STATE OF MICHIGAN

COURT OF APPEALS

DIX-EMMONS, LLC,

Plaintiff-Appellant,

v

DANNY NAMO, a/k/a DANNY NAMOU, individually and d/b/a CLEAR SIGNAL COMMUNICATIONS, and CLEAR SIGNAL COMMUNICATIONS, INC.,

Defendants-Appellees.

UNPUBLISHED
March 18, 2008

No. 276319
Wayne Circuit Court
LC No. 06-623654-CH

Before: Meter, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order denying its motion for summary disposition, granting defendants' motion for summary disposition, and assessing sanctions against plaintiff. We affirm the grant of summary disposition but reverse the assessment of sanctions.

The facts in this case are not disputed. Plaintiff purchased a parcel of property in Lincoln Park from Shabab and Ghulam Moghul, husband and wife. On August 18, 2006, plaintiff filed a complaint to quiet title and to force the removal of defendants from the property because defendants were occupying it and operating a cellular telephone store there.

Defendants had leased the property on September 2, 2004. The lease was for a five-year term, with an option to renew for an additional five years. The lease stated that the transaction was between defendants and "Ghulam Moghul by her Property Manager, Bill Grady." Shabab and Ghulam had, on April 1996, signed a document granting Grady power of attorney to lease and otherwise deal with the property in question.

The parties each filed a motion for summary disposition. Plaintiff argued that the lease was invalid because it was executed by only Ghulam and not Shabab, despite the fact that they owned the property as tenants by the entirety. Plaintiff argued that defendants "leased from a person who had no right to enter into such an encumbrance, and Plaintiff, as subsequent owner in fee simple, with a Warranty Deed from the correct owners, may not be compelled to honor the purposed Lease." Plaintiff stated that even though Grady had Shabab's power of attorney, there was no evidence that Grady *used* this power in signing the lease. Defendants argued that the

lease was valid because Grady clearly had the authority to lease the property on behalf of the Moghuls.

After brief oral arguments, the trial court ruled as follows:

> The defendant's motion for summary disposition is granted, the plaintiff's is denied. The property manager, Bill Grady, had the authority of both the husband and the wife who were the owners of this property to act – by virtue of the power of attorney to act on their behalf, to sell, to lease, or to otherwise deal with real property belonging to the husband and wife, the Mogals [sic]. He did so in this case. The fact that the lease doesn't name both the husband and wife is of no moment. The real issue is what does the power of attorney allow Mr. Grady to do. There was a valid lease, if it entered into [sic]. Mr. Namo has the right to enjoy the premises according to the terms and conditions of the lease until such time as the lease either expires, or there is some violation of the lease, the terms and conditions of the lease, that would or could cause the Dix-Emmons LLC to seek eviction.

The trial court also granted "[a] thousand dollars in costs" because "the motion [sic] was frivolous." It stated that an award of these costs was appropriate because

> there was a valid, at least facially valid power of attorney from both of the Mogals [sic] to Bill Grady that doesn't have an expiration date on its face so it was therefore apparently valid at the time of the lease that was entered into with Mr. Namo.

We review de novo a trial court's decision with regard to a motion for summary disposition. *Thomas v Bd of Law Examiners*, 210 Mich App 279, 280; 533 NW2d 3 (1995). Here, the trial court did not state on which subrule it was relying in granting summary disposition. However, defendants moved for summary disposition under MCR 2.116(C)(8). A motion under this subrule focuses on whether the opposing party's pleadings state a prima facie case. *Thomas, supra* at 280. If not, then the motion should be granted. *Id*.[1]

[1] It is arguable that MCR 2.116(C)(10) was actually the proper subrule on which to base the grant of summary disposition to defendants. However, our result today would be the same even if we were to assume that (1) the trial court relied on MCR 2.116(C)(10) in granting summary disposition to defendants or (2) MCR 2.116(C)(10) was indeed the applicable subrule but was not relied on by the parties or the trial court. As noted in *Blair v Checker Cab Co*, 219 Mich App 667, 670-671; 558 NW2d 439 (1996), "where a party brings a summary disposition motion under the wrong subrule, the trial court may proceed under the appropriate subrule as long as neither party is misled." Moreover, "[a]n order granting summary disposition under the wrong subrule may be reviewed under the correct one." *Energy Reserves, Inc v Consumers Power Co*, 221 Mich App 210, 216; 561 NW2d 854 (1997). The pertinent issues are the same in this case, whether it is analyzed in the context of MCR 2.116(C)(8) or (C)(10).

