessee Supreme Court has stated as follows:

> "Where an agreement naming in the body of the instrument the parties bound thereby is signed by a third person not named therein, he cannot be regarded as one of the principal obligors, and the question has frequently arisen as to whether this constitutes a sufficient memorandum to bind him as a guarantor or surety for the parties named. In such a case, since oral evidence is necessary to show the undertaking of a person so signing, it is generally held that there is not a sufficient memorandum of an agreement to become surety or guarantor. Thus, where a person not named in a lease as a party thereto signs the lease, it is held that to allow his liability as a guarantor for the lessee to be established by oral evidence would be violative of the statute [of frauds]."

In re Estate of Dickerson, 600 S.W.2d 714, 717 (Tenn. 1980) (quoting 72 AM. JUR. 2D *Statute of Frauds* § 316 (1974) at 836-37). The Supreme Court has considered this issue more than once since 1980 and, although the Court's discussion in those cases is usually framed in terms of whether the person who signed the contract was personally bound as a guarantor, we find that line of cases instructive, especially the following two cases: *84 Lumber Co. v. Smith*, 356 S.W.3d 380 (Tenn. 2011) and *MLG Enterprises, LLC v. Johnson*, 507 S.W.3d 183 (Tenn. 2016).

84 Lumber involved a commercial credit application identifying Allstates Building Systems, LLC, as a limited liability company and R. Bryan Smith as the president of the company. 356 S.W.3d at 381. Mr. Smith signed the application as follows: "R. Bryan Smith, President." *Id.* at 382. 84 Lumber accepted the credit application and extended credit to Allstates. *Id.* Thereafter, Allstates failed to pay, and 84 Lumber filed suit against both Allstates and Mr. Smith seeking to recover the principal and interest. *Id.* The issue considered by the Supreme Court was whether Mr. Smith's signature on the application bound him "in both a representative capacity and as a guarantor to the contract or whether he [could] be bound as a guarantor only if he signed the application a second time in his individual capacity." *Id.*

The Court began by recognizing that, "[i]n most cases, a representative who signs a contract is not personally bound to the contract. A representative who signs a contract may be personally bound, however, when the clear intent of the contract is to bind the representative." *Id.* (citing *Dominion Bank of Middle Tenn. v. Crane*, 843 S.W.2d 14, 19 (Tenn. Ct. App. 1992); *Anderson v. Davis*, 234 S.W.2d 368, 369-70 (Tenn. 1950)). "'Whether or not a particular contract shows a clear intent that one of the parties was contracting as an individual or in a representative capacity, must be determined *from the contract itself*.'" *Id.* 383 (quoting *Lazarov v. Klyce*, 255 S.W.2d 11, 14 (Tenn. 1953)). With these principles in mind, the Court proceeded to analyze the contract, placing more significance on the language of the application than on how Mr. Smith signed it. *Id.* The Court focused on a paragraph immediately above Mr. Smith's signature that stated as follows:

> BY SIGNING BELOW I HEREBY CERTIFY THAT I AM THE OWNER, GENERAL PARTNER OR PRESIDENT OF THE ABOVE BUSINESS, AND I DO UNCONDITIONALLY AND IRREVOCABLY PERSONALLY GUARANTEE THIS CREDIT ACCOUNT AND PAYMENTS OF ANY AND ALL AMOUNTS DUE BY THE ABOVE BUSINESS, AND THAT I HAVE READ ALL OF THE TERMS AND CONDITIONS ON THE REVERSE SIDE OF THIS APPLICATION AND UNDERSTAND AND AGREE TO THE SAME, AND THAT ALL OF THE INFORMATION CONTAINED IN THIS APPLICATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Id. at 381-83. Based on this language, the Court held that, despite Mr. Smith's signature indicating he signed in his representative capacity, "[t]he explicit and unambiguous language of the contract points to only one conclusion: Mr. Smith agreed to be personally responsible for the amounts due on the account." *Id.* at 384. Thus, the Court considered the substance of the contract more significant than the manner in which the contract was signed when determining whether a person signed as a representative or in his or her individual capacity.

