STATE OF MICHIGAN

COURT OF APPEALS

ADAMS OUTDOOR ADVERTISING,

Plaintiff-Appellant,

v

GENTILOZZI REAL ESTATES, INC., a/k/a GENTILOZZI REAL ESTATE MANAGEMENT COMPANY, INC., and PAUL GENTILOZZI,

Defendants-Appellees.

UNPUBLISHED
March 1, 2002

No. 227915
Ingham Circuit Court
LC No. 98-088047-CZ

Before: Bandstra, P.J., and Murphy and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1982 Central Advertising Company and Bischoff & Warren entered into an agreement which allowed Central to display a billboard on the roof of a building owned by Bischoff & Warren. The agreement had a ten-year term, from January 19, 1982, through January 19, 1992. The agreement provided that following the expiration of the initial term the lease would automatically renew for successive one-year periods, with the total extension not to exceed ten years. Central could terminate the lease upon giving thirty days' written notice, and could obtain a refund of any prepaid rent if it was prevented from maintaining the sign due to governmental action which diminished or destroyed the use of the premises for advertising purposes.

Plaintiff acquired Central's outdoor advertising business, including the lease. Defendants purchased the building, and plaintiff made rent payments to defendants. Plaintiff made its final payment on January 19, 1997, which renewed the agreement through January 19, 1998.

On October 17, 1997, the City of Lansing condemned the building and required defendants to raze it. By letter dated October 28, 1997, defendants notified plaintiff that the building would be demolished. Plaintiff removed the sign from the building. The building was demolished on December 8, 1997. Thereafter, the City of Lansing enacted an ordinance which restricted the number of billboards that could be displayed in the city at any one time. The ordinance provided that if the number of billboards displayed exceeded 120, an applicant could obtain a permit to erect a new billboard if it removed two nonconforming billboards.

Plaintiff asserted the demolition of the building constituted a breach of the agreement by defendants, and demanded compensation in the amount of $35,000 for lost revenues through January 19, 2002, the last date through which the agreement could have existed pursuant to the series of one-year extensions. Defendants declined to pay plaintiff. Plaintiff filed suit seeking lost rental income, unspecified damages equal to one-half of the revenue from a new (unidentified) sign location, and unspecified damages for waste. Defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing, inter alia, that renewal of the agreement beyond the term which expired on January 19, 1998, was impossible because the building had been demolished, and the unambiguous terms of the agreement limited plaintiff's recovery to a refund of prepaid rent. The trial court granted defendants' motion for summary disposition, holding: (1) the condemnation action by the City of Lansing rendered further performance under the lease impossible; and (2) under the terms of the lease plaintiff should have notified defendants it was terminating the lease and requested a refund of prepaid rent.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

When the terms of a contract are clear, the construction of the contract is a question of law for the court. *Zurich Ins Co v CCR & Co (On Rehearing)*, 226 Mich App 599, 604; 576 NW2d 392 (1997). If the terms are unambiguous, a court does not have the right to make a different contract for the parties, and no further construction is warranted. *Id.*

Plaintiff argues the trial court erred by granting defendants' motion for summary disposition. We disagree and affirm. Plaintiff's argument is based on the erroneous assumption that defendants were required to maintain the building in a condition which would allow for the display of the sign through January 19, 2002. The lease contained no language regarding defendants' duty to maintain the premises, and no such obligation can be inferred from the language of the agreement. *Zurich*, *supra*. Furthermore, the agreement unambiguously stated that following the expiration of the initial ten-year term, the lease would renew for only one year at a time. The evidence showed at the time the building was razed, the agreement had been extended through January 19, 1998. The trial court correctly concluded that given that the agreement imposed no duty on defendants to maintain the building or to guarantee the existence of a building, and given that the building was razed pursuant to an order issued by the City of Lansing, the doctrine of impossibility applied to excuse both parties from further performance under the agreement. *Bissell v L W Edison Co*, 9 Mich App 276, 284-285; 156 NW2d 623 (1967). Finally, the trial court correctly held that because plaintiff did not pursue the remedy provided to it in the agreement, i.e., termination of the lease and recovery of prepaid rent, it was not entitled to recovery under the terms of this action. *Shiffer v Bd of Ed of Gibraltar School Dist*, 393 Mich 190, 197; 224 NW2d 255 (1974).

Affirmed.

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Christopher M. Murray