

**COURT OF APPEALS
DECISION
DATED AND FILED**

SEPTEMBER 2, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**Nos. 98-1018-FT
98-1019-FT**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

No. 98-1018-FT

GURWANT S. KALEKA AND PARMINDER K. KALEKA,

PLAINTIFFS-RESPONDENTS,

V.

**YOGI BHARDWAJ, YOGI BHARDWAJ, D/B/A NATIONAL
PETROLEUM, INC., AND BV ENERGY, INC.,**

DEFENDANTS-APPELLANTS.

No. 98-1019-FT

**GURWANT S. KALEKA AND
PARMINDER K. KALEKA,**

PLAINTIFFS-RESPONDENTS,

V.

ROHIT SHARMA,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Racine County:
STEPHEN A. SIMANEK, Judge. *Affirmed.*

ANDERSON, J. In these consolidated appeals, we determine that Yogi Bhardwaj, Yogi Bhardwaj, d/b/a National Petroleum, Inc., BV Energy, Inc., and Rohit Sharma (Bhardwaj) were month-to-month tenants of a gas station in Sturtevant, Wisconsin and were properly served with a fourteen-day notice terminating tenancy after defaulting on the monthly rent. Accordingly, we affirm the circuit court's judgments ordering a writ of restitution.

In February 1997, Bhardwaj entered into negotiations with Gurwant S. and Parminder K. Kaleka (the Kalekas) to purchase the gas station. At that time the Kalekas operated the station as vendees under an earlier land contract. The negotiations were fruitful and a closing date of April 29, 1997, was set. For reasons not relevant to this appeal, the sale did not close on April 29th, and Bhardwaj prepared an "Amendment to Purchase and Sale Agreement" which stated that the parties intended to authorize Bhardwaj to take possession of the gas station and operate it until the problems delaying the closing were solved. The Amendment provided that Bhardwaj would pay "[m]onthly rent in the sum of \$4191.73, commencing May 1, 1997," and that the rent represented the Kalekas' monthly obligation under the terms of the land contract.

Bhardwaj made the rental payments on the first of every month until December 1, 1997. In response to Bhardwaj's failure to pay rent, the Kalekas served a § 704.17(1), STATS., fourteen-day notice terminating Bhardwaj's tenancy on February 18, 1998. When Bhardwaj failed to surrender the premises, the

Kalekas commenced this small claims action for eviction and past due rent of \$12,600.

At the conclusion of a bench trial, the circuit court found that the Amendment prepared by Bhardwaj was a lease, as that term is defined in § 704.01(1), STATS.; the tenancy was a month-to-month tenancy and not a tenancy-at-will; Bhardwaj had defaulted on the monthly rent; and the Kalekas had properly served Bhardwaj with a fourteen-day notice terminating tenancy. As a result, the circuit court issued writs of restitution to the Kalekas.¹

On appeal, Bhardwaj contends that the Amendment was a valid lease and established an occupancy that can best be described as a tenancy of one year or less. Bhardwaj asserts that under § 704.17(2)(a), STATS., a tenancy of one year or less cannot be terminated by a fourteen-day notice; rather, the fourteen-day notice can only be served if the tenant has been given a five-day notice to quit or pay rent.² Because the Kalekas never gave the five-day notice to quit or pay rent,

¹ The bench decision of the circuit court was not included in the appellant's appendix. Counsel is reminded that RULE 809.19(2), STATS., requires the appendix to include "portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues." This appeal being placed on the expedited appeals calendar under RULE 809.17, STATS., does not relieve counsel of the obligation to file an appendix in compliance with the rules.

² Section 704.17(2)(a), STATS., provides:

If a tenant under a lease for a term of one year or less, or a year-to-year tenant, fails to pay any instalment of rent when due, the tenant's tenancy is terminated if the landlord gives the tenant notice requiring the tenant to pay rent or vacate on or before a date at least 5 days after the giving of the notice and if the tenant fails to pay accordingly. If a tenant has been given such a notice and has paid the rent on or before the specified date, or been permitted by the landlord to remain in possession contrary to such notice, and if within one year of any prior default in payment of rent for which notice was given the tenant fails to pay a subsequent instalment of rent on time, the tenant's tenancy is terminated if the landlord, while the tenant is in default in

(continued)

the notice that was served was ineffective to terminate Bhardwaj's tenancy. He concludes that the Kalekas are not entitled to the writs of restitution.

Determining parties' rights under a contract involves a legal issue which we review independently of the trial court's determination. See *Rent-a-Center, Inc. v. Hall*, 181 Wis.2d 243, 251, 510 N.W.2d 789, 793 (Ct. App. 1993). When the terms of the contract are plain and unambiguous, we interpret the contract as it stands. See *Eden Stone Co. v. Oakfield Stone Co.*, 166 Wis.2d 105, 115, 479 N.W.2d 557, 562 (Ct. App. 1991). We are to construe contracts so as to give a reasonable meaning to each provision and are to avoid constructions that render portions meaningless or surplusage. See *Goebel v. First Fed. Sav. & Loan Ass'n*, 83 Wis.2d 668, 680, 266 N.W.2d 352, 358 (1978).

In resolving this appeal, we must resolve whether the Amendment prepared by Bhardwaj is a valid lease; if the Amendment is not a valid lease, we must determine whether Bhardwaj was a periodic tenant or a tenant-at-will. Finally, considering the nature of Bhardwaj's tenancy, we must determine if the tenancy was properly terminated.

We find ourselves in disagreement with the learned trial judge as to whether the Amendment was a valid lease. Section 704.01(1), STATS., defines a lease as:

[A]n agreement, whether oral or written, for transfer of possession of real property, or both real and personal property, for a definite period of time. A lease is for a definite period of time if it has a fixed commencement date and a fixed expiration date or if the commencement and expiration can be ascertained by reference to some event, such as completion of a building.

payment of rent, gives the tenant notice to vacate on or before a date at least 14 days after the giving of the notice.

The Amendment plainly sets forth a starting date of May 1, 1997. The expiration date of the lease cannot be as readily determined. Although the Amendment refers to a closing date of the purchase and sale agreement within seven days of two specified events occurring, it gives no indication if that is the date of expiration of the lease. The matter is further confused because there is a requirement that as to leases of personal property that Bhardwaj shall hold the Kalekas harmless against any amounts due “from and after May 1, 1997 and until closing *or* the termination of the lease.” (Emphasis added.) We hold that there is no expiration date of the lease either specifically set forth or readily ascertainable by reference to an event. Therefore, we hold that the Amendment is not a valid “lease” as defined in the statute.

Without a valid lease setting up the term of the lease, we must decide the term from the totality of the circumstances. A tenant who holds possession without a valid lease and pays rent on a periodic basis is a periodic tenant. *See* § 704.01(2), STATS. Here, Bhardwaj was in possession of the gas station without a valid lease and paid \$4191.73 rent on the first of every month. We conclude that the intent of the parties under the circumstances, as established by the monthly interval between rent-paying dates, was that Bhardwaj was a month-to-month tenant. *See id.*

The final question is whether the Kalekas properly terminated Bhardwaj’s month-to-month tenancy with the service of a fourteen-day notice. Section 704.17(1)(a), STATS., establishes the method by which a landlord can terminate a month-to-month tenant:

If a month-to-month tenant or a week-to-week tenant fails to pay rent when due, the tenant’s tenancy is terminated if the landlord gives the tenant notice requiring the tenant to pay rent or vacate on or before a date at least 5 days after the giving of the notice and if the tenant fails to pay

accordingly. *A month-to-month tenancy is terminated if the landlord, while the tenant is in default in payment of rent, gives the tenant notice requiring the tenant to vacate on or before a date at least 14 days after the giving of the notice.*
[Emphasis added.]

We are satisfied that the fourteen-day notice served on Bhardwaj on February 18, 1998, requiring the vacation of the premises on or before March 5, 1998, fulfilled the requirements of the statute.

By the Court.—Judgments affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

