

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

**SECURE CHECK CASHING, INC,
Plaintiff,**

v.

**Case No. 13-137672-CB
Hon. James M. Alexander**

**812 S. MAIN, LLC,
Defendant.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on cross motions for summary disposition. Plaintiff is a tenant in a building purchased by Defendant in October 2013. In March 2013, Plaintiff entered into a commercial lease agreement with Defendant’s predecessor, HLE & LOE, LLC. Shortly after acquiring the building, Defendant notified Plaintiff that it felt that the lease was undervalued, and therefore, Defendant was terminating the lease under a purported 120-day notice-of-termination clause.

Plaintiff disagrees that Defendant has the right to terminate the lease and filed the present suit – seeking declarations that: (Count I) it did not breach any lease terms; (Count II) it has no obligation to pay certain taxes and insurance; (Count III) the lease does not give Defendant the right to termination on 120 days’ notice; (Count IV) quiet enjoyment; and (Count V) anticipatory breach of contract.¹

The Court will note that, in its motion, Defendant seeks money damages and a declaration that Plaintiff is a holdover tenant. But a review of the file reveals that Defendant has

¹ Despite both parties’ arguments that the pending motions resolve the entire case, Plaintiff and Defendant spend nearly the entirety of their arguments focused on Count III alone.

not filed any Counter-Claim seeking the same. Because Defendant has no existing claim, there is no claim, on which, to base a summary request. The Court, however, will treat Defendant's pleadings as a response to Plaintiff's motion and a motion to dismiss Plaintiff's Complaint – the only existing claim.

Both parties now move for summary disposition under MCR 2.116(C)(10), which tests the factual support for Plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Michigan law is well-established that “a court must construe and apply unambiguous contract provisions as written.” *Rory v Cont'l Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). Further, “[a] contract must be interpreted according to its plain and ordinary meaning.” *Holmes v Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008), citing *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998). “Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court.” *Holmes v Holmes*, supra at 594; quoting *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997).

Defendant argues that paragraph 74 of the lease contains a 120-day notice-of-termination clause that it could invoke following its predecessor's sale of the property. That paragraph states, in full:

TRANSFER OF LANDLORD'S INTEREST OR SALE. In the event any transfer or sale of Landlord's Interest, in the premises, Landlord shall be automatically relieved of any and all obligations and liabilities on the part of Landlord accruing from and after the date of such transfer or sale. However, Landlord must provide 120 days advance notice to tenant of such transfer. Tenant may not terminate this Lease. Upon lease termination under this provision, the Landlord or Tenant has no further obligations or liability to each other under this Lease.

By its plain terms, paragraph 74 provides that, if HLE (defined as “Landlord” in the lease) sells its interest in the property, then it is relieved of any obligations under the lease from the date of the sale. HLE is also to provide 120 days advance notice of any sale. The paragraph goes on to state that Plaintiff may not terminate the lease.

The final sentence is, perhaps, inartfully drafted. But in context, the only reasonable interpretation is that, should HLE sell its interest, then “[HLE] or [Plaintiff] has no further obligations or liability to each other under this Lease.” It follows, instead, that only Plaintiff and the new property owner would have obligations to one another.

This interpretation is consistent with the general notion that contracts must be “read as a whole,” giving “contextual understanding” to each phrase. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 356-357; 596 NW2d 190 (1999).

To the extent that Defendant argues that paragraph 74 contains a 120-day termination provision that it may use to terminate the lease agreement, the Court disagrees. Even the most strained reading of said provision does not support Defendant’s position.

For all of the above reasons and viewing the evidence presented in the light most favorable to Defendants, the Court finds that there are no material facts in dispute, and Plaintiff is entitled to judgment as a matter of law. As a result, Plaintiff’s Motion for Summary Disposition under MCR 2.116(C)(10) is GRANTED – but only with respect to Plaintiff’s Count III, which seeks a declaration that Defendant does not have the right to terminate the lease under paragraph 74.

The Court declines to rule with respect to Plaintiff’s other counts because the parties failed to adequately address the same. Michigan law is clear that, “A party may not merely announce a position and leave it to [the] Court to discover and rationalize the basis for the

claim.” *National Waterworks, Inc v International Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007).

Because the parties failed to adequately address Counts I, II, IV, and V, said claims remain pending.

IT IS SO ORDERED.

June 6, 2014
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge