IN THE UTAH COURT OF APPEALS

OGDEN CITY CORPORATION, Appellant, *v.* WENDY T. MARSELL, Appellee.	ORDER Case No. 20220216-CA

Before Judges Tenney, Luthy, and Oliver.

In 2021, Ogden City Corporation (Ogden) sought to terminate a hangar lease agreement (the Agreement) it had with Wendy T. Marsell at the Ogden-Hinckley Airport. Ogden notified Marsell of its intent to terminate the lease by sending a notice through certified mail to Marsell's residence and posting a notice at the hangar. The district court dismissed the case for improper notice, and Ogden now appeals. We reverse.

In July 2000, Marsell entered into the Agreement with Ogden to lease a "parcel of land" at the Ogden-Hinckley Airport "for the purpose of erecting and/or maintaining an existing aircraft hangar." The Agreement's initial lease term ended on December 31, 2015, but Marsell continued as a tenant under the Agreement's "Holdover" provision that allowed for a month-to-month tenancy if Marsell chose to "hold over after the term granted." The Agreement also contains a provision about notices:

> All notices given or to be given, by either party to the other shall be given in writing and shall be addressed or delivered to the parties at the addresses hereinafter set forth or at such other addresses as the parties may by written notice hereafter designate. Notices to the Lessor and the Lessee shall be addressed as follows: . . . [.]

The address listed for Marsell was her residence in Layton, Utah.

On March 15, 2021, Ogden attempted to serve a "Notice of Termination of Tenancy and Notice to Vacate" (the Notice) to inform Marsell of its intent to terminate her month-to-month tenancy on March 31, 2021. First, Ogden sent an agent to Marsell's hangar. When the agent received no reply to his knock on the hangar's door, he posted a copy of

the Notice on the hangar. Second, Ogden sent a copy of the Notice through certified mail to Marsell's home in Layton, Utah. The return receipt for the Notice mailed to Marsell's home indicates the Notice was received and signed for by Marsell on March 17.

In April, Ogden filed a complaint for eviction. Among her filings in response, Marsell filed a motion for summary judgment, asserting that Ogden "failed to comply with Utah's notice requirements." Oral argument for the motion was scheduled for October, but in August, Ogden requested an occupancy hearing under Utah Code section 78B-6-810 "to determine the right of occupancy during the pendency of this matter." As Ogden noted, the statute does not limit occupancy hearings to the issue of occupancy only but also provides that "if the Court so determines to be proper, adjudication of all issues involved in this unlawful detainer matter between the above-named parties and entry of judgment on the merits" may occur.

At the occupancy hearing, the district court dismissed the matter after reviewing evidence—including exhibits submitted by Ogden—and hearing oral argument, concluding that "notice was deficient" and that with "no valid notice, . . . there is no cause of action." In its written findings, the court acknowledged that the Agreement "requires that Ogden City's notices to Marsell under [the Agreement] be given in writing and be addressed or delivered to Marsell's place of residence in Layton, Utah." The court then concluded that posting the Notice was improper because Ogden "is contractually obligated under the [Agreement] to send notices to Marsell's residence and, further, pursuant to Utah Code section 78B-6-805(1)(d), may only post the Notice at the [p]roperty upon being unable to locate Marsell or a person of suitable age and discretion at Marsell's residence, leased property, and, if applicable, usual place of business." Regarding the Notice sent by certified mail, the court concluded that it too was "deficient" because it "was not received by Marsell until March 17, 2021, less than fifteen (15) days before the end of that month." Accordingly, the court entered judgment (the Judgment), dismissing the matter and awarding Marsell attorney fees and costs. Ogden filed a rule 60(b) motion for relief from the Judgment and a motion to amend its complaint. The court denied both motions.

