STATE OF MICHIGAN

COURT OF APPEALS

ELLIOTT INVESTMENT COMPANY, INC., Plaintiff-Appellant,	UNPUBLISHED December 30, 2008
v	No. 279929 Wayne Circuit Court
PULTE HOME SCIENCES, LLC, Defendant-Appellee.	LC No. 05-524308-CH

Before: Beckering, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(7). We reverse and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff is the landlord of an industrial building in Detroit, and it leases portions of it to commercial tenants. Defendant was one of those tenants. The parties initially entered into a lease agreement for space in plaintiff's building in January of 1999, and that lease agreement was amended four times. The first three amendments are not pertinent to this appeal. On May 7, 2001, shortly after the third amendment, the parties entered into an agreement entitled "right of first refusal to lease additional space." This provided that defendant would have a right of first refusal to lease certain space that was then occupied by another tenant, if that other tenant did not renew its own lease, and that the parties would work together to renovate and provide financing for that space. According to the complaint, defendant affirmed to plaintiff that it wished to lease additional space, whereupon plaintiff began making efforts to accomodate defendant's intentions.

The parties entered into the fourth amendment to the lease on November 30, 2001. This amendment also contained a right of first refusal provision, and in addition it contained an option giving defendant the right, in exchange for payment of $25,000, to lease certain "additional space" in the building on specified terms. Plaintiff alleges that it undertook various actions "to prepare additional space for the Defendant" after the fourth amendment was executed, including securing loans, terminating the lease of another tenant, and obtaining studies or analyses, all of which was at plaintiff's own expense. In February of 2002, defendant informed plaintiff that it wished to lease even more additional space, subject to plaintiff satisfying certain additional requirements, all of which plaintiff alleges that it "seasonably" satisfied. Plaintiff replied that the additional requirements constituted "a change in the original plan and an acceptable alternative

has to be worked out to satisfy all parties involved." Plaintiff also explained that it needed "a signed lease before we can start the preliminary stages of environmental investigations." The parties began negotiating a fifth amendment to the lease.

But in the meantime, without either a newly signed lease or a signed fifth amendment, defendant began using the additional space.[1] Also in the meantime, plaintiff incurred further costs in the pursuit of fulfilling defendant's needs for the additional space. However, the parties' negotiations eventually ground to a halt, and on December 3, 2002, plaintiff indicated that it understood defendant to have "backed out of the deal." Plaintiff further complained that it viewed defendant as refusing to act in good faith because defendant was refusing to take responsibility for the costs plaintiff had incurred in reliance on defendant's actions and statements. No fifth amendment to the lease was ever executed.

On December 19, 2002, the parties entered into a release agreement. That release stated in relevant part:

> As you know, during the summer of 2002, Landlord and Tenant entered into negotiations with respect to a potential amendment to the Lease. As you also know, Tenant elected to terminate those negotiations.
>
> In connection with those negotiations, both Landlord and Tenant incurred certain out-of-pocket expenses. While it is expressly understood (and, upon Landlord's acceptance hereof, Landlord shall be deemed to have re-confirmed) that Tenant has no liability for the expenses so incurred by Landlord, as a good faith gesture, Tenant shall nevertheless reimburse Landlord, upon Landlord's acceptance of this letter, for the following expenses: roof repairs ... and ... environmental evaluations.… [T]he net reimbursement to Landlord shall be $26,379.60.
>
> In consideration for this payment by Tenant, Landlord releases any and all claims (whether in contract, tort or otherwise) it has or may have against Tenant relating to, arising out of, and/or on account of the lease amendment negotiations referred to above and/or the termination of those negotiations.

Plaintiff commenced the instant suit seeking to recover costs associated with defendant's stated intention to lease additional space on additional terms, as described above, on theories of promissory estoppel, breach of contract, and quantum meruit. Defendant brought a motion for partial summary disposition[2] pursuant to MCR 2.116(C)(7), alleging that the terms of the release barred plaintiff from making a claim based on anything that happened prior to the release.

