

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GERALD L. REED,

Plaintiff/Counter Defendant-  
Appellant,

v

WILLIAMS COMMUNICATIONS, INC.,

Defendant/Counter Plaintiff-  
Appellee.

UNPUBLISHED

October 14, 2003

No. 240651

Oakland Circuit Court

LC No. 01-034922-CZ

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Before: Kelly, P.J., and Cavanagh and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's orders summarily dismissing his claim against defendant and granting defendant costs and attorney fees in this contract action. We affirm.

Defendant is a telecommunications company that specializes in the transfer of digital data through a fiber optic cable network that includes regeneration stations approximately every forty miles which process, re-boost, and send the signals. The regeneration station must be supplied with constant power so that the signal is not interrupted, therefore, an emergency generator is installed on site. In June of 2000, defendant leased a portion of plaintiff's commercial building for the purpose of constructing a regeneration station to support its fiber optic cable network. Thereafter, defendant hired a general contractor to supervise and build the regeneration station on the leased site. Plaintiff had a copy of, and was familiar with, the site plans which included the construction of an emergency generator outside of and adjacent to the building, on the southwest corner of the property. Similarly, plaintiff witnessed the construction of the emergency generator and, although he allegedly advised defendant repeatedly through its agents that the generator was placed in the wrong location, did not formally object until October 23, 2000, when he notified defendant in writing of his objection to the location of the generator. Plaintiff claimed that he had authorized the installation of the generator on the east side of the property, not the southwest side, because he had planned to build a garage at that location. Nevertheless, construction of the generator continued.

In January 2001, plaintiff filed his notice to quit and complaint for termination of tenancy alleging that defendant was a trespasser on his property because defendant had "appropriated a parcel of land outside of the premises described in the lease" agreement. Defendant answered the complaint and filed a counterclaim averring that plaintiff's action lacked any basis in law or

in fact and, pursuant to the lease, it would be entitled to attorney fees and costs if it prevailed on the claim. Plaintiff answered defendant's counterclaim, alleging that the property in dispute was not subject to the lease between the parties and that such lease was irrelevant to the proceedings at issue.

In May of 2001, defendant filed its motion for summary disposition, pursuant to MCR 2.116(C)(10), arguing that (1) the express terms of the lease agreement included that defendant had the right to install a generator on the property, and (2) even if the lease did not specifically authorize the installation, plaintiff was aware of, and consented to, the installation of the generator; thus, he was equitably estopped from asserting the claim. On December 12, 2001, the trial court granted defendant's motion, holding that the lease provisions, particularly paragraphs three and six, clearly provided for installation and maintenance of a generator. An order dismissing plaintiff's claim was entered accordingly.

On December 26, 2001, pursuant to MCR 2.116(C)(10), defendant filed a motion for summary disposition on its counterclaim for attorney fees, arguing that there was no genuine issue of material fact that defendant was entitled, under paragraph thirty-four of the lease agreement, to recover attorney fees, costs, and expenses incurred for defending against plaintiff's claim. Plaintiff responded to defendant's motion, arguing that defendant was not entitled to such costs because his legal action was not commenced to enforce his rights under the lease. On March 13, 2002, the trial court granted defendant's motion for costs and attorney fees in the amount of \$8,712.31, and an order was entered. Plaintiff appeals from both orders granting defendant's motions for summary dismissal.

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition regarding his "trespass" action because the lease did not describe the exact location in which the generator could be installed. We disagree. The grant or denial of a motion for summary disposition is reviewed de novo. *Groncki v Detroit Edison Co*, 453 Mich 644, 649; 557 NW2d 289 (1996). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint, considering the documentary and other evidence in a light most favorable to the nonmoving party, to determine whether the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Issues of contract interpretation are questions of law that we review de novo. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

The Lease between plaintiff and defendant provided as follows:

NOW, THEREFORE, in consideration of the covenants and conditions herein,  
Lessor does hereby lease and let the Property unto Lessee.

The terms and conditions of this Lease are:

\* \* \*

3. Permitted Uses. Lessee shall use the Property only for the construction, operation, maintenance, repair and replacement of telecommunications equipment and/or structures necessary for communications purposes, including but not limited to, regenerators, optical amplifier equipment and the structures to house

such equipment and for any other activities directly relating thereto (the "Telecommunications System"). Lessee shall also have the right to construct, maintain, repair and replace adequate fencing and gates necessary for its use of the Property, and to construct improvements that Lessee, in its sole discretion, deems necessary, including, but not limited to the right to install permanent or temporary generators for Lessee's emergency power requirements. . . .

