

STATE OF MICHIGAN  
COURT OF APPEALS

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1300 LAFAYETTE EAST COOPERATIVE,  
INC.,

UNPUBLISHED  
May 10, 2011

Plaintiff-Appellant,

v

No. 296929  
Wayne Circuit Court  
LC No. 06-618367-CZ

STEVEN SAVOY,

Defendant-Appellee.

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Before: SAAD, P.J., and JANSEN and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court's order denying its motion for summary disposition and granting summary disposition in favor of defendant. We reverse and remand for further proceedings consistent with this opinion.

I

Plaintiff is a cooperative housing corporation organized pursuant to MCL 450.98 *et seq.* A cooperative "is a form of real estate ownership in which those who occupy the premises do not own them." Cameron, Michigan Real Property Law, § 26.28, p 1509. Instead, individuals purchase ownership interests (i.e., stock) in the cooperative, and those individuals then "lease the spaces they occupy from [the cooperative]." *Id.* Thus, while a member of a cooperative corporation is a shareholder of the corporation, he or she is also a tenant of the corporation. See *id.*

On November 30, 1998, defendant purchased stock in plaintiff corporation and leased living space from plaintiff. Defendant financed the purchase of his stock with a mortgage loan in the amount of \$120,000, obtained from NBD Mortgage Company. In exchange for the loan, NBD Mortgage Company received not only a promissory note, but also an assignment of defendant's membership interest in the corporation. Indeed, at the time of closing, defendant conveyed to NBD Mortgage Bank his physical stock certificates, to be held as security, and the parties agreed that NBD would transfer the certificates back to defendant upon his satisfaction of the debt.

Defendant's membership in plaintiff corporation was governed by an Occupancy Agreement, dated November 30, 1998. The Occupancy Agreement had an initial three-year term

and provided that it would automatically renew every three years “unless terminated by the Member pursuant to Article 4 hereof or by the Corporation pursuant to Article 13 or Article 15<sup>[1]</sup> hereof.”

Article 4 of the Occupancy Agreement, which governed termination of the agreement by defendant, provided:

ARTICLE 4.                   AUTOMATIC RENEWAL:  
MEMBER’S OPTION TO TERMINATE

It is covenanted and agreed that the initial three (3) year term herein granted shall be extended and renewed from time to time by and against the parties hereto for further periods of three (3) years each, upon the same covenants and agreements as herein contained unless: (1) notice of the Member’s election not to renew shall have been given to the Corporation in writing at least four (4) months prior to the expiration of the then current term, and (2) the Member shall have on or before the expiration of said term (a) endorsed his or her stock certificate for transfer in blank and deposited the same with the Corporation, and (b) met all his or her obligations and paid all amounts due under this agreement up to the time of said expiration, and (c) vacated the Dwelling Unit, leaving same in good state of repair. Upon compliance with provisions (1) and (2) of this Article, the Member shall have no further liability under this agreement and shall be entitled to no payment from the Corporation.

Article 13 of the Occupancy Agreement, which permitted plaintiff to terminate the agreement under certain circumstances, provided:

ARTICLE 13.                 DEFINITION OF DEFAULT  
BY MEMBER AND EFFECT THEREOF

It is hereby mutually agreed as follows: At any time after the happening of any of the events specified in clauses (a) to (j) of this Article the Corporation may, at its option, give to the Member notice that this agreement will expire at a date not less than ten (10) days thereafter, whereupon this agreement and all of the Member’s rights hereunder will expire on the date so fixed in such notice, unless in the meantime the default has been cured in a manner deemed satisfactory by the Corporation. It being the intention of the parties hereto to create hereby conditional limitations, and it shall thereupon be lawful for the Corporation to re-enter the Dwelling Unit and to remove all persons and personal property therefrom, either by summary proceedings or by other suitable action or proceeding at law or in equity and to repossess the Dwelling Unit as if this

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<sup>1</sup> Article 15 of the Occupancy Agreement, which relates to condemnation and property loss by fire or other casualty, is inapplicable in this case.

agreement had not been made, and no liability whatsoever shall attach to the Corporation by reason of the exercise of the right of re-entry, repossession, and removal herein granted and reserved.

