STATE OF MICHIGAN

COURT OF APPEALS

HOWARD L. DUBIN, D.O., P.C.,

Plaintiff/Counterdefendant-Appellant/Cross-Appellee,

and

OAKVIEW DENTAL CENTER, P.C., and PRESCRIPTION ARTS PHARMACY, N.W., INC.,

Plaintiffs/Counterdefendants

v

4 WARD 4 PROPERTIES 1, LLC,

Defendant/Counterplaintiff-Appellee/Cross-Appellant.

UNPUBLISHED
August 9, 2002

No. 226680
Wayne Circuit Court
LC No. 97-740516-CH

Before: Murphy, P.J., and Griffin and Meter, JJ.

PER CURIAM.

Plaintiff Dubin ("plaintiff") appeals by right, and defendant cross-appeals, from summary disposition orders holding that (1) plaintiff was entitled to purchase a parking lot in Detroit under a right of first refusal contained in a lease and (2) plaintiff was obligated to pay defendant a certain amount of money in order to purchase the parking lot. Plaintiff alleges on appeal that the amount it was ordered to pay for the parking lot was too high. Defendant, on the other hand, argues that plaintiff had no right to purchase the parking lot under the terms of the lease. We agree with defendant and therefore reverse the trial court's orders and remand this case for further proceedings.

In 1997, plaintiff leased certain real estate from Kelli Investments, Ltd. ("Kelli"). The lease referred to "Suite 200" of an office building but did not specifically reference the parking

lot adjacent to the building.[1] Subsequently, Kelli failed to pay its property taxes, and the government foreclosed on both the office building and the parking lot. Kelli then quitclaimed all the property to defendant, who exercised a redemption with regard to the parking lot but not the building. Plaintiff filed suit, claiming that defendant had been blocking access to the parking lot and that under its lease agreement with Kelli, it had a right of first refusal to purchase the parking lot. Defendant counterclaimed, seeking to quiet title to the parking lot.

The parties each filed motions for summary disposition, and the trial court granted summary disposition to plaintiff, concluding that the right of first refusal was worded in such a way that it included the parking lot. The court ruled that plaintiff could purchase the parking lot from defendant for $83,650 plus $18,938.90 for real estate taxes previously paid by defendant. Upon our de novo review, see *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998), we reverse.

The lease between plaintiff and Kelli stated that plaintiff was leasing "13800 Livernois, Suite 200," "including use of 3 basement rooms, viewing, x-ray and equipment room." An addendum noted:

> In the event Landlord shall receive a bona fide offer to purchase the real estate during the term of this Lease, and while the Tenant is not in default of any of the terms and covenants, and the offer to purchase shall be satisfactory to Landlord, Landlord shall give Tenant the privilege of purchasing the premises at the price and on the terms of the offer so made.

The "Memorandum of Lease" signed by the parties indicates that plaintiff leased "Lots 290-292 . . ., a/k/a 13800 Livernois." Neither the lease nor the memorandum mentioned Lots 203 through 205.

The trial court concluded that there were ambiguities in these documents, stating:

> The lease does not appear to define terms like "premises" and "real estate." It does refer to "13800 Livernois, Suite 200." But this does not tell us whether renting Suite 200 also meant that a parking space for Suite 200 was rented, or, more important, whether the language in the option referring to the "real estate" and the "premises" includes the parking spaces. The lease thus appears to be ambiguous on this question.
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> We do not believe that Defendant . . . has shown that there is a genuine issue of material fact that the option Kelli granted Dubin did not extend to the parking spaces, lots 203-05.

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[1] The office building consists of Lots 290 through 292, and the parking lot consists of Lots 203 through 205. Lot 206 is unpaved and it is unclear for what purpose this lot was or is used. Plaintiff does not concern itself with Lot 206 on appeal.

The court went on to determine that the terms "premises" and "real estate" in the option portion of the contract were "broad" terms. It noted the existence of deeds in which "13800 Livernois" was described as including the parking lot. It also noted that "the use of the land – the fact that the tenants here used the parking lots when inhabiting the building – suggests that a sensible definition of 13800 Livernois should include the parking spaces." The court ultimately concluded that Dubin was entitled to buy the parking lot in order to serve "justice."

