STATE OF MICHIGAN

COURT OF APPEALS

RADNEY H. TUCKER and BEVERLY A. TUCKER,

Plaintiff-Appellees,

v

OFFICE EXPRESS, INC.,

Defendant-Appellant,

and

ROBERT BICKLE,

Defendant.

UNPUBLISHED
February 11, 1997

No. 189790
Livingston Circuit Court
LC No. 93-012774-CK

Before: Young, P.J., and O'Connell and W.J. Nykamp,* JJ.

PER CURIAM.

Defendant Office Express, Inc. appeals as of right from an order granting summary disposition in plaintiffs' favor. We affirm.

This appeal stems from a lease between plaintiffs Radney H. Tucker and Beverly A. Tucker and Robert Bickle on behalf of defendant Office Express, Inc.'s predecessor Standard Office Products, Inc. In October 1988, plaintiffs and Bickle were unable to negotiate a new lease. Nevertheless, in March 1991, Bickle replied to plaintiffs' earlier written lease offer with an apparent acceptance. Eleven months later, Bickle broke the lease, renamed his company Office Express, Inc., and moved it to new quarters. As a result, plaintiffs filed the instant matter against Bickle and Office Express for damages stemming from Bickle's actions. Initially, defendants moved for summary disposition in their favor on the ground that the purported lease formed by Bickle's reply violated the statute of frauds, but the trial court denied this motion. Subsequently, plaintiffs moved for summary disposition in their favor on the ground that

* Circuit judge, sitting on the Court of Appeals by assignment.

there was no issue of material fact that a valid lease had been formed by Bickle's reply to their lease offer. The trial court granted this motion, and the instant appeal followed.

I

Defendant claims that the trial court erred when it granted summary disposition in plaintiffs' favor because the statute of frauds barred plaintiffs' enforcement of the purported lease. We disagree. This Court reviews de novo questions of law such as whether the statute of frauds bars enforcement of a purported contract. *Zander v Ogihara Corp*, 213 Mich App 438, 441; 540 NW2d 702 (1995).

In pertinent part, the statute of frauds found at MCL 566.108; MSA 26.908 provides:

> Every contract for the leasing for a longer period than 1 year . . . shall be void unless the contract, or some note or memorandum thereof be in writing, and signed by the party by whom the lease or sale is to be made, or by some person thereunto by him lawfully authorized in writing . . . .

In order to satisfy the statute, any writing purporting to transfer the above interests in land must be certain and definite. *In re Skotzke Estate*, 216 Mich App 247, 249; 548 NW2d 695 (1996). Thus, a lease must contain the following terms to satisfy the certainty requirement: (1) the names of the parties; (2) description of the leased premises; (3) amount of the rent; and (4) the length of the lease term. *De Bruyn Produce Co v Romero*, 202 Mich App 92, 99; 508 NW2d 150 (1993). Lastly, the document must be signed by the person making the lease or conveyance. *Jim-Bob, Inc v Mehling*, 178 Mich App 71, 88; 443 NW2d 451 (1989). Our review of the purported lease shows that all the above elements were present. Therefore, the document satisfies that statute of frauds. Consequently, since the trial court did not err on this point, we need not review defendant's partial payment exception to the statute of frauds issue.

II

Defendant next challenges the enforceability of the lease itself on contractual construction grounds. The construction of a contract, which is unambiguous is a question of law. *Mt Carmel Hosp v Allstate Ins Co*, 194 Mich App 580, 588; 487 NW2d 849 (1992). This Court employs a de novo review for questions of law. *Vicencio v Jaime Ramirez MD, PC*, 211 Mich App 501, 503; 536 NW2d 280 (1995).

Defendant first contends that the purported acceptance of plaintiffs' lease terms was in actuality a counteroffer because it failed to accept either the tax liability or the inflation escalator found in plaintiffs' offer. We disagree. It is true that if the acceptance materially varies the terms of those offered, it is a counteroffer. *Kamalnath v Mercy Memorial Hosp*, 194 Mich App 543, 548-549; 487 NW2d 499 (1992). Our review of the documents shows that the inflation escalator was the only missing term because the tax liability term was incorporated by reference form the earlier lease. The inflation escalator was immaterial to the instant transaction. Thus no counteroffer can be found.

Defendant also posits that no lease can be found because there was no meeting of the parties' minds on the terms of the lease, as shown by the missing terms above. Again, we disagree. Meeting of the minds, also known as mutual assent, must be shown for all material facts surrounding the contract's formation. *Kamalnath, supra*. The inflation escalator, which is the only true missing term, is immaterial to the contract's formation, so no error can be found on this ground either.

Defendant lastly argues that no lease can be found because no formal documentation was ever drafted or executed by the parties. We disagree. Such documents must be prepared to form a valid lease when the parties agree that such preparation is mandatory. *Blair v Lux*, 256 Mich 463, 465; 240 NW 54 (1932). Because neither plaintiffs' lease offer nor defendant's reply required such formal documentation, we will not place such a requirement on the parties.

Affirmed.

/s/ Robert P. Young, Jr.
/s/ Peter D. O'Connell
/s/ Wesley J. Nykamp