STATE OF MICHIGAN

COURT OF APPEALS

R.J. COMPANY, LLC, Plaintiff-Appellee,	UNPUBLISHED March 2, 2004
v	No. 243707 Oakland Circuit Court
TASSOS EPICUREAN CUISINE, INC, Defendant-Appellant.	LC No. 02-037647-CK

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Defendant appeals by leave granted the order denying its motion for partial summary disposition. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

The dispute arises over the lease to a piece of commercial property in Farmington Hills. The property was originally owned by Sami Yousif, who mortgaged the property in 1990. In August of 1998, Yousif leased the property to defendant. The lease was for a term of 60 months at a total rent of $181,200 or $3020 per month. Paragraphs 22 and 42 of the lease provide that if the tenant hold over after the termination or expiration of the lease, the tenancy becomes one of month-to-month with a 10 percent increase in the rental rate. Paragraph 45 of the lease gives the tenant an option to purchase the entire property for $625,000 during the first year of the lease. Paragraph 45 requires that sale of the property be consummated before the option period expires. Paragraph 45 further provides that "[i]n the event the transaction for purchase of the premises is not consummated within said fourteen (14) months, then this Lease shall become null and void and of no further effect." Defendant never exercised its option to purchase the property under ¶45.

The original landowner, Yousif, defaulted on the mortgage. In April of 2000, Raad Jarbo purchased the property at a foreclosure sale and received a Sheriff's deed to the property. Yousif failed to redeem the property in time, so full title passed to Jarbo. Jarbo conveyed his interest in the property to plaintiff. Jarbo and plaintiff attempted to get defendant to reaffirm the terms of the 1998 lease, but never received anything in writing from defendant. By letter dated October 29, 2001, defendant informed plaintiff of its intent to vacate the premises effective November 30,

2001. The letter instructed plaintiff to apply defendant's security deposit to the November 2001 rent.

Plaintiff sued defendant for breach of contract, seeking payment for unpaid rent up until November 2001 and for money damages due to defendant's breach of the 5-year lease, which ran until August 2003. Defendant moved for summary disposition of plaintiff's claims for future rent, raising 2 arguments: (1) that the lease was effectively terminated under ¶45 because defendant did not exercise its option to buy the property within the option period; and (2) that the lease was effectively extinguished by the foreclosure sale. Under either theory, defendant claimed that its tenancy following the foreclosure sale was month-to-month and could be terminated with one month's notice. Defendant brought its motion pursuant to MCR 2.116(C)(10). Plaintiff argued that the motion was premature because discovery was not yet complete.

The circuit court considered defendant's motion at a hearing held August 7, 2002. The circuit court disagreed that ¶45 automatically ended the lease if defendant failed to exercise its option to buy, finding that ¶45 extinguished the lease only where the tenant exercised its option to purchase then failed to consummate the sale within the required time period. Since defendant never exercised the option, ¶45 was simply irrelevant. The circuit court agreed with plaintiff that the foreclosure did not terminate the lease obligation, finding the case relied upon by defendant, *Dolese v Bellows-Claude Neon Co*, 261 Mich 57; 245 NW 569 (1932), distinguishable. The circuit court issued its written order denying defendant's motion for summary disposition on August 26, 2002. Defendant now appeals by leave granted, raising the same arguments raised before the circuit court.

II. STANDARD OF REVIEW

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating the motion, the trial court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in a light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

III. ANALYSIS

Defendant first asserts that the trial court erred in denying summary disposition based on the purchase option paragraph of the lease, which states in part, "In the event the transaction for purchase of the premises is not consummated within said fourteen (14) months, then this lease shall become null and void and of no further effect." However, the contract also has terms concerning a holdover tenant that were not followed by defendant. A contract should be read as a whole, with meaning given to all of its terms. *Century Surety Co v Charron*, 230 Mich App 79, 82; 583 NW2d 486 (1998). Reading the contract as a whole, there is a question of fact regarding the meaning of these provisions, and the trial court properly denied summary disposition.

Defendant also argues that plaintiff's acquisition of the property through foreclosure terminated the lease, and ended its obligations. We agree. In *Dolese v Bellows-Claude Neon Co,*

261 Mich 57, 61; 245 NW 569 (1932), the Supreme Court held that a foreclosure ends a lease and the owner after the foreclosure cannot recover rent after the period of redemption expires. Plaintiff argues that under MCL 600.3236, it has the same rights as the mortgagor had, however the version of the statute in effect at the time *Dolese* was decided is not materially different from the current provision. Thus, the statute does not provide a basis for distinguishing *Dolese.* The trial court erred in failing to find that the foreclosure terminated the lease and defendant is entitled to partial summary disposition.

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

/s/ Bill Schuette
/s/ Patrick M. Meter
/s/ Donald S. Owens