(a) In case at any time during the term of this agreement the Member shall cease to be the owner and legal holder of the stock.

(b) In case the Member attempts to transfer or assign this agreement in a manner inconsistent with the provisions of the By-Laws of the Corporation.

(c) In case at any time during the continuance of the agreement the Member shall be declared a bankrupt under the laws of the United States.

(d) In case at any time during the continuance of this agreement a receiver of the Member's property shall be appointed under any of the laws of the United States or any State.

(e) In case at any time during the continuance of this agreement the Member shall make a general assignment for the benefit of creditors.

(f) In case at any time during the continuance of this agreement any of the stock owned by the Member shall be duly levied upon and sold under the process of any Court.

(g) In case the Member fails to effect and/or pay for repairs and maintenance as provided for in Article 11 hereof.

(h) In case the Member shall fail to pay any sum due to the Corporation pursuant to the provisions of Article 1, Article 10, Article 11 or Article 19 hereof.

(i) In case the Member shall default in the performance or observance of any of his or her other covenants or agreements under this agreement or shall fail to abide by the By-Laws or House Rules of the Corporation from time to time in effect.

(j) In case the Member shall fail to pay any charge which if not paid could become a lien against the property.

The Member hereby expressly waives any and all right of redemption in case he or she shall be dispossessed by judgment or warrant of any Court or judge. In the event of a breach or threatened breach by the Member of any of the covenants or provisions hereof, the Corporation shall have the right of injunction and the right to invoke any remedy allowed at law or in equity in addition to or in place of any remedy provided for herein.

The Member expressly agrees that there exists under this Occupancy Agreement a landlord-tenant relationship and that in the event of a breach or

threatened breach by the Member of any covenant or provision of this agreement, there shall be available to the Corporation such legal remedy or remedies as are available under the law to a landlord for the breach or threatened breach by a tenant of any provision of a lease or rental agreement.

The respective rights or remedies, whether provided by this agreement or by law, or available in equity, shall be cumulative and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same time or at different times, of any other such right or remedies for the same or different defaults, or for the same or different failures of the Member to perform or observe any provision of this agreement.

The failure on the part of the Corporation to avail itself of any of the remedies given under this agreement shall not waive nor destroy the right of the Corporation to avail itself of such remedies for similar or other breaches on the part of the Member.

At some point, defendant decided to move to a new home. Defendant listed his membership interest in plaintiff cooperative for sale in July 2001. However, defendant's membership interest did not sell. In December 2001, defendant moved out of the unit he leased from plaintiff. Defendant continued to pay his carrying charges under the Occupancy Agreement for approximately two years while his membership interest remained on the market. But in February 2003, defendant stopped paying the carrying charges. Plaintiff therefore commenced summary proceedings in the 36th District Court, which resulted in a consent judgment requiring defendant to either pay the accrued carrying charges or vacate the leased unit. Plaintiff thereafter commenced additional summary proceedings in the 36th District Court, resulting in a second consent judgment which provided that defendant would be evicted if he did not pay plaintiff the accrued, past-due carrying charges under the Occupancy Agreement.

Following entry of the district court consent judgments, plaintiff commenced proceedings in the Wayne Circuit Court to recover the accrued carrying charges that it believed it was owed by defendant. Plaintiff contended that even though defendant's tenancy had been terminated by way of the district court orders, he remained a member of the cooperative corporation and therefore continued to be liable for the payment of accrued carrying charges under the Occupancy Agreement. Defendant, on the other hand, argued that the district court consent judgments had not only terminated his tenancy, but had also effectively terminated his membership in the corporation. Accordingly, defendant argued that he owed plaintiff no further carrying charges under the Occupancy Agreement. Plaintiff and defendant both filed motions for summary disposition.