Five years later, in *MLG Enterprises*, the Supreme Court considered whether an individual who signed a commercial lease on behalf of a corporate tenant was also personally responsible for the tenant's obligations when the individual signed the lease twice and the form of both signatures indicated he signed in a representative capacity. 507 S.W.3d at 184. The Court described the signatures as follows:

> The first signature space, located on the right side of the Lease, provides "LANDLORD: **MLG ENTERPRISES LLC**" followed by a signature line preceded by "By:." This signature line bears the handwritten signature of Michael L. Griffith. Directly below the signature line appears the typed text "Michael L. Griffith President/Owner." The typed text "EXECUTED BY LANDLORD, THIS ___ DAY OF OCTOBER, 2007" appears opposite the signature space on the left side of the Lease.
>
> The second signature space, located on the right side of the Lease and below the first signature space, provides "TENANT: **MOBILE MASTER MANUFACTURING LLC**" followed by a signature line preceded by "By:." This signature line bears the handwritten signature of Richard L. Johnson followed by the handwritten indication "(C.E.O.)." Directly below the signature line appears the typed text "Richard L. Johnson President/Owner." The typed text "EXECUTED BY Tenant, THIS ___ DAY OF OCTOBER, 2007" appears opposite the signature space on the left side of the Lease.

> The third signature space, located on the right side of the Lease and below the second signature space, provides a signature line beneath which appears the typed text "Richard L. Johnson." On this line is the handwritten signature "Richard L. Johnson" followed by the handwritten words "for Mobile Master Mfg. LLC." To the left of this signature appears the typed text "EXECUTED BY Richard L. Johnson, THIS ___ DAY OF OCTOBER, 2007."

Id. at 184-85. On the same page as Mr. Johnson's two signatures, the lease included the following provision:

> 37. PERSONAL LIABILITY:
>
> In consideration of Landlord entering into this Lease with Tenant, Richard L. Johnson hereby agrees that he shall be personally liable for all of Tenant's obligations under this Lease and executes this Lease for this purpose.

Id. at 184, 187-88. Continuing to develop the substance-over-form principle set forth in *84 Lumber*, the Court focused on the lease's personal liability provision and concluded that Mr. Johnson's second signature bound him personally for the tenant's obligations. *Id.* at 188. As the Court explained, "any attempt by Johnson to avoid the plain meaning of the explicit provision for personal liability by following his *second* signature with the words 'for Mobile Master Mfg. LLC' was not effective to vitiate the clear intent of the Lease 'that the individual who signed the contract agreed to be personally responsible for amounts owed on the contract.'" *Id.* (quoting *84 Lumber*, 356 S.W.3d at 383).

Applying the substance-over-form principle to the present case, the clear and unambiguous language of the Lease points to one conclusion: the parties did not intend for Ms. Hans to have a right to exercise the option to purchase. The Lease explicitly identifies only All Natural as the Tenant. Unlike the contracts at issue in *84 Lumber* and *MLG Enterprises*, the Lease contains no language providing Ms. Hans with any personal rights or requiring her to personally assume any obligations. Furthermore, unlike the contracts at issue in *84 Lumber* and *MLG Enterprises*, the provisions of the Lease make no reference whatsoever to Ms. Hans. Ms. Hans attempts to circumvent this fact by comparing her cursive and printed signatures on the Lease to the signature at issue in *Mudd v. Goostree*, No. M2012-00957-COA-R3-CV, 2013 WL 1402157, at *1 (Tenn. Ct. App. Apr. 5, 2013). However, for the reasons discussed below, Ms. Hans's reliance on *Mudd* is misplaced.

Mudd involved a commercial lease that explicitly identified Liberty Cabinets and Millworks, Inc. as the tenant. *Id.* Rexford Goostree, the owner of Liberty Cabinets, signed the lease as follows:

TENANT:

REX GOOSTREE, JR.

By *Rex Goostree, Jr.*

Id. (Italics where handwritten). When Liberty Cabinets ceased paying rent, the landlord filed a lawsuit seeking to hold Mr. Goostree personally accountable for back rent and reasonable attorney fees. *Id.* Mr. Goostree contended that he was not personally liable because he was not named as the tenant in the body of the lease and because the lease contained no language indicating that he was a guarantor. *Id.* The *Mudd* court disagreed, holding that there was "a clear and unambiguous designation of [Mr. Goostree] as the Tenant on the lease agreement" because, in the space provided for the tenant's name, Mr. Goostree printed his name to identify himself as the tenant and then signed his name below that on the signature line. *Id.* at *2.

