

STATE OF MICHIGAN
COURT OF APPEALS

SAUGATUCK, LLC, d/b/a SINGAPORE
DUNES, LLC,

Plaintiff/Counter-Defendant-
Appellee,

v

PALM BEACH POLO HOLDINGS, INC.,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED
December 13, 2011

No. 300283
Allegan Circuit Court
LC No. 08-043598-CZ

Before: MARKEY, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

In this landlord-tenant dispute, defendant/counter-plaintiff, Palm Beach Polo Holdings, Inc., appeals the trial court's order directing a verdict in favor of plaintiff/counter-defendant Saugatuck, L.L.C., doing business as Singapore Dunes, L.L.C. Defendant also appeals an evidentiary decision made by the trial court. We affirm.

This case involves an industrial lease between plaintiff and defendant. Defendant leased a portion of plaintiff's property in Saugatuck, Michigan, on which it operated a boat repair and construction business. The lease expired on December 31, 2008; however, defendant stopped paying rent after May 2007. After making several demands for rent, plaintiff served defendant with a notice to quit and on May 12, 2008, filed a complaint to evict defendant from the property in district court. Defendant filed a counter-complaint alleging that plaintiff interfered with its quiet enjoyment of the property and, accordingly, that defendant was not obligated to pay rent. Defendant claimed damages in an amount above the district court's jurisdictional limits, so the parties stipulated to bifurcate the proceedings and litigate possession in district court and damages in circuit court. The circuit court directed a verdict in favor of plaintiff.

We review de novo a trial court's decision on a motion for a directed verdict. *Zsigo v Hurley Med Ctr*, 475 Mich 215, 220; 716 NW2d 220 (2006). The evidence is considered in the light most favorable to the nonmoving party. *Id.* at 220-221. "A directed verdict is appropriate only when no factual question exists upon which reasonable minds could differ." *Roberts v Saffell*, 280 Mich App 397, 401; 760 NW2d 715 (2008). Defendant asserts that there were factual issues regarding its claims that plaintiff interfered with its quiet enjoyment. We disagree.

Defendant contends that the jury should have decided if plaintiff's repeated demands for rent, for defendant to maintain the access road and to remove the building on the leased premises at the expiration of the lease term constituted interference with defendant's quiet enjoyment of the property. Defendant does not dispute the fact that it stopped paying rent after May 2007 but justified withholding the rent because, before May 2007, plaintiff wrote defendant several letters asking for rent that was due from 2006 and 2007, asking defendant to repair damages defendant's subtenant caused to the access road and also asking defendant for a security deposit in regard to the removal of a building on the leased premises. Defendant maintains that plaintiff's letters interfered with its quiet enjoyment of the property because it paid the rent for 2006, albeit to the previous landowner because it did not know plaintiff owned the property at that point, and it paid the overdue rent for the first part of 2007 after plaintiff's demand. Defendant claims it had no duty to maintain the road or provide a security deposit.

Defendant also claims the jury should have been permitted to consider whether the installation of an electronic gate on the access road constituted interference with defendant's quiet enjoyment of the property. Defendant did not dispute the fact that plaintiff provided defendant with an access code to the gate and that there were property managers who could be called at any time from the gate keypad to open the gate remotely for guests without a code. Although no witness testified that the gate caused access problems, and several witnesses testified they had no problem accessing the property through the gate, defendant nevertheless maintains that the gate obstructed its access to the property. Defendant also claims that the evidence created a factual issue regarding whether construction occurring in another area of the property constituted an interference with defendant's ability to access the leased premises. Again, no one testified that any construction ever blocked or impeded access, and the witness who did testify about the construction said it never caused a problem in accessing the leasehold. Finally, defendant claims there was a factual issue in regard to whether plaintiff interfered with defendant's removal of the building by causing the township building inspector to post a stop-work order on defendant's building. Defendant failed to produce, however, any evidence connecting plaintiff to the township's actions.

Defendant claims it was entitled to withhold rent as a result of the above actions and that it was entitled to damages for lost rent after its subtenant moved out and for the value of the building. It is true that a landlord cannot demand rent from a tenant when the landlord takes an action that deprives the tenant "of the whole consideration for which rent was to be paid." *Kuschinsky v Flanigan*, 170 Mich 245, 248; 136 NW 362 (1912). But the "covenant of quiet enjoyment is breached only 'when the landlord obstructs, interferes with, or takes away from the tenant in a substantial degree the beneficial use of the leasehold.'" *Slatterly v Madiol*, 257 Mich App 242, 258; 668 NW2d 154 (2003) (citation omitted). We find that the trial court did not err when it directed the verdict in favor of plaintiff.

The record evidence in this case does not create any factual dispute upon which reasonable minds could differ in regard to defendant's claims. The parties do not disagree about many of the facts. Plaintiff does not deny that it wrote defendant letters requesting overdue rent, that the access road be maintained, and requesting assurances in regard to how the building on the leased premises would be removed. The trial court did not err when it determined that as a matter of law these actions by the plaintiff did not obstruct, interfere, or take from the tenant in a substantial degree the beneficial use of the leasehold. Even assuming defendant did not have a

duty to repair the road or provide a security deposit, plaintiff's request for repair or security did not constitute substantial interference with defendant's use of the leasehold. Similarly, the fact that plaintiff asked for overdue rent does not constitute substantial interference. Further, the uncontroverted evidence established that the electronic gate did not substantially interfere with defendant's use of the leasehold. Defendant does not deny that it was provided with an access code, and no witness testified that the gate ever prevented access to the property. Although on one occasion defendant's CEO believed the gate inconvenienced him: he could not open it and had to call to have it be opened remotely. With regard to the construction on the property around the leased premises, no witness testified that the construction ever presented an access problem. In fact, one witness specifically testified that the construction did not cause any access problems. Finally, the evidence supported that the township's stop-work order was not in any way related to plaintiff. Consequently, the trial court correctly directed a verdict in favor of plaintiff because defendant did not provide any evidence that created a factual issue upon which reasonable minds could differ. Additionally, the proffered evidence clearly established that plaintiff did not breach the covenant of quiet enjoyment; therefore, defendant was not entitled to withhold rent. For the same reasons, defendant failed to prove it was entitled to any damages, and the trial court did not err when it directed the verdict in plaintiff's favor.

Defendant also argues that the trial court erred when it sustained an objection to defendant's witness' testimony regarding the value of the building on the leasehold. Given our conclusion that a directed verdict was properly granted in favor of plaintiff, defendant was not entitled to damages and his evidentiary claim regarding valuation testimony is moot. *In re Duane v Baldwin Trust*, 274 Mich App 387, 404; 733 NW2d 419 (2007).

We affirm. Plaintiff, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello