STATE OF MICHIGAN

COURT OF APPEALS

MASSAWA ENTERPRISES, LTD,

Plaintiff-Appellee,

v

SAUL SILVERSTEIN, d/b/a COMMERCIAL COIN LAUNDRY SYSTEMS, f/k/a AMERICAN COIN LAUNDRY,

Defendant-Appellant.

UNPUBLISHED
December 20, 2005

No. 255545
Kent Circuit Court
LC No. 03-003934-CK

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court order granting plaintiff's motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arises from a series of agreements entered into by defendant and plaintiff's predecessor in interest, Dodgson Management Company (Dodgson) in 1995. The agreements allow defendant to place coin-operated laundry equipment in six buildings owned by Dodgson and located in the Leonard Oakes Apartments complex in Grand Rapids. Since the time of these agreements, plaintiff purchased the apartment complex from Dodgson. Plaintiff contends that, although they are labeled leases, the agreements constitute licenses and were revoked when it obtained title to the apartments. When defendant refused to remove his laundry equipment, plaintiff filed the instant suit. The trial court found that the agreements constitute licenses because they did not confer exclusive possession or control of the premises to defendant. The trial court therefore granted summary disposition in favor of plaintiff.

On appeal, defendant asserts that the trial court erred in finding that the agreements constitute licenses rather than leases. He argues that, rather than requiring the owner of the apartment complex to clean and maintain the laundry areas, the agreements expressly confer "exclusive possession and control" on defendant. And the agreements in combination with the proffered drawings were sufficiently specific in regard to the description of the laundry areas and the number of washers and dryers to be placed in them. Consequently, defendant contends that genuine issues of material fact exist that should have precluded the trial court from granting plaintiff's motion for summary disposition. We agree.

We review de novo a trial court's decision to grant or deny summary disposition. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). Under MCR 2.116(C)(10), summary disposition is appropriate where "there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). A question of material fact exists "when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.*

"A lease is a conveyance by the owner of an estate of a portion of the interest therein to another for a term less than his own for a valuable consideration." *De Bruyn Produce Co v Romero*, 202 Mich App 92, 98; 508 NW2d 150 (1993). It grants the lessee the right to possession and exclusive use or occupation of the property leased for all purposes not prohibited by its terms. *Id.* In order for an agreement to constitute a valid lease, "it must contain the names of the parties, an adequate description of the leased premises, the length of the lease term, and the amount of the rent." *Id.*, 98-99, quoting *Macke Laundry Service Co v Overgaard*, 173 Mich App 250, 253; 433 NW2d 813 (1988).

In contrast, a license consists of "permission to do some act or series of acts on the land of the licensor without having any permanent interest in it." *Kitchen v Kitchen*, 465 Mich 654, 658; 641 NW2d 245 (2002). While a tenant has exclusive legal possession and control of the premises against the owner for the term of the leasehold, a licensee "only has a right to use of the premises he occupies, subject to the proprietor's retention of control and right of access." *Ann Arbor Tenants Union v Ann Arbor YMCA*, 229 Mich App 431, 443; 581 NW2d 794 (1998).

This Court dealt with the distinction between leases and licenses in *Macke*, *supra*, 250. In this case, the plaintiff's predecessor in interest made an agreement with an apartment complex to "lease" the laundry space in its building. *Id.*, 252. The complex then sold the building to the defendant who canceled the agreement and removed the plaintiff's laundry equipment. *Id.* The plaintiff filed suit seeking damages for breach of the lease and returned possession of the leased premises. *Id.* After the trial court denied the defendant's motion for summary disposition, this Court reversed on the ground that the agreement constituted a license rather than a lease. *Id.*, 253-255. It stated:

> The agreement in this case is vague in that it does not specify the number of machines to be placed in the laundry area. Moreover, although the agreement purports to lease "all the laundry space," it permitted defendant's predecessor to choose the area designated as a laundry area. Finally, the agreement did not give plaintiff exclusive possession or control of the area, since it required defendant's predecessor to clean and safely maintain the premises. The agreement only gave plaintiff permission to use the laundry area and was therefore a license. [*Id.*, 254.]

Additionally, in *United Coin Meter Co v Gibson*, 109 Mich App 652, 653-654; 311 NW2d 442 (1981), this Court affirmed the trial court's finding that two similar agreements concerning the placement of laundry equipment in apartment complexes were licenses. It held that the agreements were not specific enough to constitute leases and gave the following explanation of its findings. *Id.*, 657. "The description of the laundry area was too indefinite." *Id.* The agreements allowed defendant's predecessors in title to choose the area designated as laundry areas. *Id.* And although the agreements called for one ten-foot by ten-foot laundry area

in each complex, one of the complexes had three different laundry rooms on separate floors. *Id.*, 654, 657-658. Further, the agreements were vague because they failed to specify the number of machines that would be placed in the different laundry areas. *Id.*, 658. Finally, the agreements did not give exclusive possession or control of the areas to the plaintiffs because the "defendant's predecessors in title were required to clean and maintain the laundry area." *Id.*

In the instant case, it is unclear from the text of the agreements whether they grant defendant sufficient control over the laundry areas for them to be considered leases. The second paragraph of each agreement states:

> 2. Lessor agrees that Lessee shall have exclusive control and possession of the demise premises. Lessee does hereby give to Lessor the limited right to use the demised premises for any lawful purpose mandatory for the physical operation of the building(s) in which the demised premises are located, provided that such use does not interfere with the Lessee's maintenance and operation of its laundry equipment.

Although the agreements purport to give defendant "exclusive control and possession" of the laundry areas, they also grant the owner of the apartment complex a limited right to use them.

Whether the agreements constitute leases or licenses turns on the meaning of the phrase "any lawful purpose mandatory for the physical operation of the building(s)." This could be interpreted to mean that the owner of the building is responsible for cleaning and maintaining the premises. Based on *Macke* and *United Coin Meter*, such an interpretation would mean that the agreements are licenses and merely allow defendant to use the premises for a specific purpose. But a reasonable person could also interpret the phrase to mean that defendant is responsible for general upkeep and the owner has a much more limited right to access the laundry rooms. For example, it could mean that the owner could only enter the premises to deal with issues affecting the entire building, such as making structural repairs or fixing damaged plumbing. This would mean that defendant has more than just a limited right to use the premises and supports the conclusion that the agreements constitute leases.

Reasonable minds might differ as to whether the agreements grant defendant exclusive possession or control of the laundry areas. Because a genuine issue of material fact exists, summary disposition under MCR 2.116(C)(10) is not appropriate. *West*, *supra*, 183. Consequently, the trial court erred when it found that the agreements constitute licenses and granted plaintiff's motion for summary disposition.

Further, although the trial court based its decision on the issue of possession or control, we find that a question of fact also exists in regard to whether the agreements are sufficiently specific to constitute leases. Because we are reviewing a motion brought under MCR 2.16(C)(10), we examine the diagrams submitted to the trial court by defendant in the light most favorable to the nonmoving party. *Richie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). Unlike the agreements in *Macke* and *United Coin Meter*, these diagrams specify the number and type of machines to be placed in the laundry areas. Additionally, the agreements are distinguishable from those in *Macke* and *United Coin Meter* in that they do not allow the owner of the apartment buildings to designate the areas used for the laundries. Rather, both the agreements and the diagrams reference specific locations inside the buildings.

But just as the descriptions of the laundry rooms in *United Coin Meter* differed from what actually existed, discrepancies exist between the descriptions and actual locations in the instant case. The agreements describe the lease premises as eight by fifteen foot rooms located in the "center-rear" of the apartment buildings' first floor. But the diagrams state that the laundry rooms are located in different sections on the second floor of the buildings.

Despite the differences in their describing the location of the laundry rooms, the combination of the agreements and the diagrams in the instant case provide much more specific information than the agreements that this Court found too vague to constitute leases in *Macke* and *United Coin Meter*. But reasonable minds could still find that they lack sufficient specificity to be more than licenses. As with the issue of exclusive possession or control, a question of fact exists such that summary disposition is not appropriate.

Reversed and remanded for further proceedings on the issue of whether the agreements constitute leases or licenses. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Henry William Saad
/s/ Karen M. Fort Hood