As noted in *Shinabarger v Phillips*, 370 Mich 135, 141; 121 NW2d 693 (1963), a principal is liable for the acts of an agent if the agent is promoting the principal's interests and acting within his conferred authority. See also *James v Alberts*, 464 Mich 12, 15; 626 NW2d 158 (2001). Here, the document granting Grady power of attorney clearly stated, in paragraph 1, that Grady was authorized to lease the specific property at issue. The document stated in paragraph 2 that Grady had the power "[t]o act for me/us and execute all documents, including but not limited to deeds, land contract[s], leases, settlement papers, purchase agreements and all other related documents necessary for purchase of said property." The document went on to state, in paragraph 3, that Grady had "full power and authority to do and perform all and every act and thing whatsoever to all intents and purposes requisite and necessary to be done in and about the premises as fully as I/we might or could do if personnaly [sic] present . . . ."

Clearly, Grady was granted the power to lease the property. Moreover, Grady *did* lease the property. Although the lease stated that it was between defendants and "Ghulam Moghul by her Property Manager, Bill Grady," the fact remains that it was Grady who signed and executed the lease, and this was something he was fully authorized to do, in furtherance of the Moghuls' interests, under the terms of the document granting him power of attorney. Therefore, the lease is valid. *Id*.; *Shinabarger*, *supra* at 141. Accordingly, plaintiff's claim was without merit as a matter of law, and the trial court correctly granted summary disposition to defendants.

Plaintiff contends that the trial court should not have assessed sanctions for a frivolous lawsuit. Although the court did not cite the authority on which it was relying in assessing the sanctions, it appears that it was relying on MCR 2.114(F). That court rule provides:

> **(A) Applicability.** This rule applies to all pleadings, motions, affidavits, and other papers provided for by these rules. See MCR 2.113(A). In this rule, the term "document" refers to all such papers.
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> *** * ***
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> **(D) Effect of Signature.** The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that
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> (1) he or she has read the document;
>
> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
>
> (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
>
> **(E) Sanctions for Violation.** If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the

> reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.
>
> **(F) Sanctions for Frivolous Claims and Defenses.** In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages.

MCR 2.625(A)(2) states: "In an action filed on or after October 1, 1986, if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591."

In *Attorney General v Harkins*, 257 Mich App 564, 575; 669 NW2d 296 (2003), the Court discussed an assessment of sanctions:

> Defendant appeals the denial of costs and attorney fees as sanctions for the pursuit of frivolous claims by plaintiff. We find no clear error in the trial court's determination that defendant was not entitled to attorney fees and costs under either MCR 2.114 or MCR 2.625. A trial court's finding that a claim or defense was frivolous will not be reversed on appeal unless it is clearly erroneous. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made. [Citations omitted.]

In *Harkins*, *supra* at 577, the Court found that the trial court did not clearly err in failing to award sanctions because the

> plaintiff's . . . arguments, although rejected by this Court and the trial court, were not so lacking in legal merit as to support a conclusion that plaintiff's action was frivolous. Sanctions are not required and should not be imposed merely because the legal argument advanced by a litigant is rejected by the court.

In this case, although we are rejecting plaintiff's stance, we believe that it was at least *arguable*, given the wording of the lease, that the lease failed to encompass Shabab's interest in the property. Accordingly, we conclude that the trial court clearly erred in assessing sanctions based on frivolity.[2] Similarly, we reject defendants' claim that sanctions based on frivolity should be assessed on appeal.

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[2] We note that MCR 2.625 states that, in general, "[c]osts will be allowed to the prevailing party in an action, unless prohibited by statute or by these rules or unless the court directs otherwise, for reasons stated in writing and filed in the action." Accordingly, defendants may still be entitled to some costs, aside from the issue of frivolity. However, the court made clear in its findings from the bench that it was assessing the $1,000 in sanctions *on the basis of the allegedly vexatious proceedings*. Therefore, we must reverse the award.

Given our analyses above, it is unnecessary for us to address the additional arguments raised on appeal.

Affirmed in part and reversed in part.

/s/ Patrick M. Meter
/s/ David H. Sawyer
/s/ Kurtis T. Wilder