NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 2127

BILLY SUMRALL
d/b/a AMITE HOMES, INC.

VERSUS

ABLE MOBILE HOUSING INC.
a/k/a ABLE MOBILE HOUSING

Judgment Rendered: May 6, 2011.

* * * * *

On Appeal from the
21st Judicial District Court,
In and for the Parish of Tangipahoa,
State of Louisiana
Trial Court No. 2006-0003332 c/w 2006-0003380

The Honorable Zorraine M. Waguespack, Judge Presiding

* * * * *

Christopher Moody
Julie R. Johnson
Hammond, LA

Attorneys for Defendant/Appellant,
Able Mobile Housing, Inc.

Charles M. Reid
Amite, LA

Attorney for Plaintiff/Appellee,
Billy Sumrall d/b/a Amite Homes, Inc.

* * * * *

BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

CARTER, C. J.

Able Mobile Housing, Inc. (Able) appeals a judgment ordering it to pay rent and costs of materials to Billy Sumrall d/b/a Amite Homes, Inc. (Sumrall), pursuant to a lease between the parties.

FACTS AMD PROCEDURAL HISTORY

Days after Hurricane Katrina struck, Able and Sumrall began communicating about Able leasing property from Sumrall. Able is an out-of-state business that works with insurance and temporary housing companies to provide temporary on-site housing (mobile homes, travel trailers and park models) for clients with losses due to such events as fires, floods, tornadoes, or hurricanes. Sumrall owns a mobile home sales center and leases a commercial tract of land in Amite, Louisiana. Able and Sumrall began talking about Able leasing the tract in Amite from Sumrall for travel trailers to house adjusters working in New Orleans.[1] Able's CEO prepared a lease document and faxed it to Sumrall. Sumrall signed the document then faxed it back to Able. No Able representative signed the lease document.

The parties dispute what happened next. Sumrall maintains that he was being rushed by Able to prepare the site and was told not to worry about the paperwork. Sumrall thought that the lease "was a done deal," as evidenced by the arrival of housing units.

Able's CEO explained that he was looking for a lot for travel trailers to house insurance adjusters for a third party temporary housing company with whom his company did business. Able's position is that the lease document faxed to Sumrall was only a proposal that was sent to Sumrall to

[1] Sumrall's testimony that he is authorized by the tract's owners to sublease the tract is uncontradicted. We note too that La. Civ. Code Ann. art. 2674 provides that a lease of a thing that does not belong to the lessor may nevertheless be binding on the parties.

show him what a lease might look like. Able maintains that the third party company rejected the site due to its distance from New Orleans and that they told Sumrall the deal was off, but since Sumrall had expended funds on the site, they entered an agreement for Sumrall to clean, restore and stage some of their housing units. Able has no record of how many of its units were on Sumrall's lot, but does not believe that any were ever hooked up to electricity, water and sewerage or occupied.

Sumrall denies being told the deal was off and testified that the agreement for him to clean and restore units was in addition to the lease agreement. Able contends that no demand for rental payment was ever made while Sumrall contends that he spoke with Able's CEO who generally put him off.

A lease is a contract by which the lessor binds himself to give the lessee the use and enjoyment of a thing for a term in exchange for a rent that the lessee binds himself to pay. La. Civ. Code Ann. art. 2668. The essential elements of the lease are the thing, the price (rent), and the consent of the parties. *Monterrey Center, LLC v. Education Partners, Inc.*, 08-0734 (La. App. 1 Cir. 12/23/08), 5 So. 3d 225, 230. The lease contract may be oral or written. La. Civ. Code Ann. art. 2681. Further, when a written contract is contemplated or required, the party that proposes the contract may be bound if the contract was prepared under its direction and the contract clearly indicates the drafter's intent to be bound once the other party assents thereto. *See Finishers Drywall, Inc. v. B & G Realty, Inc.*, 516 So. 2d 420, 422 (La. App. 1 Cir. 1987).

Whether a lease exists is a question of fact. *Southern Treats, Inc. v. Titan Properties, L.L.C.*, 40,873 (La. App. 2 Cir. 4/19/06), 927 So. 2d 677,

683, *writ denied*, 06-1170 (La. 9/15/06), 936 So. 2d 1271. An appellate court cannot set aside a trial court's finding of fact in the absence of manifest error or unless those findings are clearly wrong. *Rosell v. ESCO*, 549 So.2d 840, 844 (La. 1989). If the findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse those findings even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. *Id.*

Where there is conflict in testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed. *Stobart v. State, DOTD,* 617 So. 2d 880, 882–83 (La. 1993). The fact finder's choice between two permissible views of the evidence cannot be manifestly erroneous or clearly wrong. *Stobart,* 617 So. 2d at 883. Additionally, where the fact finder's conclusions are based on determinations regarding the credibility of a witness, the manifest error standard demands great deference to the trier of fact because only the trier of fact can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said. *Rosell,* 549 So. 2d at 844.

In this case, the trial court obviously credited the testimony of Sumrall over that of Able's CEO. The trial court also considered the exigent circumstances created by Hurricane Katrina during which Sumrall and Able negotiated. The trial court made a factual determination that a valid lease existed between the parties. After reviewing the record and considering the trial court's credibility determination, we cannot say the conclusion that a lease existed is manifestly erroneous.[2]

---

[2] Able does not challenge the particular amounts awarded in the judgment pursuant to the lease.

As we find no manifest error in the trial court's finding that a valid lease existed, we do not address Able's second assignment of error, which is premised on its position that there was no valid lease in force.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed. Costs of this appeal are assessed to Able Mobile Housing, Inc. This memorandum opinion is issued in compliance with URCA Rule 2-16.1.B.

AFFIRMED.