STATE OF MICHIGAN

COURT OF APPEALS

WAYPOINT ACQUISITIONS, L.L.C., Plaintiff-Appellant, v KERRY M. DAY-KRUSNIAK, M.D., and KERRY M. DAY-KRUSNIAK, M.D., P.C., Defendants-Appellees.	UNPUBLISHED April 6, 2010 No. 284031 Wexford Circuit Court LC No. 05-019189-CK

Before: Meter, P.J., and Murphy and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's finding of no cause of action following a bench trial on plaintiff's claim for "reliance damages." Plaintiff also challenges the trial court's earlier decision to grant defendant's[1] motion for partial summary disposition on plaintiff's claim for damages arising out of a purported lease that the trial court determined was invalid. We affirm.

Plaintiff first argues that the trial court erred in granting partial summary disposition to defendant. We disagree.

This Court reviews de novo the decision of a trial court pertaining to a motion for summary disposition. *Associated Builders & Contractors v Consumer & Industry Services Director*, 472 Mich 117, 123; 693 NW2d 374 (2005). Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence submitted by the parties, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002). A question of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

[1] This suit was instituted against both defendant Day-Krusniak personally and her professional corporation. However, for ease of reference, we refer to defendants by the singular term "defendant."

Issues regarding the existence and interpretation of a contract also present questions of law that are reviewed de novo. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006).

In order for a lease to be binding, it must demonstrate a meeting of the minds regarding the essential terms of the transaction. *Hansen v Catsman*, 371 Mich 79; 82-84; 123 NW2d 265 (1963); *Erdmans v Matci*, 226 Mich App 360, 364; 573 NW2d 329 (1997). The essential terms of the agreement must be sufficiently certain and definite and include the identities of the parties, an adequate description of the property, and the consideration. See *Bushman v Faltis*, 184 Mich 172, 179; 150 NW 848 (1915); see also *Zurcher v Herveat*, 238 Mich App 267, 290-291; 605 NW2d 329 (1999).

There is no dispute that the lease agreement in question adequately identified the parties. The pertinent issue is whether the agreement adequately described the property to be leased.

The lease identified the property to be leased as "315 Division Street, Suite 100," in Traverse City. However, the lease did not include a description of the size of the space to be leased, or indicate where in the building the suite would be located. In addition, a review of the record demonstrates that Suite 100 did not exist as a defined space in plaintiff's building at the time of the signing of the agreement. In addition, after the lease was signed, the parties continued to engage in extensive negotiations regarding where the suite would be located, indicating there was no intended, fixed place for the suite.

We find the Michigan Supreme Court's decision in *Hansen*, 371 Mich 79, instructive in the instant case. In *Hansen*, the parties entered into an agreement that referenced their contemplation of an endeavor whereby the defendant would construct and lease a building to be operated by the plaintiff as a drugstore in exchange for rental payments. *Id*. at 80-81. The agreement included approximate dimensions of the proposed building, but indicated that formal plans had not yet been agreed upon. *Id*. at 81. Steps were then taken by the parties in accordance with the agreement, but when the plaintiff was unable to obtain financing, the defendant provided notice of termination of the agreement. *Id*. The Court held that the agreement was not enforceable because it lacked certainty in regard to necessary terms. *Id*. at 83-84.

The facts in the instant case are similar to those in *Hansen*. The parties entered into an agreement whereby plaintiff would provide a space in its building for defendant to operate as a medical spa in exchange for rent. A review of the record indicates that when the agreement was signed, the parties had not yet agreed upon the particulars of the space, including how large it would be, or where in the building it would be located. The lack of a defined office space also undercuts plaintiff's assertion that the parties agreed upon the amount of consideration at the time the purported lease was signed. The document contains a specified monthly rental rate. However, the parties' later disagreement, and specifically plaintiff's assertion that the rent would have to increase if defendant chose a water view, indicates that the parties had reached no real meeting of the minds concerning the consideration. The trial court did not abuse its discretion in determining that no contract existed and in granting summary disposition to defendant because essential terms of the lease were lacking.

Plaintiff next agues that the trial court erred in finding no cause of action on their claim for promissory estoppel.[2] We disagree.