\* \* \*

6. Power and Access to Property. As a condition to execution of this Lease, Lessor shall grant to Lessee easements over any of Lessor's property for the purposes of (a) ingress and egress to a public road; (b) access to power sources; and (c) the underground installation, operation, maintenance, repair, removal and replacement of fiber optic cable and related facilities. Lessee shall obtain its own electricity and other utility service for the Property; provided however, upon Lessee's request, Lessor shall cooperate to cause sources of power upon any property owned by Lessor adjacent to the Property, if any, to be made available to Lessee; provided, however, nothing hereinabove shall be construed to cause the Lessor to incur any expenses.

\* \* \*

26. Amendments. This Lease shall not be amended, modified or supplemented, except by an instrument in writing, signed by both parties hereto.

\* \* \*

31. Entirety. This Lease and the Option Agreement to the extent not inconsistent herewith states the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the subject matter thereof.

\* \* \*

34. Fees and Expenses. If any action shall be instituted by either of the parties hereto for the enforcement of any of its rights or remedies in and under this Lease, the prevailing party shall be entitled to recover from the other party all costs that the prevailing party incurs in said action, including reasonable attorney's fees.

The Property that was subject to the Lease was not identified in the Lease Agreement; however, the Lease was supplemented by Attachments Number 1 and Number 2 which identified the Property subject to the Lease as "a 32' X 35' section, located in the Southeast corner of the existing building located at" a specified address.

A well-established rule of contract interpretation is that the intent of the parties is ascertained and enforced according to the plain language of the contract. *Zurich Ins Co v CCR & Co (On Rehearing)*, 226 Mich App 599, 603-604; 576 NW2d 392 (1997). Further, definite and

unambiguous contract language must be enforced as written and courts may not write a different contract under the guise of interpretation or consider extrinsic evidence to determine the parties' intent. See *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998).

Here, defendant claims that the lease clearly provided it the right, without limitation, to install its generator on plaintiff's property. We agree. Paragraph three of the subject lease, which set forth the "Permitted Uses," provided as follows: "Lessee shall also have the right to construct, maintain, repair and replace adequate fencing and gates necessary for its use of the Property and to construct improvements that Lessee, in its sole discretion, deems necessary, including, but not limited to the right to install permanent or temporary generators for Lessee's emergency power requirements." This provision granted defendant the right to make improvements to the property, including the right to install generators, that it deemed necessary to accomplish the only permitted use of the leased Property – the operation of its telecommunications system. Plaintiff's argument that there was an oral contract regarding the location that the generator could be installed is not persuasive and is, in fact, expressly prohibited by paragraph thirty-one of the contract which provided that the Lease and Option Agreement constituted the entire agreement between the parties. Accordingly, if plaintiff had intended to limit defendant's discretion with regard to the installation of any necessary improvements, including generators, such provision was required to be included in the lease agreement. Therefore, the trial court properly granted defendant's motion for summary disposition as to this claim. Because defendant's right was secured by the express and plain language of the contract, we need not address the application of equitable defenses, including estoppel and laches, to plaintiff's claim against defendant.

Next, plaintiff argues that the trial court erred in awarding defendant costs and attorney fees pursuant to the lease agreement. Plaintiff claims that his legal action against defendant was not instituted for the enforcement of any of his rights or remedies under the lease, as required under paragraph thirty-four; rather, it was a trespass action. We disagree.

Courts are not bound by the label that a litigant attaches to his claims but will determine the type of action by considering the substance of the claims. See *Brownell v Garber*, 199 Mich App 519, 532-533; 503 NW2d 81 (1993). Here, plaintiff's action clearly was commenced to determine the parties respective rights under the lease agreement, i.e., whether the lease authorized defendant to install the generator in the location that it was installed without seeking permission or approval from plaintiff, the landowner. Accordingly, the trial court properly awarded defendant costs and attorney fees pursuant to paragraph thirty-four of the lease agreement.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Mark J. Cavanagh  
/s/ Michael J. Talbot