STATE OF MICHIGAN

COURT OF APPEALS

CESCAM CORPORATION,

Plaintiff–Appellee,

v

C. FRANCO & SONS TRUST,

Defendant–Appellant.

UNPUBLISHED
April 4, 1997

No. 178895
Oakland Circuit Court
LC No. 94-478039

Before: Holbrook, P.J., and Saad and W. J. Giovan,* JJ.

PER CURIAM.

Defendant lessor, appeals as of right from the trial court's order granting specific performance of an option to renew a lease to plaintiff, lessee. We affirm.

This dispute concerns a lease for premises used as a bowling center. Plaintiff and defendant[1] had previously entered into a lease and later, pursuant to an option to renew, had entered into a lease extension rider. The rider contained an option to renew for an additional ten-year period at a rental rate to be mutually agreed upon. However, the parties were unable to agree on a rental rate and this action ensued. The trial court appointed a special master to make findings and recommendations regarding the reasonable rental rate for the ten-year lease extension. The special master actually returned with three different rates: (1) a reasonable rent for using the premises as a bowling alley, (2) a fair market value rental rate for the premises (i.e., for use other than as a bowling alley), and (3) a suggested compromise rate. The trial court then chose the first rate (rental rate for use as a bowling alley).

Defendant first argues that, because the lease renewal provision contained an agreement to agree on rent, without establishing how rent would be determined, the agreement was unenforceable because the parties did not agree on the rental rate. Many American courts have held that a lease of real property which provides for renewal of the lease at a rental "to be agreed upon" is void for uncertainty. *Stancroff v Brown*, 76 Mich App 589, 592-593; 257 NW2d 179 (1977). However, the modern trend departs from this rule. *Id.* 76 Mich App at 592. "[T]hose courts adopting the view that

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* Circuit judge, sitting on the Court of Appeals by assignment.

the provision in question is valid and enforceable stress that the renewal clause constitutes part of the consideration which induces the lessee to execute the original lease, that the provision implies that the rent for the renewal or extension is to be reasonable, and that if the parties cannot agree on the rental, a court can set the figure for them." 58 ALR 3d 500, §2(a), p 505. Michigan follows the modern approach. See *Bird v Couchois*, 214 Mich 607; 183 NW 36 (1921); *Stancroff*, *supra*.

The lease renewal option in the instant case provided that the parties shall mutually agree on rent for the period of the option. This provision implies that the lease rate under the option must be reasonable. *Bird*, 214 Mich at 611-613; *Stancroff*, 76 Mich App at 596. Thus, when the parties were unable to agree on a reasonable rental rate, it was proper to have the court determine such a rate. *Stancroff*, 76 Mich App at 596.

Defendant next argues that the trial court did not make findings of fact about why it chose the recommended rate for the use of the property as a bowling alley. Pursuant to MCR 2.517(A), the trial court is required to make findings of fact and conclusions of law in actions which are tried on the facts. However, it is clear from the judge's comments that he was adopting the special master's findings of fact and conclusions of law made in support of the rate chosen.

Although defendant's statement of the issues on appeal raises the question of whether the rate set was reasonable, this issue was not argued in defendant's brief and therefore it has been abandoned. *Singerman v Municipal Service Bureau, Inc.*, 211 Mich App 678, 684; 536 NW2d 547 (1995).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Henry William Saad
/s/ William J. Giovan

[1] Reference to defendant includes parties to whom defendant is the successor in interest.