STATE OF MICHIGAN

COURT OF APPEALS

FARBMAN STEIN MANAGEMENT CO., and MEDICAL OFFICE PARTNERS, L.P.,

Plaintiffs-Appellants,

v

MICHIGAN EAR INSTITUTE, P.C.,

Defendant-Appellee.

UNPUBLISHED
March 7, 1997

No. 188084
Oakland Circuit Court
LC No. 94-470313-CK

Before: Jansen, P.J., and Reilly and E. Sosnick*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a February 8, 1995, order which granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this contract interpretation claim. We affirm.

On March 29, 1990, plaintiffs (as the landlord) entered into a lease agreement with defendant (as the tenant). The lease was for office space in a medical building located in the City of Troy. The term was for five years, beginning on June 1, 1990, and expiring on June 1, 1995. The base rent for the term was $217,095, payable in equal monthly installments. Defendant paid the rent in a timely fashion and has since quit the premises.

In addition to the base rent, defendant was to pay a pro rata share of the common area maintenance charges, taxes, and insurance. The lease stated that defendant's share of these expenses would be the percentage derived by dividing the net rental area of the leased premises by the net rental area of the building, and was agreed to be 5.39%. The net rental area of the lease premises was 3,286 square feet, and the net rental area of the building was 17,770 square feet. In drafting the lease agreement, plaintiffs inverted the calculation and arrived at a figure of 5.39%. However, the tenant's share, according to the first sentence of the clause, should have been 18.49%.

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

Plaintiffs filed a complaint and order of accounting on February 10, 1994. Ultimately, the trial court granted defendant's motion for summary disposition on the ground that the contract set defendant's share of the expenses at 5.39% and that the contract was not ambiguous in this regard.

Plaintiffs' sole argument on appeal is that the lower court erred in granting defendant's motion for summary disposition because the contract was ambiguous and, thus, its interpretation should have been left to the trier of fact.

On appeal, a trial court's decision on a motion for summary disposition will be reviewed de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted to it. *Patterson v Kleiman*, 447 Mich 429, 434; 526 NW2d 879 (1994). Giving the benefit of every reasonable doubt to the nonmovant, the court must determine whether a record might be developed which will leave open an issue upon which reasonable minds could differ. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617-618; 537 NW2d 185 (1995).

Contractual language is construed according to its plain and ordinary meaning. *Pakideh v Franklin Commercial Mtg Group*, 213 Mich App 636, 640; 540 NW2d 777 (1995). Technical and constrained constructions are to be avoided. *Id.* Courts will reform a contract to reflect the parties' actual intent when there is clear evidence that both parties reached an agreement but, as a result of mutual mistake, the instrument does not express the true intent of the parties. *Olsen v Porter*, 213 Mich App 25, 29; 539 NW2d 523 (1995). Here, the error, if any, in stipulating defendant's share of the pass through expenses at 5.39% was solely that of plaintiffs. As such, this unilateral error cannot be the basis for reforming the contract. *Windham v Morris*, 370 Mich 188, 193; 121 NW2d 479 (1963); *Capitol Savings & Loan v Przybylowicz*, 83 Mich App 404, 406-411; 268 NW2d 662 (1978). Furthermore, plaintiffs' failure to properly read all of the provisions of the lease they drafted does not invalidate the lease, and plaintiffs are bound by their agreement regardless of whether they read the provision. *Witt v Seabrook*, 210 Mich App 299, 303; 533 NW2d 22 (1995).

Accordingly, the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ Edward Sosnick