At oral argument on the parties' motions, the circuit court noted in rather cursory fashion that "[t]he issues regarding possession of the premises were decided in district court." The circuit court further noted that it "believe[d] the issues regarding the carrying charges, if not specifically resolved [in district court,] were incorporated in the orders that were issued in the district court." Accordingly, the court ruled that "[t]his matter has been settled in district court and therefore it should not be here." On September 25, 2007, the circuit court entered an order

denying plaintiff's motion for summary disposition and granting summary disposition in favor of defendant "as stated on the record."

On appeal, this Court concluded that the district court consent judgments had resolved the narrow issue of defendant's tenancy, and were therefore properly given preclusive effect by the circuit court with regard to this narrow issue. *1300 Lafayette East Coop, Inc v Savoy*, 284 Mich App 522, 530; 773 NW2d 57 (2009). However, this Court concluded that the district court consent judgments had *not* resolved the amount of carrying charges due and owing to plaintiff. *Id.* at 530-533. Because there had been no final ruling on the issue of money damages in the district court, this Court determined that the circuit court had erred by dismissing plaintiff's claim for past-due carrying charges. *Id.* This Court went on to state:

Defendant claims that the district court's consent judgments constituted written notice of termination under Article 4 and that this was sufficient to end his obligations under the occupancy agreement. It is undisputed, however, that defendant never indorsed his stock certificate to plaintiff, as required by Article 4. Defendant argues that the bank took possession of the certificate at the closing and, therefore, he could not have indorsed it to plaintiff. However, this argument raises a factual dispute, thereby precluding summary disposition.

We note, however, that it is undisputed that plaintiff instituted summary eviction proceedings, as permitted by Article 13, after defendant defaulted on his obligation to pay carrying charges under Article 1. Further, it is undisputed that the parties signed a consent judgment entitling plaintiff to possess the unit unless defendant paid his past-due amount in full by a certain date. It is also undisputed that defendant never paid the amount due. . . . [T]he two consent judgments were conclusive on the issue of who was entitled to possession of the dwelling unit, i.e. plaintiff. Moreover, it is undisputed that plaintiff knew that defendant had moved out of the residence. These circumstances raise the question whether plaintiff terminated the occupancy agreement under Article 13, such that [carrying charges] would not have continued to accrue after December 2003 at the latest and the agreement would not have automatically renewed in November 2004. However, the parties did not address the effect of Article 13 below, nor have they done so on appeal, and the trial court did not consider this issue. Therefore, we remand this case for further proceedings regarding the effect, if any, of Article 13. [*Id.* at 532-533.]

In other words, this Court found that there remained a genuine issue of material fact concerning whether defendant could have endorsed his stock certificates as required to terminate his membership interest under Article 4 of the Occupancy Agreement. This Court also found that there remained a genuine issue of material fact concerning whether plaintiff's actions were sufficient to terminate defendant's membership interest under Article 13, and remanded the matter to the circuit court "for further proceedings regarding the effect, if any, of Article 13." *Id.* at 533.

On remand, each party filed a motion for summary disposition. The circuit court announced that it would be considering whether defendant had been able to endorse his stock

certificates as required by Article 4 of the Occupancy Agreement and whether plaintiff took sufficient actions to terminate defendant's membership interest under Article 13 of the Occupancy Agreement. The circuit court observed at oral argument:

The question is whether or not [defendant] terminated his membership in the, in the Association, and [the Court of Appeals is] saying that we should look at whether or not Article 13 had any effect on that, and I guess we could consider other factors. It's clear that at some point in time the Defendant vacated the premises.

The requirement under the [Occupancy Agreement] was that there be an endorsement of the stock certificate. I believe that issue has been addressed. The bank had custody or physical custody of those and that should not be held against the Defendant.

