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Conflicts Between Landlord and Tenant

-by Neil E. Harl*

For well over 700 years, the legal system in the common-law world has been oriented toward preventing the exploitation of land resources by tenants.[1] Initially, that orientation was protective of the King with socage tenure assuring tenants the opportunity to lessen the value of the King's land by waste or poor husbandry but more recently landlords of all types have been the beneficiaries of that position of the law. That feature of the common law is in accord with the public interest inasmuch as the human family is dependent upon the productivity of tillable land for survival.

In recent years, higher land values and higher cash rents coupled with the economic stress of drought and other weather adversities have combined to underscore the importance of the law as one of the major ways of assuring that land tracts are not mismanaged for the short-term benefit of the tenant. Disputes over the removal of corn stalks (referred to as corn stover) from the rented land by a cash rent tenant represent just one of the numerous ways a tenant's interest may be more in the short-term benefits rather than in the long-term productivity of the land. On the other hand, the law has continually demonstrated that the restraints imposed on tenants should not place a tenant in an economic straitjacket, either.

Waste or substandard husbandry

A tenant's obligation to preserve the leased premises includes the duty to refrain from committing waste or engaging in substandard husbandry practices.[2] That included prohibiting the cutting down of trees[3] or destruction of buildings or other structures on the land,[4] Procedurally, the landlord's remedy was to bring an action for waste.[5] Courts have long recognized that significant reductions in productivity affect the landowner negatively and reduce the value of the land in question. A remedy is provided when that occurs or is threatened.

Under an agricultural lease, the law has long implied a covenant by the tenant, if it is not expressly so stated in the lease, to manage the land in accordance with the rules of good husbandry.[6] The courts have tended to view favorably the generally accepted practices in the community and the duty of the courts is to sanction those who fall short of that standard but not to stand in the way of what is believed to be good practices as technologies and economic incentives change . As an example, plowing up areas that heretofore had not been the subject of cultivation without owner approval has been considered by a trial court as substandard husbandry.[7] However, on appeal the appellate court held that, in the absence

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of an express provision in the lease limiting cultivation of the land in question, the best husbandry was viewed as tilling the acreage in question to grow corn.[8] Courts have tended to view acts and practices that deplete the soil or otherwise diminish the owner's reversionary interest in the property as objectionable including overgrazing of pasture lands,[9] destroying fruit trees,[10] removing manure from the premises instead of spreading it on the land,[11] and overloading a barn intended to be used for the storage of hay with grain, meal and fertilizer, causing the collapse of the structure.[12]

Violating wetlands rules

A 2012 appellate case in Iowa has provided a modern-day view of how the courts view the shortcomings of tenants.[13] In that case, the tenant was one of four siblings who owned the land in question. The tenant in 2008 planted 8.7 acres of corn in two different areas on the farm that had been designated as wetlands by the United States Department of Agriculture under a Congressionally-passed program[14] in the Food Security Act of 1985.[15] The penalty was the refund of $152,093.38 in 2008 government farm program payments and the CCC loans he had received as well as $385 in conservation reserve program payments. Later, the penalties were rescinded for the three land owners who were not tenants. The owners then proceeded to terminate the lease with the tenant which had until 2018 to run. The tenant restored the wetlands for the 2009 crop year.

The three landlords who were not tenants brought an action to terminate the lease. The trial court and appellate court agreed that the farm tenant cured the material breach under the lease which allowed the multi-year lease to continue. The lease contained a good husbandry clause and imposed other stewardship duties on the tenant that were intended to protect the land. However, the tenant cured the "material breach" by restoring the wetland after one year and so avoided forfeiture of the lease (which, the court noted, involved a "minimal" cash rent of $85 per acre).

As the appellate court noted, there is a longstanding principle that "equity abhors a forfeiture." Termination of the lease was not considered an equitable remedy by the courts.

ENDNOTES

[1] See Stat. of Marlborough, 52 Hen. III, c23, § 2 (1267); Stat. of Gloucester, Edw, I, c.5 (1278). See 2 Harl, *Agricultural Law* § 8.04[4] (2012). See also Cotton, "Regulations of Farm Landlord-Tenant Relationships," 4 *Law & Contemp. Prob.* 508 (1937).

[2] See Looney, Moore and Osborn, "Legal Aspects of Virginia Farm Leases," Pub. No. 762, Va. Polytechnic Institute and State University, pp. 11-12, Nov. 1977.

[3] United States v. Bostwick, 94 U.S. 53 (1877) (destruction of ornamental trees); Silver v. Garcia, 65 Cal. 591, 4 Pac. 628 (1984) (destruction of fruit trees); Warder v. Henry, 117 Mo. 530, 23 S.W. 776 (1893) (damage to trees caused by pasturing cattle).

[4] Powell v. Dayton, S. & G.R. Co., 16 Or. 33, 16 Pac. 863 (1888) (action to recover damages for waste; complaint alleged that tenant's failure to perform repairs constituted voluntary and permissive waste).

[5] See Walker v. Tucker, 70 Ill. 527 (1873) (law implies covenant by lessee not to commit waste under lease involving farmlands and to use the land in a husbandlike manner with no exhaustion of the soil); Lewis v. Jones, 17 Pa. 142 (1851) (rules of good husbandry apply to farm tenant under an agricultural lease).

[6] See Prysi v. Kinsey, 38 Ohio App. 92, 175 N.E. 707 (1930) (under Ohio law, all farm lease contracts have implied covenant that tenant cultivate and care for the land according to generally accepted practices that constitute good husbandry).

[7] Hubble v. Cole, 85 Va. 87, 7 S.E. 242 (1888) (action by lessor to restrain tenant from committing waste by erecting a stable and plowing up 80 or 90 acres of land).

[8] *Id.*

[9] Gorman v. Brazelon, 168 S.W. 434 (Tex. Civ. App. 1914) (action to recover damages for injury to plaintiff's farm resulting from unauthorized pasturing of cattle).

[10] Silva v. Garcia, 65 Cal. 591, 4 Pac. 628 (1884) (action to enjoin removal of fruit trees).

[11] Whitesell v. Collison, 94 N.J. Eq. 44, 118 Atl. 277 (1922) (action to enjoin outgoing tenant from removing manure resulting from ordinary husbandry).

[12] Chalmers v. Smith, 152 Mass. 561, 26 N.E. 95 (1891).

[13] Mart v. Mart, No. 2-133/11-0658 (Iowa Court of Appeals 2012).

[14] 16 U.S.C. § 1308.

[15] 16 U.S.C. §§ 3801, 3821-3824.