STATE OF MICHIGAN

COURT OF APPEALS

JAMES D. COOL, DOROTHY R. COOL, and LORY A. BIERMACHER, Plaintiffs-Appellants, v HASTINGS CITY-BARRY COUNTY AIRPORT, Defendant-Appellee.	UNPUBLISHED November 15, 2011 No. 300458 Barry Circuit Court LC No. 09-000614-CK

Before: JANSEN, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

In this breach of contract and innocent misrepresentation action, plaintiffs appeal by right the circuit court's order granting summary disposition in favor of defendant. We affirm.

The circuit court's decision on a motion for summary disposition is reviewed de novo. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009).

Plaintiffs first argue that the circuit court erred by granting summary disposition in favor of defendant on their breach of contract claim. The interpretation of a contract is a question of law that is reviewed de novo. *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004). The dispute in the present case relates to whether plaintiffs had a right to renew a lease for an airport hangar without approval from defendant. The disputed language in the lease agreement provided:

> This lease shall commence on Jan 1, 1990, and the lease for the hangar being erected shall run for a period of twenty (20) years. After expiration of initial 20-year period, lessee shall have right to renew, with approval of lessor, for five year increments thereafter the contract shall be negotiated by each party.

"Generally, if the language of a contract is unambiguous, it is to be construed according to its plain meaning." *Shay v Aldrich*, 487 Mich 648, 660; 790 NW2d 629 (2010). If a contract is unambiguous, courts must enforce the contract as written. *Holmes v Holmes*, 281 Mich App 575, 594; 760 NW2d 300 (2008). Contracts must be construed so as to give effect to every word or phrase as far as practicable. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003). "A contract is ambiguous if it allows two or more reasonable interpretations,

or if the provisions cannot be reconciled with each other." *Woodington v Shokoohi*, 288 Mich App 352, 374; 792 NW2d 63 (2010). However, "[i]f the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous." *Id*.

Plaintiffs argue that the phrase "lessee shall have the right to renew, with approval of lessor" means that, by the terms of the lease, defendant granted plaintiffs an unconditional right to renew the lease at the time the lease agreement was executed. We cannot agree. If defendant had agreed at the time the contract was formed to grant plaintiffs an unconditional right to renew the lease in perpetuity, the contract language would have merely stated that plaintiffs had "the right to renew." This is not the case, however. The parties clearly included the additional language "with approval of lessor" for a reason. Plaintiffs' reading of the contract would render the phrase "with approval of lessor" nugatory and mere surplusage. "[C]ourts must . . . give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory." *Klapp*, 468 Mich at 468. Plaintiffs also argue that because the word "initial" was used in the provision, "[a]fter expiration of initial 20-year period," the parties necessarily intended that there would be a subsequent period. We disagree with this argument as well. The use of the word "initial" in the lease merely indicates that there *may* be subsequent lease periods—*not* that there *must* be. Indeed, the lease contemplates the possibility of a subsequent lease only "with the approval of lessor." Applying the plain and unambiguous language of the contract, we conclude that the parties intended to require the lessor's approval each time plaintiffs sought to renew the lease for a subsequent five-year period. See *Shay*, 487 Mich at 660. It is clear that the parties intended to require such approval by the lessor notwithstanding their use of the word "initial" in the language of the agreement.

Nor are we persuaded by plaintiffs' argument that by using the word "shall" in the phrase "lessee shall have the right to renew," the parties intended to grant plaintiffs an unconditional right to renew without the lessor's approval. Plaintiffs essentially ask this Court to ignore the modifying phrase "with approval of lessor." We decline to do so. See *Klapp*, 468 Mich at 467.

Plaintiffs next argue that the phrase "thereafter the contract shall be negotiated by each party" indicates that plaintiffs and defendant had already agreed to a future renewal of the lease. We find no merit in this claim. It is true that through their use of the phrase "thereafter the contract shall be negotiated by each party," the parties agreed that *if* plaintiffs sought to renew the lease and *if* defendant approved such renewal, then any subsequent five-year agreement would be negotiated by the parties. But we find no evidence that the parties ever contemplated that such a future renewal would in fact take place.

Because reasonable minds could not disagree concerning the proper interpretation of the parties' lease agreement, the circuit court did not err by granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). See *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Plaintiffs also argue that the circuit court erred by dismissing their innocent misrepresentation claim. Again, we disagree. To establish a claim of innocent misrepresentation, the plaintiff must show that the defendant: "(1) made a false statement in a transaction with plaintiff[s], (2) without knowledge of that statement's falsity, (3) which

statement actually deceived plaintiffs, and (4) on which plaintiffs detrimentally relied, with the benefit inuring to defendants." *Roberts v Saffell*, 483 Mich 1089, 1090; 766 NW2d 288 (2009). Plaintiffs assert that, at the time the airplane hangar was constructed, they relied on false statements made by members of defendant's governing body concerning their ability to renew the lease in the future. However, "[a] promise regarding the future cannot form the basis of a[n] [innocent] misrepresentation claim." *Forge v Smith*, 458 Mich 198, 212; 580 NW2d 876 (1998). Because the statements relied on by plaintiffs related to a promise concerning what might occur in the future, we conclude that plaintiffs' innocent misrepresentation claim was inadequate as a matter of law. The circuit court did not err by dismissing plaintiffs' innocent misrepresentation claim.

Affirmed. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Douglas B. Shapiro