On appeal, Ogden challenges the district court's adjudication that concluded notice was improper and therefore dismissed the matter.[1] When an appeal involves a mixed question of fact and law, we grant deference to the district court's factual findings

1. Ogden also challenges the district court's denials of its rule 60(b) motion and its motion for leave to amend. We need not consider these challenges, however, because—as discussed below—we reverse the court's dismissal of the case, thus rendering the motions moot.

and review the court's legal conclusions de novo. *See Randolph v. State*, 2022 UT 34, ¶¶ 18–19, 28, 515 P.3d 444.

Ogden contends the district court "confused or improperly conflated different controlling statutory and lease provisions" when it concluded notice was improper. Marsell counters that the (1) notice sent via certified mail "was defective because it was *received* by Marsell less than the statutorily prescribed 15 days prior to the end of the lease period" and (2) the "posted notice was invalid because it did not comply with Ogden's contractual obligation contained in the [Agreement] to send notices to Marsell's residence." We agree with Ogden.

First, the Agreement's language in the notice provision makes no mention of "receipt" but simply states that notice "shall be addressed or delivered to the parties." *Cf. Airstar Corp. v. Keystone Aviation LLC*, 2022 UT App 73, ¶ 11, 514 P.3d 568 (describing how a contract's notice provision expressly stated that "[n]otice shall be effective upon receipt by the party or upon refusal of delivery"). When interpreting a contract, we "first look at the plain language of the contract to determine the parties' meaning and intent" and "if the language within the four corners of the contract is unambiguous, the parties' intentions are determined from the plain meaning of the contractual language." *In re Western Ins. Co.*, 2022 UT 38, ¶ 35, 521 P.3d 851 (cleaned up). Here, the Agreement contains two requirements for notice: (1) that it be in writing, and (2) that it be addressed or delivered to the specified address. Ogden complied with those requirements when it sent the Notice by certified mail to Marsell's address.

Second, where Marsell remained in possession of the hangar after the term of the lease ended, the Agreement provided that "such holding over shall be construed to be a tenancy from month-to-month only." Ogden City was therefore required to provide Marsell with "notice requiring the tenant to quit the premises" "15 calendar days or more before the end of that month or period." Utah Code § 78B-6-802(1)(b)(i) (applying 15-day period to tenants who have "leased real property for an indefinite time with monthly or other periodic rent reserved"); *see also Callister v. Spencer*, 196 P.2d 714, 717 (Utah 1948) (holding that "on a month to month tenancy the owner can recover the property on a 15 day notice").

Here, Ogden satisfied the controlling contractual language of the Agreement when it mailed a written copy of the Notice on March 15, 2021, to the address indicated in the notice provision. And notice was timely under the applicable statute because Ogden sent

the Notice through certified mail over fifteen days before the end of the month.[2] Accordingly, we hold that service was proper upon Marsell and reverse the court's decision to dismiss the case on the grounds of improper service.

Each party requests that this court award attorney fees and costs "should it prevail" in this appeal. These requests are based on the Agreement's provision granting that "the prevailing party" in litigation "shall be entitled to recover . . . reasonable attorney fees and all costs" associated with the litigation. When the Judgment dismissed the complaint against her, Marsell was awarded attorney fees and costs based on this language in the Agreement. Because we reverse the Judgment dismissing the case, we reverse the attorney fees awarded to Marsell below and instead award the requested attorney fees on appeal to Ogden.

The district court erred in concluding that notice was improper and dismissing the complaint. Accordingly, we reverse the court's dismissal and remand this matter for further proceedings consistent with this opinion.

Dated this 11th day of October, 2023.

FOR THE COURT:

2. Because we conclude that Ogden complied with the Agreement's notice provision when it sent the Notice by certified mail, we need not address whether the posting of the Notice on the hangar was proper under the unlawful detainer statute.

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2023, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

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SECOND DISTRICT, OGDEN DEPT
ATTN: SHANNON TRESEDER
shannont@utcourts.gov

By 
Celia Urcino
Legal Secretary

Case No. 20220216
SECOND DISTRICT, OGDEN DEPT, 210902085