

STATE OF MICHIGAN
COURT OF APPEALS

LAVERNE E. QUINLAN,

Plaintiff/Counterdefendant-
Appellant/Cross-Appellee,

v

ELIAS ASSOCIATES, L.L.C.,

Defendant/Counterplaintiff-
Appellee/Cross-Appellant.

UNPUBLISHED

February 1, 2000

No. 211027

Livingston Circuit Court

LC No. 95 14575 CK

Before: Murphy, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Plaintiff, lessee, appeals as of right the trial court's summary disposition denying her immediate foreclosure of a lien on commercial property owned by defendant, lessor, and denying her statutory interest on the judgment. Defendant cross-appeals the trial court's partial grant of summary disposition in favor of plaintiff on her breach of covenant of quiet enjoyment claim. We affirm.

This Court reviews summary disposition rulings de novo to determine whether the prevailing party was entitled to judgment as a matter of law. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Marx v Dep't of Commerce*, 220 Mich App 66, 70; 558 NW2d 460 (1996). A motion for summary disposition under MCR 2.116(C)(10) may be granted when, except with regard to damages, there is no genuine issue as to any material fact. This Court must consider all the documentary evidence available and, affording the benefit of reasonable doubt to the nonmovant, determine whether a record might be developed which would leave open an issue upon which reasonable minds could differ. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617-618; 537 NW2d 185 (1995); *Farm Bureau Mut Ins Co of Michigan v Stark*, 437 Mich 175, 184-185; 468 NW2d 498 (1991).

Plaintiff first claims that the trial court erred by refusing to allow her to immediately foreclose the lien she held on defendant's property, and by refusing to immediately enter judgment in her favor in the amount of \$172,052.07, plus costs and interest, contrary to its oral ruling on the record. We disagree.

At the hearing on plaintiff's motion for summary disposition, the trial court determined that plaintiff had a lien in the amount of \$172,052.07 on defendant's property, and then orally ruled that plaintiff "has now the right of foreclosure." However, the trial court reserved its final ruling until it heard arguments on the parties' cross-motions for summary disposition on defendant's countercomplaint, at which time it would issue an opinion and order on all the issues in the case. The trial court subsequently issued a final order stating that if defendant failed to repay the \$172,052.07 owed plaintiff within a reasonable time after expiration of the parties' lease (not to exceed sixty days), plaintiff was entitled to foreclose the lien, and move for entry of a money judgment.

To the extent that the court's final, written order altered its earlier oral ruling, we find no error. It is well settled that a court speaks through written judgments and orders rather than oral statements or opinions. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977); *Stackhouse v Stackhouse*, 193 Mich App 437, 439; 484 NW2d 723 (1992). Thus, the trial court's written order reflects the final decision in this case, and any contrary oral statements made by the trial court are not controlling.

Moreover, we find that the trial court properly concluded that, under the terms of the parties' lease agreement, plaintiff did not have an immediate right of foreclosure on the lien and was not entitled to a money judgment. Contracts which are unambiguous are not open to construction and must be enforced as written. *G & A Inc v Nahra*, 204 Mich App 329, 330; 514 NW2d 225 (1994). A court's role is to effectuate the intent of the parties to a lease as it is set forth in the agreement. *Detroit Trust Co v Howenstein*, 273 Mich 309, 313; 262 NW 920 (1935); *Sprick v Regents of The University of Michigan*, 43 Mich App 178, 186; 204 NW2d 62 (1972), *aff'd* 390 Mich 84 (1973).

The parties' unambiguous lease agreement provides no right of immediate foreclosure. Pursuant to the plain language in ¶ 10 of the agreement, the parties clearly did not intend for plaintiff to have the right to demand immediate repayment if plaintiff financed the construction of an addition where defendant was financially unable to do so. The agreement specifies only that "Tenant shall have a lien on the addition" to secure her investment. There is no language permitting plaintiff to immediately foreclose on the lien.

Moreover, the lease agreement expressly states that the parties contemplated a building expansion for their mutual benefit. The agreement provides for a lien on the addition; however, it makes no provision for repayment during the term of the lease, and no provision for rental adjustment in the event of repayment. Thus, we agree with the trial court that the plain language in the agreement suggests that the parties intended that plaintiff's capital investment would be made for the term of the lease and not subject to repayment until termination of the lease.

Plaintiff next claims that the trial court erred by requiring plaintiff to bring another action to foreclose her lien or to reinstate the present action and move for entry of a money judgment. We disagree. The trial court placed no such requirement on plaintiff; rather, the trial court simply determined that the lease agreement did not afford plaintiff the right to demand repayment of the construction costs prior to the end of the lease. Thus, in the event that defendant repays the construction costs within a

reasonable time after the lease ends, as ordered by the trial court, no further action by plaintiff will be necessary.

Plaintiff also claims that the trial court erred by entering an order that fails to comport with its oral ruling regarding the amount of plaintiff's lien. We disagree. As noted above, a court speaks through written judgments and orders rather than oral statements or opinions. *Tiedman, supra* at 576; *Stackhouse, supra* at 439. In any event, the trial court's written order merely distinguishes between the amount plaintiff was entitled to by judgment, \$172,052.07, and the amount of the lien recorded by plaintiff, \$170,000. Accordingly, we find no error.

