

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2018-IA-00759-SCT

OAK GROVE MARKETPLACE, LLC

v.

***LAMAR COUNTY SCHOOL DISTRICT, LAMAR
COUNTY BOARD OF EDUCATION, LAMAR
COUNTY, MISSISSIPPI, AND LAMAR COUNTY
BOARD OF SUPERVISORS***

DATE OF JUDGMENT:	05/07/2018
TRIAL JUDGE:	HON. JOHNNY LEE WILLIAMS
TRIAL COURT ATTORNEYS:	WILLIAM A. WHITEHEAD, JR RICHARD D. NORTON JOHN ALEX FOXWORTH, JR. S. ROBERT HAMMOND, JR.
COURT FROM WHICH APPEALED:	LAMAR COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	R. ANDREW FOXWORTH
ATTORNEYS FOR APPELLEES:	WILLIAM A. WHITEHEAD, JR RICHARD D. NORTON
NATURE OF THE CASE:	CIVIL - REAL PROPERTY
DISPOSITION:	AFFIRMED AND REMANDED - 01/16/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE RANDOLPH, C.J., MAXWELL AND BEAM, JJ.

MAXWELL, JUSTICE, FOR THE COURT:

¶1. In this interlocutory appeal, the lessee of commercially used Sixteenth Section Land seeks to prevent the leasing school board from adjusting the annual rent outside the time constraints of the lease. While the terms of the lease do appear to contain a clear time restriction within which the Board did not act, this time restriction cannot be enforced. The

time restriction runs contrary to the statutory requirement that rent “shall be adjusted not less than once every ten (10) years” Miss. Code Ann. § 29-3-69 (Rev. 2010). Further, a school board’s duty as trustee to assure adequate consideration is received based on current fair market value of the Sixteenth Section Land cannot be waived, even by mutual agreement in a contract.

¶2. For these reasons, the chancellor did not err by denying the lessee’s motion for a declaratory judgment that the school board was precluded from adjusting the rent based on the time restrictions in the lease. We affirm and remand.

Background Facts & Procedural History

¶3. On August 5, 2002, Oak Grove Marketplace, LLC (Marketplace), and the Lamar County School Board (the Board) entered into a forty-year commercial lease of Sixteenth Section Land.¹ Marketplace agreed to pay \$8,450.20 a year in rent. The rent would be paid in advance by August 5th of each year. Marketplace and the Board also agreed

[t]hat within a sixty (60) day period of the 10th, 20th, and 30th, anniversary dates of this lease, said anniversary dates being August 5, 2012, August 5, 2022, and August 5, 2032, respectively, [the Board] shall have the right to conduct a reappraisal of the subject property for the purpose of redetermining reasonable ground rentals.

¶4. The Board did not reappraise the leased property within sixty days of August 5, 2012. At that time, the Lamar County School District had only a part-time land manager. That manager was responsible for more than five hundred leases covering twelve different sections. But in 2016, the District hired a full-time manager. And this manager had the

¹ Marketplace operates a McDonald’s restaurant on the property.

Marketplace property reappraised in April 2017. On April 11, 2017, the Board sent Marketplace a letter advising that the lease was “past due on a rental adjustment.” Based on the appraisal, the Board adjusted the annual rent to \$32,250 to be paid by August 5, 2017.

¶5. By letter, Marketplace objected. It asserted that, under the terms of the lease, the rental adjustment was unauthorized and untimely. As Marketplace saw it, the Board had missed its window of opportunity to reappraise the property and readjust the rent in the sixty days leading up to August 5, 2012. So now the Board must wait until within sixty days of August 5, 2022, before it can require more rent.

¶6. Based on Marketplace’s objection, the Board alternatively offered to obtain a new appraisal. This appraisal was to be based on the fair-market value of the property in August 2012. But this option would require Marketplace to pay retroactively the 2012 appraised value for August 2012 to August 2017, minus what Marketplace has already paid. Marketplace rejected this alternative. So the Board decided to impose the 2017 appraised value. It demanded Marketplace pay \$32,250 in rent by August 5, 2017, and continue to pay this new rate until 2027, when the rent would be adjusted again.

¶7. Marketplace paid only \$8,450.20. And on August 4, 2017, Marketplace filed a complaint against the Board in the Lamar County Chancery Court. Marketplace asked the chancellor to declare that the lease did not allow any attempted reappraisal before August 5, 2022. It also urged that Marketplace would not be in default if it did not pay \$32,250 by August 5, 2017, because the rent is \$8,450 and would remain that amount until August 5, 2022. Alternatively, if the chancellor found the Board was allowed to readjust the rent

before August 2022, Marketplace sought a reappraisal based on the fair-market value of the property on August 5, 2012. In that event, Marketplace requested court-ordered application of this rate prospectively for ten years, from 2017 to 2027.²

¶8. The parties agreed to a bifurcated hearing. At the first hearing, the court would consider Marketplace’s motion for a judgment declaring, under the terms of the lease, the Board could not adjust the rent until within sixty-days of August 5, 2022. Only if the court denied this motion would the court conduct a second hearing to consider Marketplace’s motion for a judgment declaring that the adjustment should be based on the 2012 fair-market value and applied prospectively for ten years starting in 2017. At an April 9, 2017 hearing, the court considered the single issue presented—could the Board adjust the rent due outside the time periods of sixty days within the tenth, twentieth, and thirtieth anniversaries of the lease?

