STATE OF MICHIGAN

COURT OF APPEALS

VINCENT A. RHODES and GENEVIEVE E. RHODES, Plaintiffs/Appellees-Cross Appellants, v GARY A. RHODES and GARY A. RHODES REVOCABLE TRUST, Defendants/Appellants-Cross Appellees.	UNPUBLISHED February 1, 2011 No. 291974 St. Clair Circuit Court LC No. 06-002760-CK

Before: SERVITTO, P.J., and ZAHRA and DONOFRIO, JJ.

PER CURIAM.

Defendants appeal an order of the trial court reforming a quitclaim deed between the parties to include a life tenancy (or "life lease") for plaintiffs and awarding them damages. Plaintiffs cross-appeal the trial court's determination that they failed to prove their claims for statutory conversion, MCL 600.2919a, and a violation of the anti-lockout statute, MCL 600.2918. Because the trial court correctly determined that the parties intended for plaintiffs to reside at the property in question so long as they were able to do so without assistance, but erred in reforming the deed to award plaintiffs exclusive use and possession of the property, we reverse in part and remand for entry of a judgment consistent with this opinion.

Plaintiffs owned a home on Harsens Island for many years. In 2001, they began to explore options to transfer the property at issue because of financial difficulties. Plaintiffs wanted to keep the property in the family and did not consider placing it on the open market. Plaintiffs thus approached defendant Gary Rhodes, one of their children, and he ultimately agreed to purchase the property for $110,000.00. On September 17, 2001, the parties signed a land contract, which provided with respect to plaintiffs that:

> Though living in the home or possibly a new home constructed on the property for life or as long as they are able to live unassisted, no rent or utilities are expected.

On January 3, 2002, plaintiffs signed a quitclaim deed transferring ownership to defendant[1] and listing the consideration as "No dollars and no cents." The deed did not contain the above language from the land contract, or any other language referencing plaintiffs' right to use and/or possess the property.

From the date the land contract was signed until 2006, plaintiffs continued their long-standing practice of wintering in Florida and residing at the Harsens Island home from May to September of each year, without incident. In September 2006, a confrontation occurred between plaintiffs and defendant when plaintiffs arrived at the property with an individual that defendant had advised plaintiffs (when the land contract was executed) was not to be allowed on the property. Defendant subsequently advised plaintiffs that they were no longer welcome on the property. Plaintiffs did not return to the property after this incident and numerous personal items belonging to plaintiffs remained at the home.

Plaintiffs thereafter initiated the instant lawsuit, alleging, among other things, that defendant breached the parties' contract, engaged in fraud with respect to the deed, converted plaintiffs' personal property remaining at the home, and violated Michigan's anti-lockout statute. Plaintiffs sought reformation of the deed, monetary damages, and injunctive relief. A bench trial was held on plaintiffs' multi-count complaint, at the conclusion of which the trial court concluded that the deed should be reformed "to include and incorporate the Terms and Conditions of the Land Contract between the parties dated September 17, 2001 such that Vincent and Genevieve Rhodes shall have a 'Life Lease' on the property. . ." In addition, the trial court awarded plaintiffs $38,266.31 in damages.

On appeal, defendants argue that the trial court erred in reforming the deed. While we believe that the trial court was correct in determining that the deed should be reformed to reflect the intent of the parties, we disagree with the trial court's determination that the parties intended for plaintiffs to have exclusive use and possession of the subject property.

"When reviewing a grant of equitable relief, an appellate court will set aside a trial court's factual findings only if they are clearly erroneous, but whether equitable relief is proper under those facts is a question of law that an appellate court reviews de novo." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008). This Court reviews for an abuse of discretion a trial court's determination whether a mutual mistake justifies reformation of a contract. *Farm Bureau Mut Ins Co of Michigan v Buckallew*, 262 Mich App 169, 177; 685 NW2d 675 (2004), vacated on other grounds 471 Mich 940 (2004).

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[1] "Defendant" shall hereafter refer to Gary Rhodes.

"[I]t has long been settled that if, by reason of fraud, mistake, accident, or surprise, an instrument does not express the true intent and meaning of the parties, equity will upon satisfactory evidence reform it." *Scott v Grow*, 301 Mich 226, 239; 3 NW2d 254 (1942), quoting *Bush v Merriman*, 87 Mich 260, 268; 49 NW 567 (1891). The burden of proof is upon the party seeking reformation to present clear and convincing evidence that the contract should be reformed to carry out the true agreement of the parties. *E.R. Brenner Co v Brooker Engineering Co*, 301 Mich 719, 724; 4 NW2d 71 (1942). In order to reform a written instrument on the ground of mistake, the mistake must be mutual and common to both parties to the instrument. *Dingeman v Reffitt*, 152 Mich App 350, 358; 393 NW2d 632 (1986). And, our Supreme Court has specifically held that the equitable power of reformation is not limited to only those cases involving ambiguous deeds, but may also be applied to unambiguous agreements. *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 372; 761 NW2d 353 (2008).

