

STATE OF MICHIGAN  
COURT OF APPEALS

---

HIGHLAND TOWN CENTER ASSOCIATION,

Plaintiff/Cross-Defendant-  
Appellant,

v

JP MORGAN CHASE & COMPANY,

Defendant/Cross-Plaintiff-Appellee.

---

UNPUBLISHED

March 10, 2009

No. 282879

Oakland Circuit Court

LC No. 2007-080871-CK

Before: Donofrio, P.J. and K.F. Kelly and Beckering, JJ.

PER CURIAM.

Plaintiff appeals the trial court's order granting defendant's motion for summary disposition and denying plaintiff's motion for summary disposition. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Procedural Background

Defendant and its predecessors ("the Bank") leased a corner lot from the Easleys in 1964. The term of the lease was for 20 years and allowed for two ten-year extensions. At some point, the Easleys transferred their interest in the whole parcel, except for the corner lot, to plaintiff and its predecessors ("the Corporation"). In 1974, the Bank leased from the Corporation a lot adjacent to the corner lot ("the ATM lot" or "the parking lot"). This lease was for ten years, with two ten-year extensions. That way, the two leases would be up for renewal in the same year.

At the same time, the parties entered into the easement agreement at issue here. The lease states in paragraph A that the Bank "is currently leasing" *both* the corner lot and the ATM lot and states in paragraph B that the Corporation owns the whole parcel *except for the corner lot*. Thus, the ATM lot property is included in both paragraphs A and B. The parties stated their agreement "to grant to each other mutual and reciprocal easements for parking, ingress, egress, access and driveway purposes." Specifically, the Bank granted to the Corporation

during the entire term of the Bank's lease and extension thereof relating to property described in paragraph A, above, an easement constituting full and free right, liberty and authority to enter upon the driveways and parking areas of said property described in paragraph A, above, with or without automobiles or similar

vehicles, or on foot, for the purpose of parking and for ingress, egress and access to, over and upon the property hereinbefore described as owned by the Corporation in paragraph B, above.

And the Corporation granted to the Bank

during the entire term of the Bank's lease and extension thereof relating to property described in paragraph A, above, an easement constituting full and free right, liberty and authority to enter upon the driveways and parking areas of the property of the corporation described in paragraph B, above, with or without automobiles or similar vehicles, or on foot, for the purpose of parking and for ingress, egress and access to, over, and upon the property hereinbefore described as being lease by the Bank in paragraph A, above.

In 2003, the Easleys transferred ownership of the corner lot to Banc One, a corporation created by the Bank, and assigned to Banc One the lease of that lot to the Bank. The lease was amended to allow three more ten-year extensions, the first of which has been exercised. However, the lease on the ATM lot expired and the Bank no longer leases that lot.

The Corporation filed suit for declaratory relief, quiet title, and an injunction barring the Bank's use of the Corporation's property. The Bank counterclaimed, seeking a declaratory ruling that it continues to have rights under the easement. Both parties moved for summary disposition under MCR 2.116(C)(10). The trial court found that:

. . . the plain language of the Easement Agreement unambiguously establishes that the reciprocal easement was granted for the benefit of both the ATM parcel and the Bank parcel [the corner lot]. The Easement Agreement expressly states that the easement is in effect during the entire term of Bank's lease and extensions. The Court finds that because the Bank lease has been extended until at least April 2014, the easement is valid and still in effect.

This appeal followed.

## II. Standards of Review

This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Issues of contract interpretation are also reviewed de novo. *DaimlerChrysler Corp v Wesco Distrib*, 281 Mich App 240, 244; \_\_\_ NW2d \_\_\_ (2008). The extent of a party's rights under an easement is a question of fact that this Court reviews for clear error. *Blackhawk Dev Corp v Dexter Village*, 473 Mich 33, 40; 700 NW2d 364 (2005); *Little v Kin*, 249 Mich App 502, 507; 644 NW2d 375 (2002).

## III. Analysis

There is little question that the ATM lot is included in the property over which the Corporation granted an easement to the Bank because the ATM lot is included in property described in paragraph B. The only question, then, is whether the phrase "the Bank's lease and extension thereof relating to property described in paragraph A" means the Bank's lease of *any*

property described in paragraph A or *all* the property described in paragraph A. The trial court found that the easement was intended to benefit both the corner lot and the ATM lot and did not require the Bank to lease both properties to maintain its easement rights. We agree. This interpretation is consistent with the language of the easement describing the Bank's lease as "*relating* to property described in paragraph A" (emphasis added), as opposed to the Bank's lease *of* the property described in paragraph A. Nothing in the easement's express language requires the Bank to maintain the original terms of the lease or to maintain a lease on both lots. Thus, in order to find plaintiff's interpretation is correct, we would first have to find the easement is ambiguous and then also that the parties did not intend for the easement to continue if the Bank stopped leasing the ATM lot. While the parties to the easement may not have contemplated the situation where a corporation related to the Bank leases the corner lot to the Bank for eternity, it appears highly relevant that the parties considered the township's plan to reduce curb cuts on M-59 and drafted an agreement beneficial to both parties. Therefore, even if we found the easement is ambiguous, the trial court's interpretation, granting defendant's motion for summary disposition, would not be clearly erroneous.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Kirsten Frank Kelly  
/s/ Jane M. Beckering