¶9. Reading the rent-adjustment clause through the lens applicable to Sixteenth Section lease law, the chancellor determined that, although the Board did “miss” the sixty-day window set forth in the lease, the Board did not waive its statutory obligation to adjust the rent at least once every ten years to ensure the school district derived maximum revenue from leasing its Sixteenth Section trust land. The court denied Marketplace’s motion for declaratory judgment on this issue.

Interlocutory Appeal

² Marketplace also asked the court to enforce Marketplace’s right to object to the Board’s appraisal and hire additional appraisers.

¶10. Marketplace petitioned this Court for permission to file an interlocutory appeal, which this Court granted. While the decision to grant or deny a motion for declaratory judgment is discretionary, this Court reviews the legal conclusions supporting that decision de novo. *Tellus Operating Grp., LLC v. Texas Petroleum Inv. Co.*, 105 So. 3d 274, 282-83 (Miss. 2012).

¶11. Marketplace alleges a single error on interlocutory appeal—the chancellor erred by finding the Board was not bound by the terms of the lease but instead was allowed to adjust the rent outside the lease’s permitted periods of August 5, 2012, August 5, 2022, and August 5, 2032. As support, Marketplace argues,

1. The lease must be enforced because it was produced by the Mississippi Secretary of State, contains clear and unambiguous terms, and meets all constitutional and statutory requirements.
2. The lease is just as enforceable against the Board, a state entity, as if it was a private party.
3. The liability for the Board’s breach of its duty as school-land trustee cannot be shifted to Marketplace.
4. Allowing the district to act outside the lease terms violates public policy.

We address the first three arguments only. The fourth public-policy argument asks this Court to go outside its constitutionally delegated role and invade the province of the Legislature. *See Masonite Corp. v. State Oil & Gas Bd.*, 240 So. 2d 446, 449 (Miss. 1970) (“[T]he legislature . . . declares the public policy of this state.”).

Discussion

¶12. To begin, we understand Marketplace’s frustration. The lease was a form lease provided by the Secretary of State’s Office. So the lease’s language describing rent adjustment as a right to be exercised within sixty-day windows spaced ten years apart was drafted by the Secretary of State’s Office in its role as overseer of Sixteenth Section Land.³ Further, it was the Board that failed to conduct a reappraisal and adjust the rent within the lease-specified time frame, a failure likely due to understaffing. If we were not dealing with a Sixteenth Section lease, the Board’s failure to timely act would have operated as a waiver, and Marketplace would have every right to enforce the time restrictions in the lease.

¶13. But we *are* dealing with a Sixteenth Section lease. And Sixteenth Section leases come with certain constitutional and statutory requirements—one being that rent adjustment at least once every ten years is a mutual, mandatory obligation and not a mere right to be exercised or waived. Based on this requirement, the chancellor did not err by denying Marketplace’s request for a declaratory judgment that the lease prevented the Board from bringing the lease into statutory compliance and adjusting the rent out of time.

I. Sixteenth Section Commercial Leases’ Constitutional and Statutory Requirements

¶14. Marketplace begins its argument with the assertion that the terms of the lease meet all constitutional and statutory requirements. We disagree.

³ Section 29-3-1 actually gives general supervisory power to the state land commissioner. Miss. Code Ann. § 29-3-1 (Rev. 2010). But the office of state land commissioner was abolished by statute in 1980, “with all the duties and responsibilities of that office transferred to the office of the Secretary of State.” *Turney v. Marion Cty. Bd. of Educ.*, 481 So. 2d 770, 776 (Miss. 1985) (citing Miss. Code Ann. § 7-11-2 (Supp. 1984)).

¶15. Marketplace first suggests the lease must comply with the law because it was on a form lease provided by the Secretary of State’s office. However, as this Court recently reiterated in *King v. Mississippi Military Department*, 245 So. 3d 404, 407-08 (Miss. 2018), courts, not executive agencies, interpret the law. So the fact the agency overseeing Sixteenth Section Land drafted the lease does not resolve the question whether the lease’s language passes constitutional and statutory muster. The same is true for the Board’s insistence that adjusting the rent outside the time limits in the lease was permissible because the Board was simply following the stated policy of the Secretary of State’s Office on how to bring rent up to date.⁴ The fact the Board’s actions were in line with the Secretary of State’s policy does not automatically resolve the legal question whether the Board’s actions were prohibited under the terms of the lease. Instead, this Court must address these questions head on. And in doing so, we find the terms of the lease do not fully comply with controlling law.

A. Sixteenth Section Law

¶16. Sixteenth Section Land is state-owned land, acquired when Mississippi became a state. *Morrow v. Vinson*, 666 So. 2d 802, 805 (Miss. 1995). The property is “held in trust for the benefit of the public schools and must be treated as such.” Miss. Code. Ann. § 29-3-1 (Rev. 2010). Jurisdiction and control of Sixteenth Section Land falls on the local board of education, under the general supervision of the Secretary of State. *Id.*; *Turney v. Marion Cty. Bd. of Educ.*, 481 So. 2d 770, 776 (Miss. 1985) (citing Miss. Code Ann. § 7-11-2 (Supp.

⁴ See Office of the Secretary of State of Mississippi, School Trust Lands Policies & Procedures Manual 76 (2017), https://www.sos.ms.gov/Public-Lands/Documents/16thSection/Lands%20Handbook_082317_V8.pdf.

1984)). The board of education has a statutory duty to manage the school trust lands and all funds generated by it. Miss. Code Ann. § 29-3-1. As part of this duty, the board must “assure that adequate compensation is received for all uses of the trust lands, except for uses by the public schools.” *Id.* Mississippi’s constitution further constrains the donation of state trust lands to private corporations or individuals. Miss. Const. art. 4, § 95. And this Court has held that “grossly inadequate consideration” for a Sixteenth Section lease violates this constitutional prohibition. *Hill v. Thompson*, 564 So. 2d 1, 9 (Miss. 1989).

¶17. While a board of education may enter a lease for the ground rental of its Sixteenth Section Land, Sixteenth Section leases are subject to certain statutory restrictions and requirements. Miss. Code Ann. § 29-3-69 (Rev. 2010). The original lease term may not exceed forty years. *Id.* Rent must be paid annually. *Id.* And, important to this case, all leases—except for residential and farming-residential lands⁵—must contain a rent-adjustment clause “requiring that the consideration for every lease of such lands shall be adjusted not less than once every ten (10) years from the date of the lease to reflect the current fair market rental value of the lands, exclusive of any improvements thereon.” *Id.*

B. Marketplace’s Lease

⁵ For residential and farm-residential leases, “the board of education may require a rent adjustment clause in which rents are to be adjusted, provided that such adjustments will not exceed the fair market rental value of the lands, exclusive of improvements thereon, as of the rental adjustment dates.” Miss. Code Ann. § 29-3-69. But, “[i]f a rent adjustment clause is not contained in a lease of lands which are or which are to become residential or farm-residential land, the reasons for not including such clause in the lease shall be stated in the lease and entered on the minutes of the board.” *Id.*

¶18. Turning to the lease in question, it does contain a rent-adjustment clause. This clause provides

[t]hat within a sixty (60) day period of the 10th, 20th, and 30th, anniversary dates of this lease, said anniversary dates being August 5, 2012, August 5, 2022, and August 5, 2032, respectively, [the Board] shall have the right to conduct a reappraisal of the subject property for the purpose of redetermining reasonable ground rentals.

Undeniably, the clear and unambiguous language describes reappraisal and rent adjustment as a contractual right the Board may exercise within specified windows of time.

¶19. But this is not what Section 29-3-69 requires. Section 29-3-69 mandates Sixteenth Section leases for non-residential and non-farming-residential lands contain rent-adjustment clauses that require the consideration “*shall be adjusted* not less than once every ten years.” Miss. Code Ann. § 29-3-69 (emphasis added). In other words, rent adjustment at least once every ten years is a mutual, mandatory obligation for every valid commercial Sixteenth Section lease. So, to the extent the rent-adjustment clause in the Marketplace lease reduces rent adjustment from a mutually binding obligation to a mere right the Board may only exercise by conducting an appraisal within narrow sixty-day windows spaced ten years apart or else it is waived, this restriction runs afoul of Section 29-3-69’s mandatory requirement.

II. The Board’s Unwaivable Trustee Duties

¶20. In its second argument, Marketplace correctly asserts that, when a state entity like the Board contracts with a private party like Marketplace, “it becomes bound by more than just statutory law” and must also abide by the terms of the contract. *Gulfside Casino P’ship v. Miss. State Port Auth.*, 757 So. 2d 250, 256 (Miss. 2000). But here we are dealing with a

term of the contract that cannot be enforced because, if it was, the lease would not longer meet the minimum requirements of Section 29-3-69. *See Campana v. Ariz. State Land Dep't*, 860 P.2d 1341, 1346-47 (Ariz. Ct. App. 1993) (holding that a rent-reduction clause in a state-land lease, mutually agreed upon by the state and lessee, could not stand because, if applied, the lease would no longer comply with the statutory requirement that the lease go to the highest bidder).

