

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

CASE NO.: 2019 CA 000381
DIVISION: 49

CAPTAINS BAIT TACKLE AND BBQ LLC
Plaintiff(s)

v.

FLAGLER COUNTY A POLITICAL SUBDIVISION
HAMMOCK COMMUNITY ASSOCIATION INC.
Defendant(s)

Unofficial Copy

Order Denying Summary Judgment (Dkt #81)

THIS CAUSE has come before the Court upon the hearing on the motion for summary judgment, the response filed by the Defendant at Dkt #94, and the crossing responses filed thereafter (Dkt #'s 97, 100). The Court being fully advised in the premises, finds, **orders and adjudges** as follows:

The Defendant alleges that they are entitled to relief at summary judgment on all counts based upon several grounds. There are genuine disputes of material fact that exist attaching to each of the Defendant' arguments. Summary judgment is **denied**.

First, the Defendant states that the Amended and Restated Lease is void, as the County Commission failed to follow the bidding process as required by F.S. 125.35.¹ The Plaintiff argues that the applicability of F.S. 125.35 is in dispute. The Plaintiff states that this is an *amendment* to the same lease that has existed since 2011, amended by his same procedure (without apply F.S. 125.35) in 2015 and again in 2016. This alone creates a dispute of material fact as to the applicability of F.S. 125.35 and the validity of the contract. Therefore, the Court reserves further analysis of the remainder of the

¹ The irony within the position is impossible to escape in that a county attorney is a signatory on the Amended and Reinstated lease. That person holds the office that is presumed to assure the essential requirements of the law are followed by the County Commission prior to this contract being presented to the commission for approval. The county attorney arguably agreed with the present arguments of the Plaintiff regarding the inapplicability of that statute at the time they signed the amendments to the lease. If not, how can one rightly claim benefit from such malfeasance if true?

Plaintiff's arguments on this point. Moreover, the Court refrains from further findings and ruling as to the applicability of F.S. 125.35 as they are not necessary on this motion.

The remaining arguments are all inextricably intertwined and involve whether or not the Plaintiff's failed to perform under the lease, or had the Defendant's had terminated the lease, or had the Defendant's repudiated the lease. These are not mutually exclusive. The amended lease was signed by the parties on November of 18th, 2018. The County Commission voted to take some sort of action on the property as early as December 3rd, 2018, which is arguably contrary to the lease. The Defendant's motion leaves vacant the reasons for the County Commission further workshops and meetings on the signed and ratified contract. The Defendant focuses on the original motion and vote by the County Commission in December of 2018 for the board to **rescind** or **reconsider** the lease. The Defendant relies on this Court to declare which from the record, which is internally conflicted--- the county clerk's meeting/vote notes says the vote was to rescind, and the presented video says the vote was to reconsider. Therein is a material fact at issue.

One cannot simply ignore the clerk's notes nor further infer from interpreting a single word the intent of the County Commission moving forward. Both terms, and the events that follow that December 2018 vote potentially have the same effect as alleged by the Plaintiff. There is no reason, nor is the court able due to the conflicting record, to resolve at summary judgment what the County Commission was doing. The undisputed fact is that thereafter the county commission held meetings/workshops (at least nine within Dec. 2018-June 2019) concerning proposals that were already defined and were essential terms of the signed amended lease. Moreover, the County Administrator Jerry Cameron presented the plaintiff with several options that arguably were not envisioned under the lease. The Defendants have failed to present evidence that establishes one interpretation of either parties resulting actions and inactions with regard to the amended lease that negates all other reasonable interpretations.

As to arguments over Count IV as pled in the alternative, the Court denies relief without further comment.

DONE AND ORDERED in chambers, in Flagler County, Florida, on 22 day of June, 2023.

6/22/2023 1:53 PM 2019 CA
000381



Unofficial Copy

e-Signed 6/22/2023 1:53 PM 2019 CA 000381

CHRISTOPHER A FRANCE
CIRCUIT JUDGE

Copies to: All parties and attorneys of record

CASE NO.: 2019 CA 000381