

Wood Care Centers, Inc vs. Evangel  
Temple Assembly of God  
Parole Evidence

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# Background

- Wood Care Centers leases Property to Evangel Temple Assembly
- Evangel Temple terminates lease agreement before agreement expires
- Wood Care sues
- Trial Court: Take-nothing Judgment
  - Even though argument has merits, Wood Care cannot recover monetary or injunctive relief

# Definitions

- Parol Evidence: Testimony or other evidence of communication(oral or written) not present in contract
- Parol Evidence Rule (PER): When parties have put their agreement into a contract, and the court finds that the contract represents the parties' complete and final statements, it will not allow either party to present parol evidence

*In two issues, Wood Care argues the trial court improperly considered parol evidence in its interpretation of the Agreement and the evidence is legally and factually insufficient to support the trial court's conclusion that Evangel Temple did not breach the Agreement. We affirm.*

Wood Care argues that the trial court should not have considered parol evidence when evaluating the Agreement. The trial court erred in concluding that Evangel Temple did not breach the Agreement when it chose to consider Parol evidence.

**The Agreement contained a "ten-percent termination clause" that stated: Tenant, however, shall have the option of terminating this lease at any time by giving Landlord written notice of its election to do so and payment to Landlord of a sum of money equal to 10% of the balance of the rental payments then owed under the terms of this lease. The Agreement also contained a "tax-exemption termination clause" that stated: Both parties agree to cooperate with each other to achieve any available property tax exemption. In the event a property tax exemption for the leased premises is denied or suspended, Tenant shall have the option to terminate this lease. If, notwithstanding, the denial of such property tax exemption, Tenant elects to continue the lease, then Tenant shall be responsible for the payment of all property taxes and assessments and shall timely pay such taxes or assessments.**

The agreement has a "ten-percent clause" that states that Evangel Temple has the option of terminating the lease at any time through written notification and with a payment to Wood Care of 10% of the balance of rent owed. The agreement also has a "tax-exemption termination clause" that states that both Evangel Temple and Wood Care must work together to obtain any property tax exemptions. If the tax exemptions are cancelled or denied, the Evangel Temple has the option of terminating the lease or continuing the lease. If Evangel Temple continues the lease, then it becomes responsible for paying all the property taxes and assessments associated with the property.

When construing contracts and other written instruments, our primary concern is to ascertain the true intent of the parties as expressed in the instrument.

[\*NP Anderson Cotton Exch., L.P. v. Potter\*, 230 S.W.3d 457, 463 \(Tex.App.-Fort Worth 2007, no pet.\)](#).

We must examine and consider the entire contract in an effort to harmonize and give effect to all provisions so that none are rendered meaningless.*Id.*; see also

[\*J.M. Davidson, Inc. v. Webster\*, 128 S.W.3d 223, 229 \(Tex.2003\)](#). "We construe contracts 'from a utilitarian standpoint bearing in mind the particular business activity sought to be served' and 'will avoid when possible and proper a construction which is unreasonable, inequitable, and oppressive.'" [\*Frost Nat'l Bank v. L & F Dist., Ltd.\*, 165 S.W.3d 310, 312 \(Tex.2005\)](#) (quoting [\*Reilly v. Rangers Mgmt., Inc.\*, 727 S.W.2d 527, 530 \(Tex. 1987\)](#)).

The court is primarily concerned with understanding the true intent of Evangel Temple and Wood Care as expressed in their agreement. In order to do so, they must consider all the provisions in the contract so as not to undermine the value of a single provision.

The court interprets contracts from a utilitarian standpoint. In other words, it looks at contracts and the business activities it seeks to form. The courts will try to interpret contracts in a way that is equitable, reasonable, and just.

Lack of clarity or a disagreement among the parties does not necessarily create an ambiguity.

[Universal Health Servs., Inc. v. Renaissance Women's Group, P.A., 121 S.W. 3d 742, 746 \(Tex. 2003\)](#). Rather, whether "a contract is ambiguous is a question of law that must be decided by examining the contract as a whole in light of the circumstances present when the contract was entered." *Id.* "If, after the pertinent rules of construction are applied, the contract can be given a definite or certain legal meaning, it is unambiguous and we construe it as a matter of law."

[Frost Nat'l Bank, 165 S.W.3d at 312](#) (citing [Webster, 128 S.W.3d at 229](#)). Ambiguity must be decided by the court by assessing the contract as a whole and the circumstances at the time the contract was formulated. Thus, the fact that Evangel Temple and Wood Care have disagreement does not constitute ambiguity. If the court examines the contract and determines that the contract has a definite legal meaning, the contract is not ambiguous, and it can be interpreted as a matter of law.