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[1] The complaint does not specify when this allegedly took place, although it appears to imply that it was in approximately the late spring or early summer of 2002.

[2] Defendant conceded that some outstanding claims would remain even if the trial court granted this motion, but the parties stipulated to dismissal of the rest of this matter subject to plaintiff's right to pursue the instant appeal. Those other claims are therefore not at issue.

Plaintiff admitted that the release existed and that it might bar some portions of its claims. However, plaintiff argued that the gravamen of the complaint was a violation of the fourth amended lease, whereas the release was limited to claims arising out of the negotiations for the failed fifth amended lease.

The trial court held that the above release "covers all claims prior to the agreement." Therefore, the trial court dismissed plaintiff's claim based on defendant's alleged violation of terms of the fourth amended contract. The sole issue before us is whether, as plaintiff argues, the trial court misinterpreted the terms of the release. We agree with plaintiff.

Initially, we consider whether a different interpretation would affect the outcome of this case. The sequence of events described by the parties suggests that their contractual dealings were too fluid to be easily compartmentalized into discrete, individual transactions. We feel that the record only dimly illuminates the point at which the parties' actions under the fourth amended lease evolved into negotiations for the fifth. However, we need not make that determination, because the record *is* clear that there *was* such a transition. At a minimum, the release itself clarifies that the fifth amendment negotiations commenced "during the summer of 2002," which is consistent with the explanation from plaintiff that defendant's desire to lease additional space on different terms was "a change in the original plan" and that it needed "a signed lease." Furthermore, some of the expenses for which plaintiff now asserts it is entitled to compensation from defendant date back to November of 2001, and in addition, some of those expenses arise out of defendant's alleged breach of the fourth amended lease. We cannot say, on the basis of this record, that plaintiff clearly would have no claims remaining irrespective of the way the release language is parsed.

Thus, the "cardinal rule in the interpretation of contracts is to ascertain the intention of the parties." *McIntosh v Groomes*, 227 Mich 215, 218; 198 NW 954 (1924). Contract language must be given it its ordinary and plain meaning, *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 71 n 1; 467 NW2d 17 (1991), and this Court must construe an unambiguous contract by its terms alone. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469; 663 NW2d 447 (2003). In other words, if the language of the contract is clear and unambiguous, the courts must conclude as a matter of law that the contract reflects the parties' intent; extrinsic evidence thereof may only be considered if the contract is ambiguous. *In re Egbert R Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008).

The operative language is the final paragraph of the release. Notably, it begins by purporting to release "any and all claims," which is clearly and unambiguously comprehensive. However, the remainder of the paragraph strictly limits that comprehensive release. Specifically, the release is restricted to claims "relating to, arising out of, and/or on account of the lease amendment negotiations referred to above and/or the termination of those lease negotiations." This language is equally unambiguous: the release explicitly affects claims that have some foundation in a specified transaction between the parties, and it therefore impliedly *excludes* claims that are not connected to that transaction. And the prior two paragraphs of the release – in other words, the ones "referred to above" - clearly describe "negotiations" during the summer of 2002" that the parties "entered into . . . with respect to a potential amendment to the lease." When read as a whole, the only possible interpretation of the release is that it covers only claims arising out of the lease amendment negotiations that began "during the summer of 2002."

The trial court clearly erred in holding that the release was broader than this. The trial court's view that the release simply "covers all claims prior to the agreement." That is, in fact, contrary to the plain language of the release, because the comprehensive language in the release is restricted to a particular transaction commencing with a date; it is not a general and unlimited release of *all* claims *preceding* any particular date. As a consequence, the trial court erred in concluding that the release has any effect on claims arising out of an alleged violation of the parties' fourth amended lease. We cannot, however, determine whether plaintiff actually has any such claims that are not also founded in the failed negotiations for the fifth amended lease.

Reversed and remanded for further proceedings on plaintiff's claims. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Stephen L. Borrello
/s/ Alton T. Davis