A Lease or a License?

Every small claims magistrate knows that a “simple landlord-tenant relationship” is a jurisdictional requirement in summary ejectment actions. In most cases the existence of such a relationship is quite clear, but that’s not always so. When the property in question is something other than a home or business, questions sometimes arise. For example, what if an agreement involves a boat slip? A stall at a flea market? A horse stall in a stable? A chair in a beauty salon? In these situations and countless others, the legal issue is whether the agreement between the parties should be characterized as a *lease* or a *license*.

A lease is first and foremost a *thing of value*, usually referred to as a *property interest* or an *estate* in land. That interest may be sold, inherited, and levied upon. A lease grants tenants the right to exclusive possession of the property, which they may use and enjoy however they wish, so long as they do not damage the property and their actions are not prohibited by the lease. Wilcox v. Cherry, 123 N.C. 79, 31 S.E. 369, 370 (1898). Because a lease is a thing of value belonging – for a limited time – to the tenant, a landlord has no right to retake possession while the lease is in effect.

A license is a temporary right to make use of property for a specific purpose. A license is not a *thing of value.* It is not a property interest, and so may not be sold, inherited, or levied upon. A *licensee* is entitled only to use property, rather than to possess it. Consequently, a licensee has no right to exclude others from the property, nor to make use of it in any way other than that specifically authorized by the licensor. A license is revocable at will.

Sometimes it is easy to identify an agreement as a license. When you buy a ticket to a concert, you have permission from the concert venue to occupy the particular seat listed on the ticket for the purpose of watching the concert. No one would argue that you are a tenant, or that you have rights going beyond that seat for that period of time.

Or consider the parking lot situation. When you park at the mall to shop, your temporary occupancy of the parking space is permissive. If parking is for customers only, that permission is limited to a particular use. If you park in a private lot which charges by the hour, the implied contract is still a license, but with different terms: parking is not limited to customers, and payment is required, with the amount determined by length of use. If, instead of parking your car in the lot, you showed up on foot carrying a tent and sleeping bag, the attendant might well tell you that the space is available only for the particular use of parking a motor vehicle. All of these are examples of licenses.

Contrast the situation in which you arrange to pay a monthly fee to reserve a particular parking place in a lot near your work. Four characteristics make this arrangement look more like a lease than a license: you have (1) exclusive use (2) of a particular piece of real property (3) for a specified period of time (4) in exchange for payment.

Note that these factors are not definitive. One or more of them may be absent without necessarily changing the classification of a particular agreement, and various fact situations may present additional factors that must be considered as well. Nor are they absolute. Many leases, for example, allow the landlord to enter rental premises to conduct an inspection. Such a provision gives a tenant exclusive-possession-subject-to-a-restriction, with the degree of restriction dependent on additional provisions such as notice requirements and limitations on frequency. To the degree that the four factors listed above are entirely absent or quite definitely present, however, the determination of whether a particular arrangement is a lease or a license is generally straightforward.

Agreements related to storage space often present a more challenging analysis. Like parking lots, the particular use to which storage space may be put is inherently limited, and that immediately looks like a license, rather than a lease. On the other hand, storage contracts almost always involve the provision of space for a definite period of time in exchange for compensation-- which looks more a lease. While there are no North Carolina cases on this issue, a federal bankruptcy case nicely illustrates the analysis a magistrate might use to resolve the question. In In re Northport Marina Associates, 136 B.R. 911 (1992), the court was required to classify three types of storage provided by the marina:

First, “transient” customers could pay a per-foot-per-day charge in exchange for being allowed to use a boat slip – along with associated services – for a short time, usually one or two days.

Second, the marina offered a winter storage plan, providing storage, security, and minor maintenance in exchange for a fee based on the boat’s size. The agreement gave the marina sole discretion as to where the boats were stored, allowing them to be “moved and maneuvered” at any time, even to a place other than the marina.

Third, customers could enter into a “Slip Rental Service and Membership Agreement” for the period between May 1st – October 31. The agreement identified the particular slip rented, with the cost based on the size of that slip, and provided that the slip would be available for occupancy at any times requested.

The court found that only the third agreement was a lease based on (1) the six-month period, (2) the fact that the customer was renting a “specific assigned slip,” (3) the cost based on the characteristics of the space reserved, and (4) that fact that only this agreement used the term “rental.” Space provided to transient users had none of these factors commonly associated with leases. As for the winter storage plan, the opinion noted that “what is provided is storage rather than a right to occupy a particular space.”

The classification of agreements related to self-service storage units was the subject of a lengthy opinion in In re Safeguard Self-Storage Tr.[1] That court found that the agreement satisfied the definition of a lease under California law, based on the fact that the company’s customers “secure

their storage spaces with their own lock and have exclusive access to the spaces." Furthermore, the opinion noted that the agreement used "lease language," specifically identified the storage space by number, required payment of periodic rent, and contained a provision governing notice of termination.

The analysis in these cases offers a systematic approach to distinguishing a lease from a license. To begin with, an agreement must satisfy the essential requirements for a lease: (1) It must give the alleged tenant exclusive possession of a specific parcel of land, (2) either for a specified duration or for a particular term which repeats until terminated by some specific action or event, (3) in exchange for the alleged tenant's agreement to pay rent or otherwise give value.

If an agreement is missing one of these characteristics, it is not a lease and the analysis stops there. In the Northport Marina case, the Winter Storage Agreements clearly satisfied the last two requirements but failed entirely to meet the first. Permission to use facilities without specifying the particular space to be used is generally declared to be a license.

Note, however, that the presence of all three qualities does not necessarily end the inquiry. In Northport Marina, the agreement with the transient users arguably satisfied all three requirements but was nevertheless classified as a license. Because the term was so short, and the particular boat slip was assigned by the company, two of the three requirements were only weakly present.

In close cases other factors become important, particularly the relative degree of control exercised by the parties. Certainly that factor was influential in the Safeguard Storage opinion: The court emphasized that the customers supplied their own locks, that they alone had access to their units, and that they, and not the business owner, were responsible for the care of the stored property.

Another factor, frequently mentioned but relied on inconsistently by the courts, are the terms used in the agreement. It is axiomatic that "[i]n determining the real character of a contract, courts will always look to its purpose rather than to the name given to it by the parties." Wilcox v. Cherry, 123 N.C. 79 (1898). An agreement is not a lease merely because the parties label it as such. In its quest to give effect to the intention of the parties as expressed in a written agreement, however, a court may consider whether the specific terms used shed light on the parties' understanding of the agreement, including the way in which it is to be enforced.

Distinguishing between a lease and a license is important, because only the former is a proper subject for a summary ejectment action, while the latter may be terminated in an instant with no justification required. Perhaps the most important principle in distinguishing between the two is that the particular interest does not depend on the nature of the property: a person may keep a cow in a pasture belonging to another as a function of either a lease or a license. It depends instead of the factors outlined above, with the answer being straightforward in some situations and much less certain in others.

[1] 2 F.3d 967, 972 (9th Cir. 1993). In North Carolina, self-service storage facility agreements are classified as leases as a matter of law. GS 44A-44.1.