¶21. Further, Section 29-3-69's mandatory rent adjustment is tied to the statutory duty imposed on the Board as trustee to assure adequate compensation is received for Marketplace's use of Sixteenth Section Land and the constitutional prohibition against the Board's essentially donating trust land by virtue of receiving grossly inadequate consideration *See* Miss. Code Ann. § 29-3-1; *Hill*, 564 So. 2d at 9 (citing Miss. Const. art. 4, § 95). And this Court has held that the State, in its role as the trustee of Sixteenth Section Land, cannot contract away its trustee duties, "any more than the State can surrender its police power in the administration of government and in the preservation of peace and order." *State ex rel. Coleman v. Dear*, 212 Miss. 620, 630, 55 So. 2d 370, 373-74 (1951) (citing *Pace v. State ex rel. Rice*, 191 Miss. 780, 4 So. 2d 270, 277 (1941)). Because rent adjustment is part of Board's duty as trustee of Sixteenth Section Land, this duty cannot be contracted away, even by mutual agreement of the parties.

¶22. This is what distinguishes this appeal from the two cases Marketplace cites, *Cig Contractors, Inc. v. Mississippi State Building Commission*, 399 So. 2d 1352, 1355 (Miss. 1981) and *In re Magnolia Venture Capital Corp.*, 218 B.R. 843, 849 (S.D. Miss. 1997). In

both of those cases, state agencies sought to avoid being sued by asserting sovereign immunity and Eleventh Amendment immunity respectively. Immunity is a right that can be waived. And in both cases, the courts held that the entities did in fact waive their immunity right by contract. *Cig Contractors, Inc.*, 399 So. 2d at 1355; *In re Magnolia Venture Capital Corp.*, 218 B.R. at 849. But here, we are not dealing with a right that may be waived. We are dealing with the state’s trust duty—a duty akin to its police power—which cannot be waived.

¶23. Of course, the Board and Marketplace could agree, as they did here, to the statutory minimum—reappraisal and adjustment only once every ten years—and to waiting to reappraise and adjust until as late as statutorily possible—right before the ten-year period expires. To the extent the lease does not conflict with Section 29-3-69, Marketplace is certainly correct that the Board is bound by the lease’s terms. *See Cig Contractors*, 399 So. 2d at 1355 (“Where the state has lawfully entered into a business contract with an individual, the obligations and duties of the contract should be mutually binding and reciprocal.”). But the parties could not agree to something *less* than what Section 29-3-69 requires—namely, that if the Board did not reappraise the property within sixty days of August 5, 2012, then the statutory minimum rent adjustment was not only optional but also forfeited. Such an agreement fails to comply with Section 29-3-69 and is void.⁶

⁶ This does not mean, however, that the entire Sixteenth Section lease itself is void. Mississippi law is clear that, “if a court strikes a portion of the agreement as void, the remainder of the contract is binding.” *Russell v. Performance Toyota, Inc.*, 826 So. 2d 719, 725 (Miss. 2002). *See also Campana*, 860 P.2d at 1346-47 (severing a rent-reduction clause from a state-land lease as void for failure to meet statutory requirements but upholding the remainder of the lease).

¶24. This brings us to Marketplace’s third argument. Marketplace asserts that the Board, by seeking to adjust five years later than it was supposed to, has shifted its liability for its failure to properly monitor the terms of the lease to Marketplace. We can see why, from Marketplace’s point of view, this outcome may at first seem unfair. But the only alternative is that the lease is void. If Marketplace can contractually prevent the consideration of its commercial lease from being adjusted for twenty years, then the lease does not meet the mandatory rent-adjustment obligation of Section 29-3-69. Also, insisting the Board must wait twenty years before it has another opportunity to adjust rent runs dangerously close to violating the constitutional prohibition against donating public land via grossly inadequate consideration. *See Hill*, 564 So. 2d at 9 (citing Miss. Const. art. 4, § 95).

Conclusion

¶25. By adjusting the rent in 2017, the Board was not making an untimely attempt to exercise a right conferred in the lease. Rather, the Board was carrying out a statutory mandate and, in the process, trying to ensure the annual rent, based on current fair-market value, was constitutionally adequate. Because the chancellor did not err by finding these statutory and constitutional considerations controlled over the language of the lease, we affirm the chancellor’s decision allowing the Board to adjust the consideration for Marketplace’s Sixteen Section lease out of time. And we remand this case to the chancery court to consider Marketplace’s remaining claims.

¶26. **AFFIRMED AND REMANDED.**

RANDOLPH, C.J., KITCHENS AND KING, P.JJ., COLEMAN, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR.