Cite as 2012 Ark. App. 694

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA12-72

RALPH VAN CLEVE, JUNE VAN CLEVE, AND RIVER CITIES AVIATION, INC.
APPELLANTS

V.

CITY OF NORTH LITTLE ROCK AND NORTH LITTLE ROCK AIRPORT COMMISSION
APPELLEES

Opinion Delivered December 12, 2012

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, FIFTH DIVISION [NO. 60-CV-2011-600]

HONORABLE WENDELL GRIFFEN, JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

This is an appeal from an order dismissing a lawsuit filed by appellant River Cities Aviation, Inc., and its principals seeking to enforce the renewal provision of a written lease executed by the North Little Rock Airport Commission and the corporation. The trial court granted a motion to dismiss, finding that appellants Ralph and June Van Cleve did not have standing because they were not parties to the original lease agreement; that the lease expired in February 2006; that the corporation's charter was revoked in 2005; that no other contract was signed by the parties after the corporate charter was revoked; that no complaint was filed until February 2011; that the applicable statute of limitations was three years; that the statute of limitations had run, barring enforcement of the lease's renewal provision; and that River Cities Aviation, Inc., had no standing to sue because its corporate charter was revoked at the time the lawsuit was filed. Appellants argue that the trial court erred in applying the three-

ear statute of limitations applicable to oral contracts to this written contract and in holding that River Cities Aviation, Inc., had no standing to sue because its charter was revoked when suit was filed. We find no prejudicial error, and we affirm.

The trial court did err in ruling that River Cities Aviation, Inc., had no standing to sue because its charter was revoked when the lawsuit was filed. Although the corporate charter was indeed revoked at that time, the supreme court held in *Omni Holding & Development Corp. v. C.A.G. Investments*, 370 Ark. 220, 258 S.W.3d 374 (2007), that a corporation that filed suit at a time when its corporate charter was revoked did in fact have standing to sue because, under Ark. Code Ann. § 26-54-112 (Repl. 2008), the subsequent reinstatement of its corporate charter was retroactive to the date of its revocation, vesting it with continuous existence as though the revocation of its charter had never occurred. River Cities Aviation, Inc., thus had standing to sue.

Nevertheless, we affirm the order appealed from because appellants have failed to demonstrate prejudice. A party is entitled to a fair hearing but not a perfect one, and even where procedural error is present, the appellant has the burden of showing that he was prejudiced by the error. *Berna v. State*, 282 Ark. 563, 670 S.W.2d 434 (1984); *Sparkman Learning Center, Inc. v. Arkansas Department of Human Services*, 2012 Ark. App. 194. The central question in the present case is whether appellants, who are officers of the corporation, are entitled to enforce a contractual provision granting the corporation, upon expiration of the lease, "first option to lease said property on terms and conditions as are then in effect on airport rentals *and are mutually agreeable to the parties thereto*." (Emphasis added.)

We hold that the referenced provision is illusory and unenforceable for lack of mutuality.

> A contract, to be enforceable, must impose mutual obligations on both of the parties thereto. The contract is based upon the mutual promises made by the parties; and, if the promise made by either does not by its terms fix a real liability upon one party, then such promise does not form a consideration for the promise of the other party. As is said in the case of *St. Louis, I. M. & S. Ry. Co. v. Clark*, 90 Ark. 504, [119 S.W. 825,] "mutuality of contract means that an obligation must rest on each party to do or permit to be done something in consideration of the act or promise of the other; that is, neither party is bound unless both are bound."

El Dorado Ice & Planing Mill Co. v. Kinard, 96 Ark. 184, 187–88, 131 S.W. 460, 462 (1910). Unless both parties are bound, an agreement to make a contract in the future is not enforceable because mutuality of obligation is lacking. *Superior Federal Bank v. Mackey*, 84 Ark. App. 1, 20, 129 S.W.3d 324, 336 (2003). Here, appellants are attempting to enforce an agreement between the corporation and the airport to make a contract in the future, which either party could simply walk away from if the terms were not "mutually agreeable to the parties." Because this is not an enforceable promise, no prejudice could result from the error regarding the corporation's standing to sue or any of the other assertions of error raised by appellants.

Affirmed.

ABRAMSON and MARTIN, JJ., agree.

The Henry Firm, P.A., by: *Matthew M. Henry* and *Kristin M. Lausten*, for appellants.

C. Jason Carter, City Att'y, by: *Daniel L. McFadden*, Ass't City Att'y, for appellee.