STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1991

LTI 9500, LLC,
Appellant,

vs.

Security Warehouse/5th Avenue Lofts Association,
Respondent.

Filed September 9, 2019
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-CV-18-1409

Justin P. Weinberg, Daniel N. Moak, Cyrus C. Malek, Briggs and Morgan, P.A., Minneapolis, Minnesota (for appellant)

David L. Hashmall, Brandon J. Wheeler, Felhaber Larson, Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Cleary, Chief Judge; and Cochran, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

The parties are neighboring commercial-property owners whose dispute involves an agreement granting appellant use of a parcel of respondent's land to access appellant's

parking spaces. The district court granted respondent's motion for summary judgment. Appellant argues that the district court erred in concluding that the agreement was unambiguous and granted appellant a license, not an easement. Because we agree that the agreement was unambiguous and granted appellant not an easement but a license, we affirm.

FACTS

In 1967, two owners of adjacent commercial properties in downtown Minneapolis executed an Access Agreement (the agreement). It provided that one owner (the payor) would pay an "annual license fee" to the other (the payee) in exchange for the nonexclusive right to use a strip of land (the land) belonging to the payee for access to the payor's parking spaces.

Section 8 of the agreement provided that:

> This Agreement will automatically be extended from year to year, as of May first of each year, by the payment of the moneys due each year as of the immediately preceding April 15th by [the payor, or appellant], *together with the acceptance thereof by [the payee, or respondent]*, unless it has been otherwise automatically terminated by the failure of [the payor] in the performance of any of its covenants and agreements herein contained, or unless it has been terminated upon sixty (60) days written notice to [the payor] by [the payee] for the failure of the deposit system established to prevent parking or obstruction, as hereinbefore set out, to, in fact, prevent such parking on or obstruction of said property. [The payee] also reserves the right to cancel this Agreement in the event that it should add to its existing building on the adjacent premises or construct a further building or extension. In the event of termination at some time other than on May first, [the payee] shall make an appropriate proportionate refund of any moneys paid hereunder.

(Emphasis added.) The agreement did not include the word "easement."

The agreement was first amended in 1985 to change the annual license fee from $100 to $500. The amendment did not include the word "easement." In 1998, the agreement was amended a second time. This amendment referred to "that certain Access and parking Easement Agreement" and said "the parties agree that the Agreement and this Amendment may be placed on record." This version of the agreement was duly recorded. In 2005, respondent Security Warehouse/5th Avenue Lofts Association became the payee party to the agreement.

In 2015, appellant LTI 9500, LLC, became the payor party to the agreement by respondent's Consent to Assignment and the 2015 Assignment and Assumption. Also in 2015, a third amendment to the agreement raised the annual license fee to $1,000 and specifically provided that the agreement created a license, not an easement, and should not be recorded as creating an easement.

Appellant then obtained government approval for a plan to construct an underground parking ramp that would require the use of the land governed by the agreement for ingress and egress. In October 2017, respondent notified appellant that constructing a ramp would be a material change of the intended use of the land and a violation of the agreement. In November 2017, respondent notified appellant that it had again violated the agreement because a flatbed truck servicing appellant's building was partially parked on and blocking access to the land. On January 8, 2018, respondent notified appellant that, because of appellant's repeated violations of the agreement and the failure of settlement negotiations "relating to the [agreement] and the proposed

construction by [appellant] of a garage . . . within [appellant's p]roperty," respondent was terminating the agreement as of March 16, 2018. On January 23, 2018, respondent notified appellant of yet another violation and reiterated that it would terminate the agreement as of March 16, 2018.

On January 24, 2018, appellant sent respondent a check paying the license and tax fees owed under the agreement and filed a summons and complaint raising claims of breach of contract and breach of an implied covenant of good faith and fair dealing and seeking a declaratory judgment that, under the agreement, appellant was the owner of a valid permanent easement over the land and respondent had no authority to interfere with appellant's use of the land.

In February 2018, respondent filed an answer and a counterclaim for breach of contract, seeking a declaratory judgment, injunctive relief, and to quiet title. In March 2018, appellant moved for a temporary restraining order (TRO). The motion referred to the agreement as the "Access Easement" and sought to enjoin respondent from (1) terminating the agreement, (2) interfering in any way with appellant's use and enjoyment of access over the land, (3) constructing any obstruction or barrier on the land, and (4) threatening or harassing appellant.

Respondent opposed appellant's motion, arguing inter alia that the phrase "together with the acceptance thereof" in the agreement gave respondent the right to terminate the agreement by not accepting payment. Respondent also filed a notice of motion for a TRO restraining appellant from building the parking ramp and from using the land for any purpose other than access to appellant's existing parking area. At the hearing on the TRO

motions, the district court ordered the parties to maintain the status quo: appellant had right of access over the land; no construction was to begin, and the agreement remained in force.

In April, respondent notified appellant that it was in receipt of appellant's check but did not accept the tender of money, that the agreement would not be renewed and would therefore expire on May 1, and that appellant would no longer be allowed to use the land. In June, the district court granted respondent a TRO consistent with its order at the hearing.

Respondent then moved for summary judgment, asking the district court to (1) dismiss appellant's complaint; (2) find that the agreement had expired on May 1; (3) quiet title to the land by declaring that appellant had no right, title, or easement; and (4) dissolve the TRO.

