

STATE OF MICHIGAN
COURT OF APPEALS

5642 WEST MAPLE GROUP, LLC,

Plaintiff/Counter-Defendant-
Appellee,

UNPUBLISHED
March 7, 2006

v

WEST BLOOMFIELD SCHOOL DISTRICT,

Defendant/Counter-Plaintiff-
Appellant,

No. 256135
Oakland Circuit Court
LC No. 2003-048723-CZ

Before: Cavanagh, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this action for declaration of the parties' rights and obligations under the terms of a lease agreement, defendant appeals as of right from the trial court's order granting summary disposition and awarding costs and attorney fees to plaintiff. We affirm.

We review a trial court's grant of summary disposition under MCR 2.116(C)(10) de novo, and in doing so consider all admissible documentary evidence in the light most favorable to the nonmoving party to determine whether there is any genuine issue of material fact. *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 357-358; 597 NW2d 250 (1999). Contract interpretation, including whether a term is ambiguous, is also a question of law that we review de novo. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003).

When interpreting a contract, our primary goal is to ascertain and give effect to the intent of the parties. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). "To do so, this Court reads the agreement as a whole and attempts to apply the plain language of the contract itself." *Id.* If the words of the contract are patently clear and unambiguous, this Court will not consider extrinsic evidence to determine the parties' intent or to impeach the plain meaning of the contract. *Zurich Ins Co v CCR & Co*, 226 Mich App 599, 604; 576 NW2d 392 (1997). "A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation." *Xu v Gay*, 257 Mich App 263, 273; 668 NW2d 166 (2003) (citation and internal quotation marks omitted). "An unambiguous contract must be enforced according to its terms." *Burkhardt v Bailey*, 260 Mich App 636, 656; 680 NW2d 453 (2004).

Defendant first argues that the terms of the lease agreement concerning the cost of janitorial services are ambiguous, and that extrinsic evidence is therefore admissible to discern the parties' intended obligations with respect to the provision and cost of such services. Because we find the language of the relevant contractual provisions to be unambiguous and wholly reconcilable, we disagree.

Section 10 of the lease agreement (“the janitorial-services clause”) provides that “[s]o long as [defendant] is not in default under the Terms of this Lease, [plaintiff] shall, at its own cost and expense, furnish the Demised Premises with janitorial services.” Section 4.C. of the agreement (“the escalator clause”), however, provides that defendant is obligated to pay plaintiff for any increases in “the cost of providing janitorial services and supplies to the Building” over those “due and payable during the calendar year in which the Commencement Date occurs.” Relying on extrinsic evidence, defendant interprets these provisions as requiring it to pay for increases in janitorial expenses only if it is in default. Defendant’s interpretation, however, irreconcilably conflicts with the plain language of the escalator clause. Indeed, the escalator clause unambiguously provides that defendant is required to pay increases in janitorial expenses, and nothing in that clause suggests that this obligation applies only when defendant is in default under the terms of the lease. To the contrary, when read together, the clauses at issue plainly require that so long as defendant is not in default under the terms of the lease, plaintiff will provide and pay for janitorial services, but that defendant will reimburse plaintiff for any increase in the cost of such services over that incurred by defendant during the first calendar year of the lease. It is well settled that when interpreting a contract, the contract must be considered as a whole, *Old Kent Bank, supra*, and we are aware of no authority holding that a contract obligation created in one clause cannot be qualified elsewhere in the contract. We therefore find no ambiguity with respect to defendant’s obligation to pay increased janitorial expenses. *Xu, supra*; see also *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 491-492; 579 NW2d 411 (1998). Accordingly, we conclude that the trial court did not err in holding that the parties’ lease agreement unambiguously required defendant to pay for increased janitorial expenses even if defendant was not in default, and that the unambiguous terms of the agreement should be enforced as written. *Burkhardt, supra*.

Defendant further argues that, even assuming it is responsible for increases in the cost of janitorial expenses over that incurred in the “base” year, there is an ambiguity in the lease agreement regarding the method by which the amount of the base year janitorial expenses are to be determined. Again, we disagree.

