

## The Doctrine of Emblements: Protection for Texas Farm Lessees

In Texas, a lessee who plants crops on the leased property may, under certain circumstances, have the right to enter the property and harvest the crops even after the lease terminates based upon “the doctrine of emblements.”

The doctrine of emblements is an equitable doctrine designed to protect farmland lessees. Under the doctrine of emblements, a former tenant has the right to re-enter the leased property to cultivate, harvest, and remove crops that were planted prior to the termination of the tenancy. In order for this doctrine to apply, the following elements must be proven: (1) the tenancy was for an uncertain duration; (2) the termination was due to an act of God or by an act of the landlord and the termination was no fault of the tenant and was done without his previous knowledge; and (3) the crop was planted by the tenant during his right of occupancy.

(1) Uncertain duration: In order for the doctrine of emblements to apply, the lease at issue must be for an uncertain duration. Many times, parties have unwritten leases or leases that have continued on for years without certain termination dates. These leases would fall under the doctrine. Further, a lease for a set period of time, but which could end based on certain circumstances prior to the conclusion of the set time period is considered to be a lease of uncertain duration for which the doctrine can apply. Additionally, if the parties to a lease for a certain duration agreed to allow a crop to be planted with knowledge or agreement that harvest would occur after the lease terminated, the tenant may still have a right to the growing crops. Generally, however, a lease for a specific duration of time, such as a lease that will terminate on a certain date, would not be within the doctrine.

(2) Termination due to act of God or landlord and not the fault or with knowledge of the tenant: Not surprisingly, the doctrine does not apply to situations where the tenant is at fault for the termination. For example, if a tenant is evicted from the property for failure to pay rent, he or she is not entitled to harvest the crops that were planted during the lease.

(3) Crop planted during right of occupancy: In order for the doctrine to apply, the crop must have been planted during the time that the tenant was permitted access to the property. For example, if a landlord terminated a lease in March, but the tenant trespassed and planted crops in April, the tenant would have no right to harvest those crops. Similarly, if the tenant knows that a landlord claims possession to the property or that a lawsuit regarding title of the property is pending at the time he or she plants the crop, the doctrine offers the tenant no protection.

In Texas, the leading case on this topic is *Dinwiddie v. Jordan*, 228 S.W. 126 (Tex. Ct. App. 1921). There, a tenant leased farmland from a landlord. The parties agreed to lease of 5 years, but the lease provided that if the property was sold during the lease that the tenancy would terminate. The tenant planted 300 acres of wheat during the fall of 1916. In December 1916, the property was sold to a third party at a foreclosure sale. Under these circumstances, the court found

that the tenant had an interest in the growing crops and the right to enter the property to cultivate and harvest the crop even after the lease terminated pursuant to the parties' agreement.

*See also Miller v. Gray*, 149 S.W.2d 582 (Tex. 1941) (doctrine inapplicable where written lease provided for certain end date); *Beken v. Elstner*, 503 S.W.2d 408 (Tex. Ct. App. 1973) (although lease was for a certain duration, the lessee had the right to harvest crops where the lessor knew that the crop could not mature during the period of the lease, but represented to the tenant that he would be allowed to remove the crops); *Collins v. Thornton*, 262 S.W.2d 781 (Tex. Ct. App. 1953) (where parties to oral lease ending on December 31, 1951 agreed to allow lessee to plant cotton in the summer of 1951 and did not discuss a termination date of the lease as applied to the cotton crop, he was entitled to recover damages caused by the landlord plowing up growing cotton field); *Lewis v. Pittman*, 191 S.W.2d 691 (Tex. Ct. App. 1945) (doctrine not applicable where pasture lessee had the right to gather pecans during a lease for a set duration and filed suit for value pecans that were not harvested during the duration of the lease); *John Hancock Mutual Life Insurance Co. v. Dameron*, 131 S.W.2d 122, (Tex. Ct. App. 1939) (no doctrine of emblements for defendant who planted crops in February 1936 where plaintiff purchased property at a foreclosure sale in May 1935 and filed suit for title and possession in January 1936); *Calhoun v. Kirkpatrick*, 155 S.W. 686 (Tex. Ct. App. 1913) (no right to harvest crops of the tenant was evicted from the property in a forcible detainer suit).

In order to protect one's self, a tenant leasing farmland should consider including a term in the lease that requires sufficient notice of lease termination and reserves for the tenant the right to enter the property after the lease terminates to harvest any crops that were planted during the lease term or requires that the landlord compensate the tenant for the value of the growing crops. By including this term, the tenant may protect his right to the crop even if the elements of the doctrine are not met. Some examples of possible lease terms addressing this issue are included below.

*"If, at the termination of this lease, for any reason, there are growing crops on the farm in which the tenant has an interest, the landlord will compensate the tenant for his interest upon such basis as may be mutually agreed or determined by arbitration, or will complete the care, harvesting, and sale of such crops, deduct the expenses thereof from the returns, and will pay the tenant his proportionate share of the proceeds."*

*"The Tenant shall have the right of entry for \_\_\_\_\_ days after the termination of the lease for the purpose of harvesting spring seeded crops."*

*"In the event of such sale or disposition, Lessees shall have the right to retain possession of said premises until all crops planted by them during the calendar year in which such event occurs are harvested."*

*“Upon termination, [Farmer] agrees to yield possession of the premises within 90 days of the date of notice of termination, reserving the right to re-enter the premises solely to harvest any crops that are the personal property of [Farmer] and are growing at the time of termination.”*