In this matter, the admitted evidence clearly and convincingly supports plaintiffs' claim that the parties intended for plaintiffs to reside at the subject property until they could no longer do so unassisted. In 2001, plaintiffs sent a letter to their six adult children indicating that defendant would be buying the Harsens island property for $110,000.00 and would be "letting us live there as long as we are able—rent FREE." The letter concluded with an invitation to attend an upcoming family meeting where the matter would be discussed. The family meeting did, in fact take place. According to defendant's sister, Geraldine, defendant indicated at the meeting that he wanted plaintiffs to be able to live on the property as long as they could do so unassisted. Defendant's brother, Vincent, a licensed attorney, testified that while he did not attend the meeting, he had spoken to defendant and plaintiffs numerous times about the potential sale of the Harsens Island home and that they had discussed what a life estate[2] in the property would mean for plaintiffs. Consistent with the parties' intentions, the 2001 land contract specified that plaintiffs' were to be able to live on the property "for life or as long as they are able to live unassisted." The land contract made no specific mention of a "life lease," nor did it refer to plaintiffs as tenants or defendant as a landlord.

Plaintiff, Genevieve Rhodes, testified that she had conversations with Vincent and with defendant about her and her husband retaining a life estate in the property. Genevieve testified that a few months after the land contract, specifically providing that she and her husband could remain living at the Harsens Island home as long as they were able to do so unassisted was signed, defendant sent a deed to her at her Florida home. According to Genevieve, defendant told her he needed her to sign the deed so he could borrow money to build a pole barn on the property, and that the deed would not change anything.

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[2] Though Vincent and other witnesses reference a "life estate" and use the term somewhat interchangeably with the term "life lease," the trial court held that plaintiffs held a "life lease" in the property.

While defendant testified that his intention was to have plaintiffs stay at the Harsens Island property merely as his guests, he also indicated that ". . . I was purchasing this place, they have the right to stay with me. They—you know, my intention was to, to share as I have for decades." Defendant's testimony thus suggests an understanding that plaintiffs were more than mere temporary guests, staying at his pleasure. Further, in two letters sent to the Township of Clay and the Michigan Department of Treasury after the deed was executed, Gary Rhodes refers to providing plaintiffs a "life lease." And, despite the deed's existence and lack of reference to a life estate or life lease, the parties continued with the status quo—with plaintiffs spending six months of the year at the Harsens Island home—until the 2006 dispute concerning a guest unwelcome by defendant at the property. The parties' intention was clear that plaintiffs would have the right to reside at the property and the trial court properly determined that the deed should be reformed to reflect this intent. Such a reformation would also be equitable under the unique circumstances in this case.

However, the trial court also ruled that plaintiffs were entitled to *exclusive possession* of the property. This is not consistent with the clearly expressed intent of the parties. The parties fully agreed that plaintiffs did not enjoy exclusive possession of the property during the time periods they resided there, and that defendant was often at the property. Not only do all parties agree that defendant made extensive repairs to the property (including a new roof and new windows), they also agree that he built a new master bedroom and bathroom onto the home for his own use. Genevieve Rhodes specifically testified that defendant spent many summer weekends at the home and also that he continually shared in the possession and use of the property:

Q: [Defendant] was there sharing possession of [the home], right.

A: Yes.

Q: . . . you didn't have exclusive possession of the residence, you weren't the only ones there, right?

A: Oh, no.

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Q: But Gary had possession of the property, too? He was living there, he added—

A: Of course.

Moreover, the land contract, the only written document providing that plaintiffs were to reside at the home, also provides that defendant was to have possession of the home. The land contract specifies: "Possession of Premises may be taken by Buyer on date of closing and retained for so long as no default is made by Buyer in any terms or conditions hereof." Thus, the land contract unambiguously provides that *both* parties were to have possession and use of the property.

There was no testimony or evidence admitted suggesting that any of the parties intended or expected that plaintiffs were ever to have use and possession of the home to the exclusion of

Gary Rhodes or that their interest in the property was as exclusive leaseholders. Thus, that portion of the judgment providing plaintiffs with exclusive use and possession of the subject property was unsupported by the evidence and the trial court clearly erred in including it in the judgment. The judgment should therefore be amended to incorporate only the terms and conditions of the September 17, 2001 land contract and the parties' clearly expressed intent that plaintiffs were able to reside at the home so long as they are able to live unassisted.

