

STATE OF MICHIGAN  
COURT OF APPEALS

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VIACOM OUTDOOR, INC.,

Plaintiff-Appellee,

v

JONATHAN BRATT, LISA BRATT, and  
MARKET VALUE OUTDOOR ADVERTISING,  
INC.,

Defendants-Appellants.

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UNPUBLISHED

February 6, 2007

No. 265044

Kent Circuit Court

LC No. 02-012596-CZ

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendants appeal as of right a judgment entered in favor of plaintiff following a bench trial. The trial court held that plaintiff had established a prescriptive easement with respect to a billboard on land that plaintiff mistakenly believed it purchased in 1985, but which is actually owned by the Bratt defendants. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's findings of fact in a bench trial for clear error and reviews de novo the court's conclusions of law. *Amb's v Kalamazoo Co Rd Comm*, 255 Mich App 637, 651; 662 NW2d 424 (2003); MCR 2.613(C).

"An easement is the right to use the land of another for a specified purpose." *Schadewald v Brulé*, 225 Mich App 26, 35; 570 NW2d 788 (1997). Generally, an easement by prescription results from the use of the property of another that is open, notorious, adverse, and continuous for a period of 15 years. *Goodall v Whitefish Hunting Club*, 208 Mich App 642, 645; 528 NW2d 221 (1995). "Adverse or hostile use is use inconsistent with the right of the owner, without permission asked or given, use such as would entitle the owner to a cause of action against the intruder." *Id.* at 646 (citations and quotation marks omitted).

Defendants contend that the use of the billboard was permissive. According to defendants, the license between Penn Central and plaintiff's predecessor in interest (Gannett Outdoor Advertising) governing two separate billboards, continued in effect despite the 1985 conveyance of property on which one of the billboards was located. Defendants do not dispute the general rule that a license is automatically revoked upon transfer of title by either the licensor or licensee. *Kitchen v Kitchen*, 465 Mich 654, 658-659; 641 NW2d 245 (2002). However, they

claim that with respect to the billboard at issue, the license was not revoked by the transfer of land because the transfer did not include the portion of land on which that billboard was located. In effect, defendants argue that the written license agreement was severable, i.e., it was automatically revoked in part with respect to the billboard on the property actually conveyed, but remained operative with respect to the billboard on the property that was not conveyed.

The trial court did not clearly err in determining that the conveyance of property subject to the license revoked the license completely. In general, provisions of a contract stand or fall altogether, but a partial rescission may be allowed where the contract is divisible. *Blumrosen v Silver Flame Industries*, 334 Mich 441, 445-446; 54 NW2d 712 (1952). Similarly, where a portion of a contract is invalid, the defect does not void valid provisions if they are severable. *Professional Rehabilitation Assoc v State Farm Mut Automobile Ins Co*, 228 Mich App 167, 174; 577 NW2d 909 (1998). “The primary consideration in determining whether a contractual provision is severable is the intent of the parties.” *Id.* (citation omitted). In this matter, the parties to the license (Penn Central and Gannett) agreed to a particular amount for Gannett’s use of two billboards while they negotiated the sale of property. There is no evidence that the parties intended that the license would be severable with respect to the two billboards. Because the agreement was not divisible, the automatic revocation of the license that stemmed from the conveyance was a complete revocation, not a partial revocation as argued by defendants.

Defendants argue that because the license was coupled with an interest, it was not terminable at will and was not automatically terminated by transfer of the fee. See *Forge v Smith*, 458 Mich 198, 210; 580 NW2d 876 (1998).

The trial court noted that plaintiff had personal property on the land that was the subject of the license, but explained that the fact that the license may have been coupled with an interest was immaterial. “[T]here is no reason why the parties cannot agree that the license be revoked—which is what the sales agreement has done. There is no need for the irrevocable license rule to protect the licensee if he has *agreed* to the revocation of the license.”

We agree with the trial court. If defendants’ argument were accepted, a license coupled with an interest would be irrevocable regardless of the parties’ intentions, tantamount to a permanent interest in the property. The only authority cited by defendants, *Forge, supra*, does not support that view. Instead, in discussing the nature of licenses in general, *Forge, supra* at 210, states, “A license grants permission to be on the land *without granting any permanent interest in the realty.*” (Emphasis added.)

Defendants also challenge the trial court’s finding that the parties to the sales agreement intended for it to supersede the license agreement as further support for its determination that the use was not permissive.

Parties to an agreement may execute a substituted agreement that “totally supersedes the terms of the original.” *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 412; 646 NW2d 170 (2002) (citation and internal quotation marks omitted). In *Archambo*, there was a title insurance commitment and a subsequent title insurance policy that contained an integration clause. The Court explained that the integration clause evidenced an “explicit statement of intent to abrogate the antecedent commitment.” *Id.* at 413.

In the present case, Penn Central and Gannett entered into a license agreement, effective January 1, 1985, for two billboards. They subsequently entered into a sales agreement that contained the following integration clause: “This Agreement contains the entire agreement of the parties hereto and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this Agreement shall be of any force or effect.” As in *Archambo*, the integration clause evidenced their intent to abrogate the earlier agreement. Moreover, the licensor’s failure to demand and the licensee’s failure to make payments as required by the license agreement support the court’s determination that the parties intended to abrogate the license agreement.

Affirmed.

/s/ Stephen L. Borrello  
/s/ Kathleen Jansen  
/s/ Jessica R. Cooper