STATE OF MICHIGAN

COURT OF APPEALS

CLAYTON ENVIRONMENTAL,

Plaintiff-Appellant,

v

NOVI INDUSTRIAL PROPERTIES, GRAHAM CLEMENTS, RICHARD BISHOP, and THOMAS MASTERS,

Defendants-Appellees,

and

MICHIGAN NATIONAL BANK,

Defendant.

UNPUBLISHED
May 29, 2001

No. 216164
Oakland Circuit Court
LC No. 97-541345-CH

Before: Bandstra, C.J., and Zahra and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order denying its motion for judgment notwithstanding the verdict or new trial. On appeal, plaintiff challenges the trial court's denial of its motion for summary disposition. We reverse and remand.

On October 2, 1985, plaintiff signed a lease to become a tenant at a light industrial building in Novi. Defendant Novi Industrial properties is the landlord under the lease. On April 25, 1996, plaintiff provided written notice of its intent to exercise an option in the lease to purchase the premises. Defendants asserted that plaintiff improperly calculated the purchase price under the option and refused to attend the closing scheduled by plaintiff. Thereafter, plaintiff filed the present suit for specific performance of defendants' agreement to transfer the property under the option. Plaintiff brought a motion for summary disposition under MCR 2.116(C)(9), arguing the lease clearly and unambiguously provides for calculation of the purchase price and, specifically, that the term "Landlord's Equity" as used in the option equals $170,000. The trial court ruled that the lease is ambiguous in regard to the option purchase price and denied plaintiff's motion on that basis. The issue whether "Landlord's Equity" as used in the

option to purchase equals $170,000 went to a jury trial. The jury found that the lease does not provide that the term "Landlord's Equity" in the option to purchase equals $170,000.

On appeal, plaintiff argues that the trial court erred in failing to rule as a matter of law that the option provision of the lease unambiguously provides for calculation of the option purchase price using $170,000 as the value of "Landlord's Equity." We agree.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Likewise, whether contractual language is ambiguous is a question of law that is reviewed de novo. *Farm Bureau Mut Ins Co of Michigan v Nikkel*, 460 Mich 558, 563; 596 NW2d 915 (1999). A motion for summary disposition brought under MCR 2.116(C)(9) tests the sufficiency of the defendant's pleadings by accepting all well-pleaded allegations as true. If the defenses are so clearly untenable as a matter of law that no factual development could possibly deny the plaintiff's right to recovery, summary disposition is appropriate. *Dimondale v Grable*, 240 Mich App 553, 564; 618 NW2d 23 (2000).

"The primary goal in interpreting contracts is to determine and enforce the parties' intent." *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). "To do so, this Court reads the agreement as a whole and attempts to apply the plain language of the contract itself." *Id*. The language of the contract is to be given its ordinary, plain meaning and technical, constrained constructions should be avoided. *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 71 n 1; 467 NW2d 17 (1991). The construction of the terms of a contract is generally a question of law for the court; however, where a contract's meaning is ambiguous, the question of interpretation should be submitted to the factfinder. *D'Avanzo v Wise & Marsac, PC*, 223 Mich App 314, 319; 565 NW2d 915 (1997) A contract is ambiguous when its words can reasonably be understood in different ways. *Id*. The fact that a contract is inartfully worded or clumsily arranged does not render it ambiguous if it fairly admits of one interpretation. *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 382; 591 NW2d 325 (1998).

In the present case, the option to purchase provision provides, in relevant part:

> 44. Option to Purchase. Tenant is hereby granted an option to purchase the Demised Premises on the following terms and conditions. The purchase price shall be the total of:
>
> (i) The amount equal to the total unpaid principal and interest due under the Mortgage in the property, including any "balloon" payments due thereunder, plus
>
> (ii) The Landlord's Equity in the Demised Premises plus an amount equal to Landlord's Equity times 6% of Landlord's Equity per year retroactive to the commencement of the Lease. For example, if Tenant purchases the Demised Premises in the 10th year of the Lease, and Landlord's Equity is $170,000.00, then, in addition to the amount specified in 44(i), Landlord shall receive as part of the purchase price, $272,000.00 payable in cash or certified check (6% of

$170,000.00 = $10,200.00, $10,200.00 x 10 Years = $102.000.00, $170,000.00 + $102,000.00 = $272,000.00).

The "Index of Defined Terms of Lease" indicates the term "Landlord's Equity" is defined on page six of the lease. On page six, ¶ 6 provides the following with respect to rent:

> 6. Rent. The basic rent under this Lease will equal the sum of (a) and (b):
>
> (a) Twenty-One Thousand Five Hundred ($21,500.00) Dollars per month; plus
>
> (b) Seventeen Thousand ($17,000.00) Dollars per year which is equal to ten (10%) percent of One Hundred Seventy Thousand ($170,000.00) Dollars equity in the Demised Premises ("Landlord's Equity").

When interpreting a contract, its terms should be given their commonly used meanings, in context, unless clearly defined. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 354; 596 NW2d 190 (1999); *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 568; 596 NW2d 915 (1999). If a term is clearly defined, that definition governs. See *Heniser v Frankenmuth Mut Ins Co*, 449 Mich 155, 172-173; 534 NW2d 502 (1995) and *GAF Sales & Service, Inc v Hastings Mut Ins Co*, 224 Mich App 259, 261-262; 568 NW2d 165 (1997).

We conclude that the option provision of the lease is unambiguous. The term "Landlord's Equity" is specifically defined in the rent provision of the lease to mean $170,000. That term is expressed in the same capital letters in the option provision. There are no instructions in the lease for determining an amount of "Landlord's Equity" to be used exclusively when calculating the option purchase price. Under these circumstances, the option provision is not reasonably susceptible to more than one interpretation. To the extent the option could have been more clearly worded by specifically inserting $170,000 in place or in conjunction with the term "Landlord's Equity," inartful wording does not render the lease ambiguous. *Michigan Twp, supra*. "Landlord's Equity" was clearly defined in the lease to mean $170,000 and, therefore, the option provision, which includes "Landlord's Equity" in the calculation of the option purchase price, fairly admits of one interpretation. *Michigan Twp, supra*; see *Heniser, supra* and *GAF Sales, supra*.

Accordingly, the option purchase price should have been determined as a matter of law by the trial court. Given our holding, we need not discuss plaintiff's remaining issues on appeal.

Reversed and remanded for entry of an order granting summary disposition for plaintiff on the question whether the lease unambiguously provides that "Landlord's Equity" in the option provision equals $170,000. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Brian K. Zahra
/s/ Patrick M. Meter