Defendant additionally argue that the merger doctrine is applicable in the instant case and that the trial court improperly failed to apply it. The merger doctrine presumes that "a deed executed in performance of a contract for the sale of land operates as satisfaction and discharge of the terms of the executory contract. However, an exception exists where the deed does not constitute full performance of the purchase agreement." *Chapdelaine v Sochocki*, 247 Mich App 167, 171; 635 NW2d 339 (2001). Here, it is undisputed that the deed was executed before defendant had paid the full purchase price agreed upon between the parties. Thus, full performance of the purchase agreement had not occurred prior to the execution of the deed and the merger doctrine is inapplicable.

Defendant next asserts that the court erred in its award of damages for "lost rent." Because the trial court's award of damages was based on its conclusion that defendant had impeded plaintiffs' exclusive rights to the property as life tenants, and we have determined that no such exclusive use and possession was intended, this award was in error. Again, plaintiffs were not given, nor was it intended they be given, an exclusive possessory interest in the home. The award of damages from lost rent shall thus be stricken from the judgment.

Defendant also argues that the trial court's decision to award damages to plaintiffs for rental expenses incurred, in addition to damages awarded for the rental value of the property, constituted an impermissible double recovery. Generally, damages recoverable for a breach of contract are those that arise naturally from the breach or those that were in the contemplation of the parties at the time the contract was made. *Groh v Broadland Builders, Inc*, 120 Mich App 214, 217; 327 NW2d 443 (1982). "As a general rule, only one recovery for a single injury is allowed under Michigan law." *Great Northern Packaging, Inc v Gen Tire & Rubber Co*, 154 Mich App 777, 781; 399 NW2d 408 (1986).

Here, because the award of damages for lost rent was in error, awarding plaintiffs rental expenses incurred does not amount to a double recovery. The reimbursement for plaintiffs' rental costs incurred when they rented an alternate place to stay in Michigan constituted consequential damages, because the natural consequence of defendant's breach of the parties' land contract was the necessity to procure alternate lodging. The rent paid by plaintiffs for alternate lodging arose naturally from defendant's breach of the parties' contract and was thus proper.

Plaintiffs also challenge the damage award on cross appeal. Specifically, plaintiffs argue that the court erred in not awarding treble damages under either the anti-lockout statute, MCL 600.2918, or the conversion statute, MCL 600.2919a. MCL 600.2918(1) provides:

> Any person who is ejected or put out of any lands or tenements in a forcible and unlawful manner, or being out is afterwards held and kept out, by

> force, if he prevails, is entitled to recover 3 times the amount of his actual damages or $200.00, whichever is greater, in addition to recovering possession.

The plain language of the anti-lockout statute provides that the award of treble damages must be premised on a showing of force ("forcible *and* unlawful manner"), rather than simply showing that a party was locked out. See, *Shaw v Hoffman*, 25 Mich 162 (1862). Here, the parties agree that when plaintiffs arrived at the property with an unwelcome guest, defendant requested police assistance to remove the guest from his property—not to remove plaintiffs. In addition, defendant testified that after the guest left, he did not prevent plaintiffs from entering the premises. While plaintiff Genevieve Rhodes testified that she did not enter the house that day or any since, she provided no testimony that she or her husband was forcibly removed from the property or forcibly prevented from re-entering it.[3] Instead, plaintiffs were apparently told in a telephone voicemail that they were not welcome at the Harsens Island property anymore and thereafter made no attempt to enter the property. The trial court did not err in declining to award plaintiffs damages based upon the anti-lockout statute.

With respect to plaintiffs' conversion claim, MCL 600.2919a provides as follows:

> (1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees.
>
> (a) Another person's stealing or embezzling property or converting property to the other person's own use.
>
> (b) Another person's buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted.
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> * * *

Plaintiffs maintain that their personal property was converted because they had several items of personal property remaining at the home that they were not able to recover. However, there was no evidence presented below that any of plaintiffs' personal property left behind had been converted to defendant's own use, as required by the statute. Moreover, Genevieve conceded that defendant had notified plaintiffs that their personal property could be retrieved, albeit subject to conditions as to who could accompany them when they came to collect their belongings. Genevieve further testified that she did not attempt to retrieve plaintiffs' belongings

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[3] Defendant's subsequent changing of the locks would qualify as "interference with a possessory interest" under the terms of MCL 600.2918(2)(c). However, § 2918(2)(c) provides for an award of "actual damages or $200.00, whichever is greater," not treble damages.

because she was hoping to regain access to the property as a result of this litigation. In light of this testimony, the trial court's conclusion that plaintiffs had failed to establish this claim was proper.

Reversed in part and remanded for entry of a judgment consistent with this opinion. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Pat M. Donofrio

Zahra, J., not participating, having been appointed to the Michigan Supreme Court effective January 14, 2011.