However, as noted in *LaRose Market, Inc v Sylvan Center*, 209 Mich App 201, 205; 530 NW2d 505 (1995), "rights of first refusal are to be interpreted narrowly." Moreover, "[t]his Court interprets language in contracts according to its plain meaning." *Orley Enterprises, Inc v Tri-Pointe, Inc*, 206 Mich App 614, 617 ; 552 NW2d 896 (1994). The plain meaning of the lease document here refers to "13800 Livernois, Suite 200." It does not reference the parking lot and is specific in including the particular suite leased. Indeed, it specifically refers to the use of "3 basement rooms, viewing, x-ray and equipment room." It is reasonable to assume that the mention of certain specific locales (e.g., the three basement rooms) excluded other specific locales (e.g., the parking lot) that were not mentioned in the lease. See generally *Elliott v Genesee County*, 166 Mich App 11, 15; 419 NW2d 762 (1988) (explaining the principle of *expressio unius est exclusio alterius* – the express mention of one thing implies the exclusion of other, similar things).

The trial court emphasized that the right of first refusal mentioned "the real estate" and "the premises" and concluded that these were broad terms. However, the right of first refusal was contained in an addendum to the lease agreement, and the only possible conclusion is that this addendum referred to the "the real estate" and "the premises" being leased, i.e., 13800 Livernois, Suite 200, including the additional rooms as described in the lease.

We conclude that under the specific language of the lease, including the absence of reference to the parking lot, the trial court erred in determining that plaintiff was entitled to purchase the parking lot. Indeed, the court, in making its ruling, essentially rewrote the parties' contract. While it is true that in the deed Kelli received for the property, 13800 Livernois is described to include Lots 203-206 as well as Lots 290-292, and while it is true that in its closing statement when purchasing the property, defendant referred to 13800 Livernois as including the parking lot, these facts are not dispositive. Indeed, the fact remains that plaintiff's lease referenced very specific rooms and a suite within 13800 Livernois but did *not* mention the parking lot. Accordingly, the lease, and by extension, the right of first refusal, did not include the parking lot. Moreover, the point of reference for interpreting a clear contract is the contract itself; by referencing the deed given to Kelli, the court improperly looked outside the lease agreement to create an ambiguity. The trial court erred in granting summary disposition to plaintiff; it should instead have granted summary disposition to defendant on the issue of its entitlement to the parking lot.[2]

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[2] We note that in *HB Earhart, Inc v Haw*, 251 Mich 11, 14; 231 NW 103 (1930), the Court stated that "[t]he lease of a house by street number includes only so much of the lot on which the building stands as is necessary for the complete enjoyment of the building for the purpose for which it was let." Plaintiff contends that the parking lot was essential to its use of the property and should be deemed part of the lease. However, the lease was so specific in describing the
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Defendant argues on cross appeal that "this Court should not only reverse the lower court but should order Dubin to pay $1500 per month rental, with interest thereon, from the date of 4 Ward's acquisition of the parking lots . . . until and unless Dubin purchases same." We decline to determine the amount of rent due to defendant and instead leave this factual determination to the trial court.[3]

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Richard Allen Griffin
/s/ Patrick M. Meter

(…continued)

property leased while at the same time omitting mention of the parking lot that we conclude that the lease did not in fact include the parking lot. We also reject plaintiff's additional contention that the government's foreclosure essentially invalidated defendant's purchase of the parking lot. Indeed, defendant essentially obtained a right to redeem the parking lot by way of the conveyance from Kelli, and it exercised this right. Plaintiff also argues that statutory violations occurred with respect to the redemption; however, it was the state's prerogative to allow a redemption despite any statutory violations that might have occurred. Finally, plaintiff suggests that an earlier default it obtained against Kelli in a separate lawsuit somehow bars judgment for defendant in the instant case. We disagree. Indeed, defendant was not a party to the earlier lawsuit, and the earlier lawsuit did not specifically concern the issue of whether the parking lot was included under the right of first refusal.

[3] We note that in light of our disposition of this case, plaintiff's appeal is moot.