

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KACHELI CLEANING, INC.,

Plaintiff-Appellant,

v

PROJECT SMOOTH MICHIGAN, L.L.C., f/k/a  
AMERICAN LASER CENTERS, L.L.C.,

Defendant-Appellee.

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UNPUBLISHED

November 18, 2010

No. 294265

Oakland Circuit Court

LC No. 2008-089874-CK

Before: O'CONNELL, P.J., and BANDSTRA and MURRAY, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's denial of its motion for judgment notwithstanding the verdict (JNOV). We affirm.

Plaintiff's complaint arose out of a dispute regarding a cleaning contract between plaintiff and defendant. On November 30, 2007, after entering into the contract, defendant sold its assets to a new company. The following month, defendant's general counsel informed plaintiff of concerns about the quality of plaintiff's cleaning services. Plaintiff ceased performing the cleaning services in January 2008. Plaintiff claimed that defendant breached the contract by failing to provide written notice of termination. Plaintiff further claimed that defendant failed to allow plaintiff the contractually required 30 days to cure the allegedly dissatisfactory cleaning services. At trial, the jury reached a verdict of no cause of action against plaintiff. In a verdict form, the jury determined that defendant had complied with the termination requirements and that plaintiff had materially breached the contract.

Plaintiff now argues there was no evidence to support the jury's verdict, and that as such the trial court erred in denying the JNOV motion. We disagree. A trial court may grant a JNOV only if the trial evidence was insufficient to create a factual issue for the jury. *Heaton v Benton Constr Co*, 286 Mich App 528, 532; 780 NW2d 618 (2009). We review de novo the trial court's decision. *Prime Fin Serv LLC v Vinton*, 279 Mich App 245, 255; 761 NW2d 694 (2008). In our review, we must "view the evidence and all legitimate inferences in the light most favorable to the nonmoving party to determine whether a question of fact existed." *Livonia Bldg Materials Co v Harrison Constr Co*, 276 Mich App 514, 517-518; 742 NW2d 140 (2007). "If reasonable jurors could honestly have reached different conclusions, the jury verdict must stand." *Severn v Sperry Corp*, 212 Mich App 406, 416; 538 NW2d 50 (1995).

Additionally, the proper interpretation of a contract and the legal effect of contractual clauses are reviewed de novo on appeal. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008). The five elements of a valid contract are: parties competent to contract; a proper subject matter; legal consideration; mutuality of agreement; and mutuality of obligation. *Hess v Cannon Twp*, 265 Mich App 582, 592; 696 NW2d 742 (2005). We determine and enforce the parties' intent by reading the contract as a whole and by applying the plain contractual language. See *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 529; 740 NW2d 503 (2007).

Here, the parties do not dispute the validity of the contract. Defendant acknowledges that it did not notify the new company of the cleaning contract, and that, therefore, plaintiff's contract was not assumed by the new company. A reasonable juror could conclude that as of December 1, 2007, an enforceable contract was still in existence between plaintiff and defendant and both parties were required to perform under the contract.

The required cleaning services are described in Article 2 of the contract:

[d]uring the term of this Agreement, [plaintiff] shall provide the following services: vacuum the carpet as needed, or at least once per week, sweep the linoleum floor as needed, or at least once per week, dust desk tops, file tops, counter tops, and window sills once per week, wipe and clean fingerprints off front door as needed, or at least once per week, wash and clean lavatories as needed, maintain toilet facilities in a clean and sanitary condition, replenish lavatory supplies on a daily basis, empty waste baskets daily, put trash in Facility garbage cans or dumpsters, and perform other services to maintain the premises in a clean and sanitary condition as needed.

Article 3 stated the contract would terminate five years from the day the contract began; Article 8 allowed either party to terminate the contract under certain circumstances. The termination provision stated: "[e]ither party shall have the right to terminate this Agreement if the other party has materially breached this Agreement and said breaching party has not cured said breach within thirty days or [sic] receiving written notice from the non-breaching party."

The record contains sufficient evidence to create an issue of fact for the jury regarding whether plaintiff materially breached the cleaning contract by failing to maintain the facilities in a clean and sanitary condition. Defendant presented evidence that plaintiff materially breached the contract by leaving the lavatories soiled for weeks, by failing to disinfect on a daily basis, and by failing to mop the kitchen floor regularly. Plaintiff admitted receiving complaints from defendant's employees, but plaintiff also presented evidence that the cleaning services were sufficient. From this conflicting evidence, reasonable jurors could have concluded that plaintiff materially breached the contract by failing to clean defendant's facilities pursuant to the contract terms.

Additionally, the record contains sufficient evidence to create an issue of fact for the jury regarding whether defendant properly terminated its contract with plaintiff. Defendant presented evidence that on December 13, 2007, defendant's general counsel wrote a letter informing plaintiff of material breaches regarding the cleaning contract. The letter contained a request that plaintiff improve the cleaning services and listed items for improvement. The trial evidence

indicated that plaintiff responded to the letter with an e-mail claiming that defendant had breached the contract, and that plaintiff quit working at defendant's facilities on January 7, 2008.

From this evidence, reasonable jurors could have concluded that the December 13, 2007, letter acted as proper written notice of plaintiff's material breach, triggering the 30-day period for plaintiff to cure the breach before termination of the contract. Thus, once the 30-day period ended on January 12, 2008, the contract terminated pursuant to its terms. Reasonable jurors could further have concluded that the letter triggered plaintiff's 30 days to cure its material breach, and that plaintiff's quitting work terminated the contract between the parties. Sufficient facts existed to support the jury's verdict; thus, the trial court's denial of plaintiff's JNOV motion was proper.

Affirmed.

/s/ Peter D. O'Connell  
/s/ Richard A. Bandstra  
/s/ Christopher M. Murray