Following a hearing, the district court granted respondent's motion for summary judgment, finding that the agreement had expired, quieting title to the land in respondent, and concluding that appellant has "no right, title, interest, estate, lien or easement in or upon" the land.

Appellant challenges the grant of summary judgment, arguing that the agreement was ambiguous as to whether the agreement conveyed a license or an easement to appellant. Appellant also disputes that the phrase "together with acceptance thereof" in the agreement entitled respondent to refuse payment and terminate the agreement.

D E C I S I O N

"In an appeal from a summary judgment where there is no dispute of material fact [an appellate court's] review is limited to determining whether the lower court erred in its application of the law." *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293,

298 (Minn. 2000). No material facts are disputed here; the dispute concerns the interpretation of an unambiguous contract. "If the contract is unambiguous when the language of the contract is given its plain and ordinary meaning, construction of the contract is a matter for the court and summary judgment is proper." *Auto Owners Ins. Co. v. Perry*, 730 N.W.2d 282, 284 (Minn. App. 2007). "A contract must be interpreted in a way that gives all of its provisions meaning." *Current Tech. Concepts v. Erie Enters.*, 530 N.W.2d 539, 543 (Minn. 1995).

The district court concluded that "the unambiguous language of the [a]greement creates a license and does not create an easement." We agree.

> An "easement" constitutes an interest in the land itself, while a "license" merely confers a privilege to do some act or acts upon the land without conveying any interest in or title to the land itself. . . . An easement, ordinarily, is a permanent interest in the realty with the right to enter at all times and enjoy it, while a license . . . may be revoked at will, and is terminated by a conveyance of the land by the party giving the license. Moreover, a license is of limited duration.
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> The intent of the parties determines whether an interest in land is a license or an easement. . . . [I]f the instrument or agreement merely confers permission to do an act or series of acts on the real property of the one conferring the privilege, it is a mere license and not an easement.
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> . . . [A]s a general rule . . . a license is revocable at any time. An irrevocable license is said to be an easement rather than a license.

28A C.J.S. *Easements* § 8 (June 2019 Update); *see also City of Hutchinson v. Wegner*, 195 N.W.2d 535, 536-37 (Minn. 1923) ("An easement always implies an interest in the land upon which it is imposed, and therefore lies only in grant, while a license carries no such

estate and is generally revocable at the will of the licensor. . . . [W]hether an easement or a license was created [by an agreement] depends largely on the intent of the parties." (quotations omitted)).

To support its conclusion that the agreement was a license rather than an easement, the district court relied on the agreement's provisions that: (1) the licensor could unilaterally cancel the agreement if it wanted to add to its building or construct another building; (2) the licensee's right was limited to access "for the sole purpose of gaining ingress to and egress from" part of the licensee's premises; (3) the agreement was on a year-to-year basis; and (4) the licensee could not sell, assign, or convey its rights without the licensor's consent. The district court also noted that, while the second amendment did use the term "easement," it did not alter the rights granted to appellant and therefore showed the parties' "lack of intent to transform the Agreement from a license agreement into the grant of an easement," and the most recent 2015 amendment provided that it does not, and "shall not be construed to, create any recordable interest, including but not limited to, any easement." Thus, the agreement itself and its most recent amendment support the district court's conclusion that appellant had a license, not an easement.

As a license, the agreement is terminable by respondent. *See* 28A C.J.S. *Easements* § 8 ("[A] license may be revoked at will."); *Hutchinson*, 195 N.W.2d at 537 ("[A] license is generally revocable at the will of the licensor.") Moreover, the agreement provides that the agreement is extended annually by the licensee's payment "together with the acceptance thereof by [the licensor]," and the agreement "must be interpreted in a way that gives all of its provisions meaning." *Current Tech. Concepts*, 530 N.W.2d at 543. The

district court recognized that respondent terminated the agreement by using the means of termination the agreement itself provided and correctly granted summary judgment quieting title to the land in respondent and stating that appellant "had no right, title, interest, estate, lien or easement in or upon the land."

Appellant raises three arguments. First, appellant argues that, in the phrase "together with the acceptance thereof" in section 8 of the agreement, "acceptance" actually means "receipt." "Acceptance" is defined as "[an] offeree's assent, either by express act or by implication from conduct, to the terms of an offer in a manner authorized or requested by the offeror, so that a binding contract is formed." *Black's Law Dictionary* 14 (10th ed. 2014). Relying on this definition, the district court noted that it is consistent with "the [p]arties' intent that [respondent] has a choice on whether to accept or reject [appellant's] tender of money."

Appellant's second argument, that the agreement "***automatically*** extends upon [appellant's] timely payment" (emphasis in original), removes from respondent the right to unilaterally terminate the agreement and conflicts with the plain language of the agreement as well as with the fact that a license is generally revocable at the will of the licensor. *See Hutchinson*, 195 N.W.2d at 137.

Appellant's third argument is that the two "unless" clauses in section 8 modify only respondent's acceptance, not the agreement's automatic extension. But those clauses read, "unless it has been otherwise automatically terminated" and "unless it has been terminated upon sixty (60) days written notice . . . ." The antecedent of "it" in both clauses is "the agreement," not respondent's acceptance. Contrary to appellant's argument, section 8 does

not provide that respondent can reject payment only if the contract has already been terminated: presumably payment would not be made if no contract were in force.

None of appellant's arguments succeeds. Consequently, we affirm the summary judgment granted to respondent.

Affirmed.