ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES GOODE and FRED LOVELESS,

Plaintiffs,

v.

AAFAB, INC.,

Defendant.

CIVIL ACTION
NO. 1:02-CV-3016-JTC

ORDER

Pending before the Court is Plaintiffs' Motion for Summary Judgment [#11-1]. After the termination of a leasing agreement between James Goode and Fred Loveless ("Plaintiffs") and Defendant AAFAB, Inc. ("AAFAB"), AAFAB refused to return Plaintiffs' escrow funds. This violates 49 C.F.R. § 376.12(k) which governs such leases, and Plaintiffs' Motion for Summary Judgment [#11-1] is **GRANTED**.

I. BACKGROUND

AAFAB is a motor carrier providing transportation services to the shipping public under authority granted by the Department of Transportation ("DOT"). Plaintiffs are owner-operators who leased their trucks and driving services to AAFAB. Any lease agreement AAFAB enters into with owner-operators such as Plaintiffs are governed by the Truth-in-Leasing regulations

at 49 C.F.R. Part 376. 49 C.F.R. § 376.11; O.O.I.D.A. v. Ledar Transport, 2000 WL 33711271 *1 (W.D.Mo. Nov. 3, 2000).

Plaintiffs each entered similar written lease agreements with AAFAB that required driver escrow funds. One term provides that if Plaintiffs gave AAFAB at least three days notice before terminating the lease, the escrow fund would be returned to Plaintiffs within ninety days. If notice was not given, the escrow fund would be forfeited to AAFAB. Plaintiffs did not give the required three days notice to AAFAB, and, consequently, AAFAB did not return the escrow funds.

Plaintiffs contend that the written lease agreements are illegal because they conflict with the Truth-in-Leasing regulations, 49 C.F.R. §§ 376.11-376.12. Pursuant to 49 U.S.C. § 14704, Plaintiffs assert two related claims: first, AAFAB is engaged in the unlawful provision of transportation services because the lease agreement is illegal; and, second, AAFAB's forfeiture provision violates 49 C.F.R. § 376.12(k). From the Complaint, Plaintiffs seem to be asserting these claims on behalf of all owner-operators; however, § 14704 does not provide Plaintiffs class action standing.

II. SUMMARY JUDGMENT

Rule 56(c) of the Federal Rules of Civil Procedure defines the standard for summary judgment: Courts should grant summary judgment when "there

is no genuine issue as to any material fact . . . and the moving party is entitled to judgment as a matter of law." In this case, the parties do not dispute the facts, and the only issue is whether, as a matter of law, AAFAB's lease is legal.

B. Mootness

AAFAB contends that Plaintiffs' first claim, unlawful provision of transportation services, is moot because AAFAB no longer uses the allegedly illegal lease.

A case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. Horton v. City of Saint Augustine, 272 F.3d 1318, 1326 (11th Cir. 2001). "'A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not be reasonably expected to occur.'" Friends of the Earth v. Laidlaw Envtl. Servs., 528 U.S. 167, 189, 120 S.Ct. 693, 708 (2000)(quoting United States v. Concentrated Phosphate Exp. Ass'n., 393 U.S. 199, 203, 89 S.Ct. 361 (1968)). The party asserting mootness carries the heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to reoccur. Id., S.Ct. at 708.

After Plaintiffs filed this lawsuit, AAFAB stopped using the lease agreement at issue in this case. (Def.'s Mot. Summ. J., Jorgensen Decl. ¶ 8.)

AAFAB has not submitted a copy of the new lease; therefore, its legality cannot be determined. AAFAB also fails to explain how the new lease agreement rectifies the old lease's flaws. Thus, AAFAB has not demonstrated the challenged conduct will not reoccur because the company's compliance with the regulations remains open to question. Moreover, the focus of Plaintiffs' suit is the lease they signed, not the new lease.

B. The Truth-in-Leasing Regulations

As an authorized motor carrier, AAFAB is required to have a written lease that complies with the Truth-in-Leasing regulations. 49 C.F.R. 376.11(a). These regulations were enacted to promote full disclosure between the carrier and the owner-operator regarding the leasing contract, to reduce opportunities for illegal or inequitable practices, and to promote the stability and economic welfare of the independent trucker segment of the motor carrier industry. Lease and Interchange of Vehicles, 131 M.C.C. 141, 142, 1979 WL 11158 at *1 (1979).

1. Does the Lease Comply with the Regulations?

49 C.F.R. § 376.11(a) states that AAFAB's written lease must "meet certain requirements contained in § 376.12." On the back of the lease agreement, AAFAB printed the entire text of § 376.11 and § 376.12. AAFAB contends this is sufficient to comply with § 376.11, but Plaintiffs contend that

the requirements of § 376.12 must be incorporated into the terms of the lease itself, rather than merely recited on the back. Plaintiffs note several requirements of § 376.12 are missing from the terms of the lease itself.[1]

The express language of § 376.12 requires the lease to incorporate the regulation's requirements. Section 376.12 states that, "the *written lease* required under § 376.11(a) *shall contain* the following provisions. The required lease provisions *shall be adhered to and performed* by the authorized dealer." (emphasis added). Section 376.12 then dictates the provisions each lease should contain, such as "[t]he lease shall specify the time and date or circumstances on which the lease begins and ends," § 376.12(b), and "[t]he lease shall clearly specify which party is responsible for removing identification devices from the equipment upon the termination of the lease." § 376.12(e). Thus, merely reciting the text of § 376.12 does not comply with the regulations.

The only case the Court has been able to locate addressing this issue, O.O.I.D.A. v. Ledar Transport, 2000 WL 33711271 (W.D. Mo. Nov. 3, 2000), reached the same conclusion. In Ledar Transport, the district court determined that Ledar's lease excluded several provisions required by §

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[1]Plaintiffs assert the following requirements are missing: 376.12(c),(e),(g), (h), (i), (j)(1), (j)(2), j(3), (k)(2), (k)(3), (k)(4), and (k)(5).

376.12 and, as a result, the lease was illegal. Id. at *7-10. Notably, AAFAB has failed to cite any conflicting cases or offer any argument supporting the legality of the lease. Thus, Plaintiffs' Motion for Summary Judgment is **GRANTED**.

2. Does the Escrow Provision Conflict with the Regulations?

AAFAB's lease provides that Plaintiffs would receive a refund of their escrow funds "90 days after 3rd day of notice." (Def.'s Resp. Mot. Summ. J., Ex A, Loveless & Goode's Leases). AAFAB asserts that the three days notice was necessary to cover any loss caused by the unexpected termination of the lease. Plaintiffs contend the three-day notice requirement conflicts with § 376.12(k).

When an escrow fund is required by the authorized carrier, the lease must contain:

> The conditions the lessor must fulfill in order to have the escrow fund returned. At the time of the return of the escrow fund, the authorized carrier may deduct monies for those obligations incurred by the lessor which have been previously specified in the lease, and shall provide a final accounting to the lessor or all such final deductions made to the escrow fund. The lease shall further specify that in no event shall the escrow fund be returned later than 45 days from the date of termination. § 376.12(k)(6).

AAFAB's escrow provision violates § 376.12(k)(6) in two ways: first, the escrow is not returned in forty-five days, and second, the forfeiture clause. The forty-five day limit is strictly enforced, so AAFAB cannot wait ninety

days before returning the escrow. O.O.I.D.A. v. Arctic Express, Inc., 159 F.Supp.2d 1067, 1080 (S.D. Ohio 2001); Lease and Interchange of Vehicles, 131 M.C.C. at 154, 1979 WL 11158, at *11. Moreover, Plaintiffs failure to give adequate notice will not necessarily cause pecuniary loss to AAFAB. Section 376.12(k)(6) only allows AAFAB to deduct monies for obligations incurred by Plaintiffs that are specified in the lease. Allowing AAFAB to retain the full escrow irrespective of the actual loss caused by the lack of notice contravenes the language of § 376.12(k)(6). See Arctic Express, Inc., 159 F.Supp.2d at 1079 ("Defendants...lawfully cannot hold Wiese's $6,926.56 to pay for ... maintenance expenses that he did not incur."); Ledar 2000 WL 33711271 at *4 (finding "defendant's 'early lease termination fee' provision is a penalty imposed by the carrier, *unrelated to actual costs involved* with the operation of the leased equipment")(emphasis added).

Thus, the provision requiring forfeiture of the entire amount of the escrow of termination violates the Truth-in-Leasing regulations.

III. CONCLUSION

Plaintiffs' Motion for Summary Judgment [#11-1] is **GRANTED** on the claim for unlawful provision of transportation services and the claim for violations of the Truth-in-Leasing regulations. As such, the Court holds as follows:

> (1) The leases entered by Plaintiffs are **DECLARED** unlawful because they do not comply with 49 C.F.R. § 376.12, and Defendant is **ENJOINED** from using these leases again; and,
>
> (2) Defendant is **ORDERED** to comply with § 49 C.F.R. 376.12(k) relating to escrow funds, including returning any funds due Plaintiffs.

Parties are **ORDERED** to submit within twenty (20) days of the filing of this order any outstanding issues remaining for trial including, but not limited to, damages. These briefs should be limited to ten (10) pages each.

SO ORDERED, this 4 day of February, 2004.

JACK T. CAMP
UNITED STATES DISTRICT JUDGE

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