It appears from looking at the presentations here that the obligations under the contract had been fulfilled up until the time [defendant] vacated and, in fact, he did vacate.

The motion here is brought pursuant to MCR 2.116(C)(10), and the question is whether or not there are any genuine issues of material fact relating to the termination of that membership and there are no genuine issues of material fact.

[Defendant's] motion is granted.

On February 23, 2010, the circuit court entered an order denying plaintiff's motion for summary disposition and granting defendant's motion for summary disposition "as stated on the record."

## II

We review de novo a circuit court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

## III

On remand, the circuit court disregarded this Court's conclusion in *1300 Lafayette East Coop* that there remained a genuine issue of material fact concerning whether defendant could have endorsed his stock certificates as required to terminate his membership under Article 4 of the Occupancy Agreement. The circuit court ruled that it was beyond genuine factual dispute that defendant could not have endorsed his stock certificates as required under Article 4 because the certificates were held by the bank as security and this "should not be held against the Defendant." This determination by the circuit court was directly contrary to this Court's previous conclusion that there remained a genuine issue of material fact on this question. We note that no new evidence was taken on this issue following remand. Instead, the circuit court merely concluded that there was no question of fact in this regard, even though this Court had already held that there was. Once this Court has determined that there remains a genuine issue of

material fact with respect to a specific matter, the matter must be decided by the trier of fact rather than by the circuit court on summary disposition.

Moreover, our review of the transcript of the circuit court's hearing reveals that the court did not consider the effect of Article 13 of the Occupancy Agreement on remand, even though it was expressly instructed to do so by this Court in *1300 Lafayette East Coop*.

Once an issue has been decided by this Court, this Court's decision is binding on the lower courts under the law of the case doctrine. *Bauer v Garden City*, 163 Mich App 562, 571; 414 NW2d 891 (1987). Moreover, "when an appellate court gives clear instructions in its remand order, it is improper for a lower court to exceed the scope of the order." *K & K Construction, Inc v Dep't of Environmental Quality*, 267 Mich App 523, 544; 705 NW2d 365 (2005). "It is the duty of the lower court or tribunal, on remand, to comply strictly with the mandate of the appellate court." *Id.* at 544-545, quoting *Rodriguez v Gen Motors Corp (On Remand)*, 204 Mich App 509, 514; 516 NW2d 105 (1994). Therefore, the circuit court was bound by this Court's previous determination that there remained a genuine issue of material fact with respect to whether defendant was able to endorse his stock certificates and terminate his membership interest under Article 4 of the Occupancy Agreement. *Bauer*, 163 Mich App at 571. This was a question to be resolved by the trier of fact—not by the circuit court on summary disposition. Furthermore, the circuit court was required to comply with this Court's clear remand instructions, directing it to consider "the effect, if any, of Article 13." See *K & K Construction*, 267 Mich App at 544-545. Nonetheless, it did not.

For these reasons, we reverse the circuit court's order denying plaintiff's motion for summary disposition and granting summary disposition in favor of defendant. On remand, the circuit court shall specifically consider whether plaintiff took sufficient actions to terminate plaintiff's membership agreement pursuant to Article 13 of the Occupancy Agreement. If the court determines that plaintiff did not take sufficient actions to terminate defendant's interest under Article 13, or if the court determines that there remains a genuine issue of material fact on this matter, the court shall submit the question to the trier of fact. The court shall also submit to the trier of fact the questions whether defendant was able to endorse his stock certificates and terminate his membership interest under Article 4 of the Occupancy Agreement, and whether defendant's ability or inability to do so was in any way affected by the fact that the bank held defendant's physical stock certificates as security. As noted by this Court in *1300 Lafayette East Coop*, there remained genuine issues of material fact with regard to these questions.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. As the prevailing party, plaintiff may tax costs pursuant to MCR 7.219.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Kirsten Frank Kelly