As previously noted, the escalator clause at issue here provides that “[defendant] shall pay any increase in . . . the cost of providing janitorial services and supplies . . . , which are *due and payable* during the calendar year in which the Commencement Date occurs.” (Emphasis added). We find that, by expressly referring to base expenses that are “due and payable” during the “calendar year” in which the lease commences, this clause plainly sets forth that the base

janitorial expenses from which an increase is to be calculated are those expenses that are *actually* incurred during the base period.¹

Moreover, contrary to defendant's assertion, there is nothing in the language of the contract to suggest that the parties intended that janitorial expenses would be annualized if, as here, less than a full year of expenses were incurred. Defendant cites *Old Kent Bank, supra*, for the proposition that its interpretation is preferable because, without annualization, each subsequent year would include a five-month increase; a result defendant asserts is unreasonable. However, the rule that a reasonable and fair construction should be favored over a construction that is unfair or unreasonable is inapplicable to this case because defendant's construction contradicts the plain language of the contract. *Id.*; *Burkhardt, supra*. More specifically, defendant's interpretation that the lease calls for annualization of janitorial expenses contradicts the "due and payable" terms contained in the clause. In any event, "[a] mere judicial assessment of 'reasonableness' is an invalid basis upon which to refuse to enforce contractual provisions." *Rory v Continental Ins Co*, 473 Mich 457, 470; 703 NW2d 23 (2005).

Defendant also claims that annualization is proper because without annualization the result is absurd, citing *Port Huron Area School Dist v Port Huron Ed Ass'n*, 120 Mich App 112; 327 NW2d 413 (1982). However, we do not read *Port Huron* as suggesting that courts can ignore the plain language of a contract and apply an interpretation that contradicts the plain language of an agreement, particularly in light of our Supreme Court's more recent ruling that the effect of contractual language cannot be avoided on a theory that the result would be unreasonable. *Rory, supra*.

Finally, defendant argues that the trial court erred in awarding plaintiff its attorney fees and costs. Again, we disagree.

Section 19.F. of the lease agreement ("the legal-expenses clause") provides:

In case suit shall be brought for recovery of possession of the Demised Premises, for recovery of rents or any amount due under provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Landlord or Tenant to be kept or performed, the non-prevailing party shall pay the prevailing party all expenses incurred therefore, including actual attorneys' fees, court costs and other related expenses incurred by the prevailing party.

Defendant does not claim that this clause is ambiguous or unenforceable, but rather that plaintiff's suit for declaratory relief is not of a type covered by the legal-expenses clause because it does not seek an award of money or declaration of breach. However, as found by the trial court, although brought by plaintiff as an action for declaratory relief, plaintiff's suit was, for all intents and purposes, a suit for "recovery of . . . [an] amount due under [the] lease." Moreover, although the trial court did not specifically rule that plaintiff's complaint was a "suit brought . . .

¹ Because the contract language is unambiguous on its face, there is no need to resort to defendant's extrinsic evidence to resolve the alleged ambiguity. *Zurich Ins Co, supra*.

because of breach,” plaintiff’s complaint specifically alleged that defendant was required under the lease to pay the increased janitorial expenses, and had refused. Although the complaint does not specifically use the word “breach,” an allegation that a party to a contract has refused to abide by the terms of that contract clearly alleges that the contract has been breached.

Defendant also argues that plaintiff’s complaint does not meet the requirements of the legal-expenses clause because the trial court never ruled that a breach occurred, nor did it award a monetary judgment. However, nothing in the clause at issue conditions the award of legal expenses on the prevailing party also receiving a monetary award or obtaining a judgment that a breach occurred. To the contrary, the clause requires only that the suit must be brought for one of the reasons listed, and that one of the party’s must be a “prevailing party.” Here, it is clear from the record that plaintiff is the prevailing party with respect to the complaint, and defendant does not argue otherwise. The trial court did not err in awarding plaintiff its legal expenses.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Joel P. Hoekstra

/s/ Jane E. Markey