Finally, plaintiff claims that the trial court erred by denying her request for prejudgment interest under MCL 600.6013; MSA 27A.6013.¹ We disagree. The purpose of an award of interest under MCL 600.6013; MSA 27A.6013 is to compensate the prevailing party for the loss of the use of funds awarded as money damages, to offset the costs of bringing an action, and to encourage prompt settlement. *Holloway Const Co v Oakland Co Bd of Rd Comm'rs*, 450 Mich 608, 614; 543 NW2d 923 (1996); *Dep't of Treasury v Central Wayne Co Sanitation Authority*, 186 Mich App 58, 61; 463 NW2d 120 (1990). A money judgment is one which adjudges the payment of a sum of money as distinguished from directing an act to be done. *Schellenberg v Lodge No 225, BPOE*, 228 Mich App 20, 51; 577 NW2d 163 (1998); *Marina Bay Condos, Inc v Schlegel*, 167 Mich App 602, 609; 423 NW2d 84 (1988). In this case, the trial court did not order payment of a sum of money. Rather, the trial court concluded that plaintiff was not entitled to repayment for construction of the addition until termination of the lease. Therefore, because there is no money presently owing to plaintiff, there was no money judgment, and plaintiff was not entitled to prejudgment interest.

On cross-appeal, defendant claims that the trial court erred in granting summary disposition to plaintiff on her breach of covenant of quiet enjoyment claim. Defendant contends that plaintiff did not properly exercise her right to renew the lease for a second option period because she failed to expressly notify defendant that she was exercising the option and failed to pay the increased rent due under the second option term. We disagree.

Michigan courts have held that where a lease agreement does not require formal notice to effect an option to renew the lease, the tenant gives sufficient notice to exercise the option and renew the lease by merely remaining on the premises after the expiration of the prior term. *Starr v Holck*, 318 Mich 452, 462-463; 28 NW2d 289 (1947); *Delashman v Berry*, 20 Mich 292, 298; 4 Am Rep 392 (1870). In addition, where the terms of the contract do not specify the method of accepting an option to renew a lease, all that is required is that the tenant inform the landlord with reasonable certainty, in terms that cannot fairly be misunderstood, that she is exercising the option given to her by the lease. *Boden v Trumpour*, 344 Mich 133, 136; 73 NW2d 462 (1955).

Here, the parties' lease agreement simply stated that plaintiff could renew her lease for a five-year period under the same terms and conditions previously set forth in the agreement with a maximum term of the lease of thirty (30) years. The lease agreement did not require that plaintiff provide defendant with formal notice of her intent to renew the lease for the 1993-1998 option period; in fact, the lease agreement was silent as to the method by which plaintiff could exercise her option. To this

end, plaintiff conspicuously remained on the premises, indicating to defendant that she was exercising her option to renew the lease. See *Starr, supra* at 462-463; *Delashman, supra* at 297. We find that, by her conduct, plaintiff unmistakably notified defendant that she was renewing her lease for the second five-year option term and that she intended to be bound by the terms of the lease during that period. See *Kern v Pawlega*, 5 Mich App 384, 388-389; 146 NW2d 689 (1966).

Defendant contends that plaintiff did not effectively exercise her option to renew the lease because she did not make rental payments in the increased amount for the first seventeen months of the second rental option period. However, we are not convinced that plaintiff's inadvertent failure to pay the increased rent² evidences an intent not to exercise her option, particularly where she immediately corrected the mistake and paid defendant in full when the matter was brought to her attention. Instead, we agree with the trial court that plaintiff's continued presence on the property, steady payment of rent, ongoing business activities, and substantial investment of approximately \$50,000 in improvements to the lease premises, considered together, provided adequate notice, in terms that could not be fairly misunderstood, that plaintiff exercised her second option to renew the lease.

Further, defendant's argument that plaintiff failed to properly "accept" the option to renew is without merit because no method of acceptance was specified in the lease agreement. Contrary to defendant's contention that the increased rent during each new option period constitutes the method of acceptance, the lease contains no such provision. Paragraph two (2) of the agreement, entitled "RENT", states in relevant part:

In the event of the exercise by Tenant of the options to renew said lease as set forth above the rental for each year of said renewal periods shall be as set forth below:

(b) During the second five (5) year renewal period Tenant shall pay the sum of \$39,000 per year in equal installments during said term or the sum of $\frac{3}{4}$ of one (1) percent of total gross sales from Tenants rental area whichever is greater, said sum to be paid on or before December 31 of each lease year and to be computed upon sales for the previous twelve (12) months beginning December 1 of the previous year through November 30 of the current lease year.

There is no language in the agreement suggesting that payment of the increased rent constitutes acceptance of the option, and we decline to interpret the agreement in that manner. The plain language of the lease agreement indicates that the increased rent is unrelated to the exercise of the tenant's option to renew the lease; rather, the increase of rent is a consequence of exercising the option to renew the lease. Defendant could not reasonably have inferred that plaintiff did not intend to renew merely from plaintiff's payment of the lower rent amount, particularly where defendant accepted the lower rental payments for seventeen months without objection, and where plaintiff immediately tendered a check to defendant in the amount of \$5,666.61 for the difference owed upon being informed of the administrative mistake.

Finally, in view of our decision that plaintiff properly exercised her option to renew the lease for the 1993-1998 term, we find no merit to defendant's contention that plaintiff's "holding over" created a month to month or year to year tenancy terminable by defendant. *Kern, supra* at 389. Accordingly, we decline to further address this argument.

Affirmed.

/s/ William B. Murphy

/s/ Hilda R. Gage

/s/ Kurtis T. Wilder

¹ MCL 600.6013(1); MSA 27A.6013(1) provides in relevant part:

Interest shall be allowed on a *money judgment* recovered in a civil action, as provided in this section. [Emphasis added.]

² The trial court found, and the parties do not dispute, that plaintiff's failure to pay the increased rental amount for the second option period was due to an administrative oversight.