STATE OF MICHIGAN

COURT OF APPEALS

GEOMETRIC AMERICAS, INC.,

Plaintiff-Appellant,

v

PHALGUN PROPERTIES, INC.,

Defendant-Appellee.

UNPUBLISHED
March 4, 2010

No. 290418
Oakland Circuit Court
LC No. 2008-095660-CZ

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order denying its motion for summary disposition and granting summary disposition in favor of defendant under MCR 2.116(C)(10)[1] in this landlord-tenant dispute. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if no factual dispute exists, thus entitling the moving party to judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion brought under subrule (C)(10), a court considers all the pleadings, affidavits, admissions, and other documentary evidence submitted by the parties in the light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists for trial. *Id*. at 30-31. Further, this Court reviews de novo as questions of law issues involving contract interpretation. *Sweebe v Sweebe*, 474 Mich 151, 154; 712 NW2d 708 (2006).

[1] Although the trial court stated that it was granting summary disposition under MCR 2.116(C)(8) and (C)(10), it appears that the court granted the motion under subrule (C)(10) only because it relied on documentary evidence outside the pleadings.

Plaintiff argues that its termination notice was timely because an arbitrator determined in a prior arbitration proceeding that November 17, 2003, was the commencement date of the Office Lease ("lease"). To the contrary, the arbitrator determined that November 17, 2003, was the effective commencement date of the first floor space "for the purpose of establishing penalties, abatements, and/or offsets[.]" Plaintiff asserts that ¶ 33 of the lease establishes penalties because it provides a penalty if plaintiff seeks early termination of the lease. Thus, plaintiff contends, the November 17, 2003, commencement date controls this provision. Plaintiff's argument contravenes the plain language of the lease and first amendment to the lease, and the arbitrator's decision did not alter the commencement date applicable to the termination clause.

In interpreting a contract, this Court's obligation is to determine the intent of the parties. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003). This Court must examine the language of the contract and accord words their ordinary and plain meanings if such meanings are apparent. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003). If the language is unambiguous, courts must interpret and enforce the contract as written. *Quality Products*, 469 Mich at 375. "Thus, an unambiguous contractual provision is reflective of the parties' intent as a matter of law." *Id.* The judiciary lacks authority to modify an unambiguous contract. *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005).

Paragraph 3 of the lease provides for a commencement date of April 1, 2003, and a duration of 123 months. In addition, ¶ 33 allows plaintiff to terminate the lease at the 39th, 63rd, and 87th months if plaintiff pays a penalty and provides six months' written notice of its intent to terminate. These provisions are unambiguous.

The first amendment to the lease added the first floor space to the agreement. The amendment stated that the first floor "will be coterminous with the Master Lease" and further provided that "[e]xcept as modified by this First Amendment, the Office Lease and all covenants, agreements, terms and conditions thereof, shall remain in full force and effect and is hereby in all respects ratified and confirmed." These provisions are clear and unambiguous. Thus, the amendment did not alter ¶ 33 of the lease, containing the termination option, and plaintiff continued to have the option to prematurely terminate the lease at the 39th, 63rd, and 87th months of the 123-month lease.

When a dispute arose regarding the commencement date for the lease of the first floor space, defendant and plaintiff's predecessor, Modern Engineering, Inc. ("Modern"), asked the arbitrator to decide this issue. The arbitrator determined that November 17, 2003, was the effective commencement date of the first floor space "for the purpose of establishing penalties, abatements, and/or offsets," and awarded Modern $3,600 to be offset against its October 2004 rent. Plaintiff misconstrues the arbitrator's award as providing a November 17, 2003, commencement date for the lease in its entirety as opposed to merely determining a commencement date to establish penalties and abatements pertaining to the lease of the first floor space. Defendant and Modern did not ask the arbitrator to determine the commencement date applicable to the lease agreement as a whole, which would have impacted the dates relevant to plaintiff's early termination option in ¶ 33 of the lease. Thus, the arbitrator's decision did not alter the original lease term providing a commencement date of April 1, 2003. As such, the trial court correctly concluded that the terms of the lease were clear and unambiguous and that

plaintiff's requested relief would effectively rewrite the terms of the lease and improperly expand the arbitrator's ruling. Accordingly, the trial court properly granted summary disposition for defendant.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Alton T. Davis