

STATE OF MICHIGAN
COURT OF APPEALS

FOREST APARTMENT ASSOCIATES,

Plaintiff-Appellee,

v

FOREST PARK DEVELOPMENT CORP. and
PAUL ROBESON FOREST PARK
COMMUNITY SERVICE ORGANIZATION,,

Defendants-Appellants.

UNPUBLISHED

March 19, 2002

No. 227563

Wayne Circuit Court

LC No. 99-906238-CH

Before: Hood, P.J., and Jansen and Murray, JJ.

PER CURIAM.

Defendants appeal as of right from the circuit court's order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10). That order declared that "the February 26, 1987 assignment of certain rights from the National Corporation for Housing Partnerships to Forest Park Development Corporation¹ is null and void, and that all such rights previously assigned have reverted to the National Corporation for Housing Partnerships." We affirm.

On appeal defendants argue that the circuit court misinterpreted the provisions of the assignment contract and erroneously concluded that defendant Forest Park Development Corporation (FPDC) had violated its obligations under that contract. We disagree. Plaintiff was entitled to summary disposition under MCR 2.116(C)(10) due to the lack of any genuine issue of material fact regarding the terms of the contract and defendants' actions.

The circuit court did not err in its interpretation or application of the 1987 assignment agreement. Neither party disputes the language of the February 26, 1987 assignment agreement. Paragraph 2(b) of that contract contains the following relevant language:

2 FPDC Acceptance of Assignment: By execution of this Agreement FPDC accepts the assignment herein made by NCHP according to the provisions of this Agreement and further acknowledges and agrees that:

¹ Appellant Paul Robeson Forest Park Community Service Organization (FPCSO) is a subsidiary of FPDC.

* * *

b. NHP shall have exclusive authority to manage all affairs of FAA and the Project, and FPDC ... and/or anyone acting on their behalf or in concert with any of them, shall not at any time engage in acts or conduct that would in any way interfere with or impair such authority of NHP or the management by NHP of the affairs of FAA or the Project;

* * *

f. In the event FPDC ... *engages in any action or conduct inconsistent with complete and punctual performance of all of their obligations created by the provisions of this Agreement ...* or if any of them fail to fully and punctually perform any of such obligations, *the assignment provided by this Agreement shall be null, void, and without further force and effect and any and all rights created thereby shall cease, terminate and be unenforceable and shall revert to NCHP* without further action by NCHP or any other person. (Emphasis added).

Contractual language should be given its plain and ordinary meaning. *Meagher v Wayne State University*, 222 Mich App 700, 722; 565 NW2d 401 (1997), lv den 457 Mich 874 (1998). Where contractual language is clear and unambiguous its construction is a question of law for the courts. *Id.*, at 721-722. The language of the paragraphs 2(b) and 2(f) is clear and unambiguous. Any conduct by FPDC or someone acting on its behalf which interfered with NHP's authority over or management of the affairs of FAA or the apartment complex violated defendant FPDC's obligations under paragraph 2(b) of the assignment agreement. Any such interference was inconsistent with FPDC's complete performance of its contractual obligations and caused the assigned interest to revert back to NCHP under paragraph 2(f).

The circuit court did not err by finding that defendants had interfered with NHP's exclusive right to manage FAA and the project in violation of paragraph 2(b). The undisputed facts before the circuit court showed that defendant FPDC's nonprofit subsidiary FPCSO continued to occupy the apartment complex's 1440-square-foot community room for approximately ten years in defiance of plaintiff's repeated demands that they either pay rent or vacate the premises. It is undisputed that defendants had no legal right to those premises; defendants do not challenge the circuit court's finding that they were trespassing on the property. The right to control the use of real property, including the right to exclude others from that property, is an essential element of ownership. *Appleton Trust v Emmet Co Rd Comm*, 236 Mich App 546, 556-557; 600 NW2d 698 (1999). Defendants' continuous occupation and use of the property over plaintiff's objections directly interfered with NHP's exclusive authority to manage FAA and the project.

Affirmed.

/s/ Harold Hood
/s/ Kathleen Jansen
/s/ Christopher M. Murray