Farm Management

Enter new lease agreements cautiously

Country Counsel

BY ROBERT MOORE

IT has been said many times that farm leases should be in writing rather than verbal. A recent court out of Adams County emphasizes that point.

The landowner, Jones, leased 150 acres to the tenant, Martin, for 12 years on a verbal lease. Martin claims that in December 2010, he and Jones entered into another verbal lease for 2011. Jones claims she was dissatisfied with Martin and did not agree to lease the farm to him in 2011. Martin claims that based on Jones' verbal representation, he entered into a grain contract, leased equipment, purchased seed and fertilizer, and intended to sign up the farm with the Farm Service Agency.

In December 2010, Jones met with another farmer, Hill, who offered to rent the farm for significantly more than Martin had been paying Jones. In early April 2011, Jones agreed to rent Hill the farm for 2011. A few days later, Jones contacted Martin and informed him the farm was being leased to another tenant. Martin claims Hill knew Martin had the farm leased and had already applied herbicides.

Martin filed a lawsuit against Jones for breaching the lease and against Hill for interfering with Martin's business relationships. After a trial, the jury awarded Martin $64,000 in compensatory damages from Jones, $45,000 in punitive damages from Hill and $53,000 in attorney fees from Hill. Martin was awarded over $162,000, equating to more than $1,000 per acre.

Jones and Hill appealed the jury's decision to the Fourth District Court of Appeals. The appeals court upheld the jury's decision. Jones and Hill can further appeal the matter to the Ohio Supreme Court, but it does not have to hear the appeal.

The appeals court issued a decision outlining the reasons for upholding the jury's decision. Normally, a verbal lease is not enforceable under the law because there is no proof for a court to consider. That is, verbal leases become a "he said, she said" scenario. However, verbal leases can become enforceable if there is other evidence the lease exists. In this situation, the court determined that Martin's actions of purchasing seed and fertilizer, entering into grain contracts and applying pesticides, among other things, proved he and Jones had entered into a lease. Why would Martin spend all that money if he didn't believe he had the farm leased?

This case presents a dilemma for producers who are offered land previously farmed by another tenant. Before leasing new land, a producer should do some due diligence to not get involved in a dispute between the previous tenant and the landowner. Consider the following:

■ Ask the landowner for any written leases with the former tenant. If there was a written lease, determine if there was a termination provision and if termination was provided. Also ask for written documentation that the landowner has informed the former tenant of the lease termination.

■ Inspect the property before agreeing to lease for any indications of tillage, pesticide application or other work performed in anticipation of the next crop year.

■ Consider the time of year. A farm being offered for lease in late winter or early spring is more likely to be in dispute than one being offered in summer or fall.

■ Have the landowner check with FSA to be sure the previous tenant has not already signed up the farm for programs.

■ Ask for proof and a commitment from the landowner that the previous tenant will not dispute the lease termination.

This case calls to attention some of the risks associated with verbal leases and picking up new farms to lease. This case should also make clear the risk of becoming involved in litigation and losing.

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