Here, the Lease has some similarity to the lease in *Mudd* because, on both the left and right sides of the document, there is a space after "TENANT:" where the tenant's name could be printed followed by the typed word "By:" and a signature line. Then, the exact same thing appears directly across on the right side of the document. Ms. Hans's cursive signature appears on the left signature line, and her printed signature appears on the right signature line. Unlike in *Mudd*, however, Ms. Hans did not print her name in either space after "TENANT:" to identify herself as the tenant. Thus, the clear and unambiguous language of the Lease designates only All Natural as the Tenant.

Because the Lease explicitly states that "Tenant" had the right to exercise the option to purchase the Property and because Ms. Hans was not the Tenant, she did not have the right to exercise the option to purchase. We affirm the trial court's decision granting Shams's motion for partial summary judgment and denying Ms. Hans's motion for partial judgment on the issue of whether Ms. Hans had the right to exercise the option to purchase.

II. Whether Ms. Hans Properly Exercised the Option

Ms. Hans next asserts that the trial court erred in denying her second motion for partial summary judgment, which pertained to the issue of whether she exercised the option to purchase pursuant to the terms of the Lease. She contends that she was entitled to summary judgment because, as required by the Lease, she sent Shams a written notice of her intent to exercise the option to purchase on September 29, 2017 and again on January 28, 2019. As our discussion above makes clear, the Lease explicitly states that the Tenant had the right to exercise the option to purchase, and Ms. Hans was not the Tenant; All Natural was the Tenant. Thus, even if the record showed that she sent written notice of her intent to exercise the option, she had no right to exercise the option. Those notices,

therefore, failed to comply with the terms of the Lease. We affirm the trial court's denial of her motion for partial summary judgment on this issue.

III. Whether Shams Terminated the Lease

Ms. Hans next contends that, after the trial on Shams's detainer warrant, the trial court erred in concluding that Shams gave proper notice that the Lease would not be renewed for a new term. She presents several arguments in relation to this issue,[4] but one is dispositive. In concluding that Shams sent proper notice of non-renewal, the court based its decision, in part, on a notice of non-renewal that was sent to All Natural via certified mail, return receipt requested, on December 29, 2020. The original detainer warrant did not include this notice of non-renewal. After introducing the notice into evidence, Shams made an oral motion to amend the pleadings to conform to the evidence pursuant to Tenn. R. Civ. P. 15.02, and the trial court granted the motion. Ms. Hans asserts that the trial court should not have permitted the amendment because she did not consent to it.

"Tennessee law and policy favors permitting litigants to amend their pleadings, thereby enabling disputes to be resolved on their merits rather than on legal technicalities." *Fausnaught v. DMX Works, Inc.*, No. M2011-01911-COA-R3-CV, 2012 WL 2087157, at *3 (Tenn. Ct. App. June 8, 2012) (citing *Hardcastle v. Harris*, 170 S.W.3d 67, 80 (Tenn. Ct. App. 2004)). "The disposition of a motion to amend is within the sound discretion of the trial court and will be reversed only for an abuse of discretion." *Id.* (citing *March v. Levine*, 115 S.W.3d 892, 908 (Tenn. Ct. App. 2003)). The abuse of discretion standard of review "does not permit reviewing courts to substitute their own judgment for that of the court whose decision is being reviewed." *Konvalinka v. Chattanooga-Hamilton Cty. Hosp. Auth.*, 249 S.W.3d 346, 358 (Tenn. 2008). A court abuses its discretion when it "applie[s] incorrect legal standards, reache[s] an illogical conclusion, base[s] its decision on a clearly erroneous assessment of the evidence, or employs reasoning that causes an injustice to the complaining party." *Id.* Several factors guide "a trial court's discretionary decision whether to allow an amendment of the pleadings includ[ing] 'undue delay, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments[,] and futility of the amendments.'" *Abdur'Rahman v. Parker*, 558 S.W.3d 606, 620 (Tenn. 2018) (citing *Pratcher v. Methodist Healthcare Memphis Hosps.*, 407 S.W.3d 727, 740 (Tenn. 2013)).

