

STATE OF MICHIGAN
COURT OF APPEALS

STANDARD FEDERAL BANK,

Plaintiff-Appellee,

v

PACIFIC DRUGS, INC., MUAFFAQ HAKIM,
NAJLA HAKIM, ALMAN HAKIM, and
NATHRAH HAKIM,

Defendants-Appellants.

UNPUBLISHED

June 23, 2005

No. 252844

Oakland Circuit Court

LC No. 2002-043519-CK

Before: O'Connell, P.J., and Schuette and Borrello, JJ.

MEMORANDUM.

This case arose out of a dispute over lease payments which were guaranteed by the individual defendants for a retail storefront occupied by Pacific Drugs, Inc. Defendants appeal as of right, challenging the trial court's grant of plaintiff's motion for summary disposition and its subsequent denial of defendants' motion for reconsideration. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendants first argue that the trial court erred by failing to consider arguments relating to the physical disrepair of the three-store complex, especially after the two larger tenants vacated their stores. We disagree. Defendants did not raise these factual issues until they filed their motion for reconsideration with the lower court. Because defendants had not yet raised the argument, the trial court could not have erroneously failed to consider it before granting summary disposition. Moreover, the trial court did not abuse its discretion by rejecting the argument as grounds for reconsideration, because defendants could have raised these facts at the summary disposition hearing. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

Next, defendants contend that the trial court erred by granting plaintiff's requested damages without holding an evidentiary hearing. After granting plaintiff summary disposition, the trial court realized the potential factual dispute on damages and told the parties that they would need to submit affidavits regarding the amount of rent due. Plaintiff submitted an affidavit, but defendants failed to object to it or refute its conclusions until after the trial court had entered a judgment based on it. Therefore, as with the previous issue, the trial court did not err when it based its award on undisputed facts, and did not abuse its discretion when it denied

reconsideration of the award based on an argument that would have been more appropriately raised before the judgment was entered. See *Id.* at 233.

Finally, defendants contend that the trial court failed to adequately address their frustration of purpose argument. Defendants argue that the parties had anticipated that the drugstore would sit among the two other, much larger, retail tenants and benefit from the additional customers these stores attracted. Unfortunately, both these retailers vacated the storefront and were not replaced by new tenants. Defendant argues that these unanticipated vacancies frustrated the purpose of entering the lease. However, the contract provided for the amount of rent Pacific Drugs, Inc. must still pay even if it totally failed to operate. Because the total elimination of Pacific Drugs as a business venture was contemplated by the lease, defendants cannot now claim that they were excused from performance because certain unanticipated events caused business to slow down. See *Liggett Restaurant Group, Inc v Pontiac*, 260 Mich App 127, 135-137; 676 NW2d 633 (2003). Moreover, the failure of the surrounding businesses, while detrimental, did not prevent Pacific Drugs from operating as a drugstore, so it was not such a severe frustration that it fell outside the ordinary business risks assumed when a storeowner signs a commercial lease. *Id.* at 134-135. Accordingly, the trial court did not err when it rejected defendants' frustration of purpose argument.

Affirmed.

/s/ Peter D. O'Connell

/s/ Bill Schuette

/s/ Stephen L. Borrello