**Because the conflict between the ten-percent termination clause and the tax-exemption termination clause does not create an ambiguity, the trial court erred by admitting parol evidence on this issue. See [Carbona v. CH Med., Inc., 266 S.W.3d 675, 681 \(Tex.App.-Dallas 2008, no pet.\)](#) (recognizing "courts do not consider extrinsic evidence in interpreting [an] agreement" when it is not ambiguous). But Wood Care has not shown the trial court's consideration of parol evidence led to an improper judgment or prevented Wood Care from properly presenting the case to this court. See Tex.R.App. P. 44.1(a). The trial court admitted only brief testimony concerning the parties' intent for the tax-exemption termination clause to control over the ten-percent termination clause.!**

The trial court allowed parol evidence because it favored Evangel Temple's argument. Evangel Temple argued that the ten-percent termination clause and the tax-exemption termination clause created contract ambiguity; therefore, parol evidence needed to be presented. However, the Court of Appeals found that the trial court should not have admitted parol evidence in this case because the court does not consider information outside of the contract when the agreement is not ambiguous. Having said that, the court recognized that Wood Care failed to show that the trial court's consideration of parol evidence fueled an inappropriate judgement or that, in considering parol evidence, Wood Care was not able to properly present his case to the court. The trial court allowed limited testimony regarding the intent of both Wood Care and Evangel Temple when writing the tax exemption termination clause and the ten-percent termination clause



**We do not agree the trial court improperly considered parol evidence to interpret the tax-exemption termination clause. As discussed above, the trial court admitted parol evidence of the parties' intentions, but the parol evidence all concerned the conflict between the ten-percent termination clause and the tax-exemption termination clause, not the meaning of the tax-exemption termination clause itself. Thus, the trial court did not consider parol evidence when it interpreted the tax-exemption termination clause. We overrule this portion of Wood Care's first issue.**

The trial court did not improperly consider parol evidence when interpreting the 'tax-exemption' clause. Based on the fact, the parol evidence the court admitted was based on the conflict as regards the ten-percent termination clause and the 'tax-exemption termination clause,' and not looking at the meaning of the tax-exemption clause itself, because parol evidence was not considered when the Court interpreted the tax-exemption clause.

The evidence at trial supported the trial court's findings of fact that Evangel Temple did not breach the Agreement and that it "made reasonable and good faith efforts" to find another use for the facility. The trial court's findings are not negated by the evidence; the evidence at trial established that Evangel Temple tried to cooperate by pursuing other tax-exempt uses but could not find a tax-exempt use that fit the facility's layout and size. Furthermore, the trial court drew the correct legal conclusions from the facts that Evangel Temple could terminate the Agreement without further liability under the facts of this case, that Evangel Temple's termination did not trigger the ten-percent termination clause, that Evangel Temple did not breach the Agreement, and that Wood Care's requested relief should be denied.

Evangel Temple did not breach the agreement because it made effort to secure other reasonable or charitable use for that facility that would have resulted in tax-exemption, but their other ministries would have had possible, but very limited use for the facility and the aim would therefore be defeated.

Therefore Batemans testimony establishes that Evangel Temple did not breach the Agreement.

Based on the foregoing, after reviewing all of the evidence in the light most favorable to the trial court's findings, crediting favorable evidence if a reasonable factfinder could, and disregarding contrary evidence unless a reasonable factfinder could not, we hold that there is legally sufficient evidence to support the trial court's findings that Evangel Temple did not breach the Agreement. Likewise, after considering and weighing all of the evidence pertinent to the trial court's findings, we cannot say that the evidence supporting the trial court's findings is so weak or contrary to the overwhelming weight of all the evidence that it should be set aside and a new trial ordered. We overrule Wood Care's second issue.

- Woodcares 2<sup>nd</sup> case is also overruled. Looking at the facts of the case, and considering the evidence, Evangel Temple did not breach the Agreement, as it “made reasonable and good faith efforts” to secure another use for the facility in order to get tax exemption.
- Considering all the evidence presented by both parties, it would be wrong to order the Trial Court to set aside its judgment.

## **Explain who won, and conclusion**

We therefore uphold the judgment of the trial court, where the trial court ruled in favor of Evangel Temple.

Considering the evidence brought by Wood Care at the trial on Breach of Contract and other related allegations concerning the Agreement, Woodcare did not prove by preponderance of evidence that Evangel Temple breached the Agreement.

In conclusion; therefore, we hereby state that Parol Evidence Rule can be introduced, as there was no ambiguity in determining the tax-exemption clause.