Under Rule 15.02, a party may amend the pleadings to conform to the evidence, even after entry of a judgment, "[w]hen issues not raised by the pleadings are tried by

[4] Ms. Hans devotes a significant portion of her appellate brief to arguing that the following notices of non-renewal failed to comply with the Lease's notice provision: (1) the January 28, 2019 notice sent via overnight mail and (2) the January 28, 2019 notice hand-delivered to the Property. Because Shams sought no monetary damages, the issue of whether the Lease terminated on March 31, 2019, or on March 31, 2021, is inconsequential. When the trial commenced on November 17, 2021, Ms. Hans continued to occupy the Property. Thus, the issue for trial—whether Shams was entitled to possession of the Property—remained the same.

express or implied consent of the parties." TENN. R. CIV. P. 15.02; *see also Allstate Ins. Co. v. Fox*, No. 134, 1990 WL 8058, at *9 (Tenn. Ct. App. Feb. 6, 1990). The record shows that Ms. Hans strenuously objected at trial to introduction of the December 29, 2020 notice on the basis that it was not a part of the pleadings.[5] We, therefore, agree with her contention that the issue was not tried by either express or implied consent. However, that does not end our inquiry.

Rule 15.02 also contemplates amendment of the pleadings when issues outside the pleadings are objected to during trial:

> If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice that party in maintaining the action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

TENN. R. CIV. P. 15.02. As this Court has explained, if the proper objection is raised:

> [T]he trial court would still be required to admit the evidence if the presentation of the merits of the case will be subserved thereby. The objecting party must persuade the court that the admission of this evidence will prejudice him in maintaining his claim or defense. If the trial court admits the evidence, thus allowing the amendment of the pleadings, it is incumbent upon the objecting party to request a continuance if necessary to meet this new evidence. The granting of a continuance is not a matter of right, but is within the discretion of the court. However, if the objecting party fails to request a continuance he may not urge on appeal that the trial court abused its discretion by not granting him additional time to meet the new evidence.

Allstate Ins. Co., 1990 WL 8058, at *12 (citing 6 C. Wright & A. Miller, FEDERAL PRACTICE AND PROCEDURE § 1495 (1971)). Therefore, an objecting party must either persuade the court that the amendment should not be allowed because he or she will be prejudiced or, if the amendment is permitted, request a continuance to allow additional time to address the new evidence.

[5] When the notice was introduced, Ms. Hans's attorney objected as follows: "[M]y objection is, it's after—it is something that happened after the original suit was filed. All the pleadings were in, and nothing was ever amended to include this. So I don't think it should be validly considered part of this lawsuit because it's not part of the pleadings."

Ms. Hans contends that allowing the pleadings to be amended to include the December 29, 2020 notice prejudiced her because the business was closed when the U.S. Postal Service attempted to deliver the notice to the Property, and she therefore never received the notice. Whether or not she received the notice is irrelevant, however, because the Lease clearly states that notice is given when "deposited in an official United States Post Office, Postage prepaid," not when it is received. This argument is unavailing.

Ms. Hans also contends that the trial court should not have permitted the amendment because it prejudiced her ability to maintain her defense. Specifically, she contends that she had no prior knowledge of the December 29, 2020 notice so allowing Shams to introduce it at trial "was effectively trial by ambush." The record, however, contradicts Ms. Hans's argument. When Shams sent the December 29, 2020 notice to All Natural, it also sent a copy of the notice to Ms. Hans's attorney. The record contains a return receipt showing that Shams sent the notice to Ms. Hans's attorney via certified mail on December 29, 2020, and that it was delivered to the attorney's office on January 4, 2021. Furthermore, Shams included the December 29, 2020 notice on its exhibit list sent in September 2021 (approximately two months before trial), thereby notifying Ms. Hans that the notice would be utilized at trial.

Based on the foregoing, we conclude that the trial court did not abuse its discretion in granting Shams's motion to amend the detainer warrant to include the December 29, 2020 notice. Furthermore, because Shams sent the December 29, 2020 notice to All Natural via certified mail more than sixty days in advance of the next renewal, the notice complied with the Lease's notice provision. We, therefore, affirm the trial court's determination that Shams properly terminated the Lease and that Shams was entitled to possession of the Property.[6]

CONCLUSION

The judgment of the trial court is affirmed. Costs of this appeal are assessed against the appellant, Tanya Hans, for which execution may issue if necessary.

_/s/ Andy D. Bennett_____
ANDY D. BENNETT, JUDGE

[6] At the conclusion of Shams's proof, Ms. Hans moved to involuntarily dismiss the case pursuant to Tenn. R. Civ. P. 40.02(2) because Shams failed to present evidence that it properly terminated the Lease. Ms. Hans argues on appeal that the trial court abused its discretion in denying this motion. In light of our determination that Shams properly terminated the Lease with the December 29, 2020 notice, this issue is pretermitted.