Promissory estoppel involves a threshold inquiry into the circumstances surrounding both the making of an alleged promise and the reliance on that promise. *State Bank of Standish v Curry*, 442 Mich 76, 84; 500 NW2d 104 (1993). The existence and scope of the promise are questions of fact; therefore, findings on those questions will not be set aside unless they are clearly erroneous. *Id*. Likewise, the extent of damages, if any, is a factual question, which this Court will not reverse absent clear error. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 177; 530 NW2d 772 (1995).

> The elements of promissory estoppel are (1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee, and (3) that in fact produced reliance or forbearance of that nature in circumstances such that the promise must be enforced if injustice is to be avoided. [*Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 686-687; 599 NW2d 546 (1999).]

Significantly, the promise must be "definite and clear." *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 442; 505 NW2d 275 (1993), mod on other grounds by *Patterson v Kleiman*, 447 Mich 429; 526 NW2d 879 (1994). In addition, a party must prove damages before they are awarded. *Joerger v Gordon Food Serv*, 224 Mich App 167, 173; 568 NW2d 365 (1997). "The guiding principle in determining an appropriate measure of damages is to ensure that the promisee is compensated for the loss suffered to the extent of the promisee's reliance." *Id*. at 173-174.

Here, plaintiff has failed to show that the trial court clearly erred when it found that (1) no evidence existed of a promise justifying plaintiff's reliance, and (2) even if such a promise occurred, plaintiff had failed to demonstrate the existence of compensable damages.

Regarding the lack of a promise, the trial court found that, while the parties engaged in continuous negotiations, defendant did not make a clear promise upon which plaintiff could justifiably rely. The court noted that defendant specifically approved the plans showing her office in the northeast corner, but she did not specifically approve the plans showing her office on the north wall, where plaintiff later wanted the office to be located and where construction was begun.

Plaintiff has not shown this finding to be clearly erroneous. We note that plaintiff does not specifically allege that defendant promised to pay for construction costs in the absence of a valid lease, choosing instead to apparently rely on its assertion that the lease represented an agreement between the parties. However, plaintiff does not indicate where, in the lease, a promise to pay for any costs associated with construction may be found in the event the parties

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[2] Plaintiff's appellate brief regarding this issue is, at times, inartfully worded, but the substance of its argument makes clear that it is making an argument based on promissory estoppel.

could not reach an agreement about the lease of the building. Plaintiff does not present anything as additional evidence that defendant made any other clear promise to reimburse plaintiff in the event that no lease was formed. A 2003 e-mail apparently sent by plaintiff's representative to defendant's representative indicates that the parties contemplated including language that would charge costs to defendant in the event she walked away from the deal. However, this was apparently never incorporated into any agreement.

Regarding damages, the trial court found that plaintiff had shown costs it claimed were associated with the building of the offices it alleges were to have been used by defendant. However, the court found that plaintiff had not shown that any compensable losses were incurred, even assuming that the parties reached some kind of "promissory estoppel consensus" on March 23, 2004, that lasted until defendant told plaintiff to stop work on June 11, 2004, given that plaintiff subsequently rented the space to another party. The trial court found that the "commission damages" claimed by plaintiff were not chargeable to defendant because no valid lease was made. It also found that, while some of the architect, "build-out," and staff time "damages" might be attributable to defendant, a large portion of them were not damages here because plaintiff's architect used the same drawings to prepare the space for the new tenant, and most of the construction was also used for the new tenant. Plaintiff did not break down its damages claim to separate out its actual losses, if any, even after the trial court specifically requested these figures, and did not adequately show when the different parts of the construction occurred. The trial court stated that it would not "guess" about the actual damages suffered by plaintiff.

Defendant has produced nothing on appeal to show that the trial court clearly erred. It instead again lists the alleged damages that it claims it has incurred. However, it does not show how the trial court erred in its assessment. It does not discuss how it could be compensated for commission "damages" in light of the fact that the parties did not enter into a lease. Nor does it discuss the trial court's finding that some of its architectural, build-out, and staff fees should be offset because of the new tenant. Regarding its alleged build-out damages, plaintiff seems to indicate that some kind of plumbing costs it incurred were specifically due to the preparation for defendant's medical spa. However, it presents no evidence supporting this assertion, and does not cite where this information was provided to the trial court.

In summary, we find that the trial court did not clearly err when it determined that defendant had not made a clear promise to plaintiff that induced its justifiable reliance, and that plaintiff could not show it suffered compensable damages for relying on any alleged promise.

Affirmed.

/s/ Patrick M. Meter
/s/ William B. Murphy
/s/ Brian K. Zahra