

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

M-59 JOY, LLC,

Plaintiff,

vs.

Case No. 2015-3035-CB

LAMAR ADVERTISING OF
MICHIGAN, INC.,

Defendant.

OPINION AND ORDER

Defendant has filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff has filed a response and requests that the motion be denied.

I. Factual and Procedural History

This matter centers on commercial billboard leases between the parties. Plaintiff is the owner of a narrow strip of property located along the I-94 expressway in Mt. Clemens, MI. On April 28, 2008, the parties executed two sign location leases ("Leases").

In the fall of 2009 Defendant requested that Plaintiff agree to reduce the rental rate under the Leases. After Plaintiff refused to reduce the rental rate Defendant terminated the Leases.

On August 28, 2015, Plaintiff filed its complaint in this matter ("Complaint"). The Complaint contains a claim for breach of contract (Count I) and tortious interference with business expectancies (Count II). On November 30, 2015, Defendant filed its instant motion for summary disposition. Plaintiff has filed a response and requests that the

motion be denied. On January 4, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

III. Arguments and Analysis

In its motion, Defendant contends that it did not breach the Leases by terminating them due to Plaintiff's refusal to lower the rental rates because paragraph 4 of the Leases permits it to terminate the Leases in that situation. Paragraph 4 of the Leases provides, in pertinent part:

[Defendant] may terminate this lease upon giving thirty (30) days written notice in the event the sign becomes entirely or partially obstructed in any way or in [Defendant's] opinion the location becomes economically or otherwise undesirable.

In its motion, Defendant contends that it terminated the Leases because in 2009 the rental locations at issue became economically undesirable at the rental rate provided in the Leases as a result of the severe economic downturn suffered throughout the country.

In its response, Plaintiff does not dispute that Defendant gave it 30 days written notice of its decision to terminate the Leases, or that the country in general, and this area in particular, suffered an economic downturn in 2009. However, Plaintiff contends that Defendant nevertheless breached the Leases when it terminated them. Specifically, Plaintiff asserts that wanting to pay lower rent and being able to enter into a lease in the same area for a lower amount with another lessor are not grounds for termination under the Leases.

“A contract must be interpreted according to its plain and ordinary meaning.” *Holmes v Holmes*, 281 Mich app 575, 593; 760 NW2d 300 (2008). “Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court. If the contract is subject to two reasonable interpretations, factual development is necessary to determine the intent of the parties and summary disposition is therefore inappropriate. If the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous. The language of a contract should be given its ordinary and plain meaning.” *Id.* at 594.

In this case, the Leases unambiguously provide that Defendant may terminate the Leases if, in its opinion, the locations in question become economically undesirable. In its response, Plaintiff concedes that Defendant was able to, and did, enter into leases for billboard(s) in virtually the same location with a different company for a lower rental rate than the rate provided for under the Leases. Accordingly, the Court is convinced that such circumstances rendered the locations rented under the Leases economically undesirable in light of the fact that Defendant could obtain billboard space in the same general area for less money. Consequently, the Court is satisfied that Defendant was

authorized to terminate the Leases in question based on Plaintiff's refusal to lower the rental rate. Further, because both of Plaintiff's claims are based upon their contention that Defendant was not permitted to terminate the Leases for the stated reason, a position that has been rejected by this Court, Defendant is entitled to summary disposition of both of Plaintiff's claims.

IV. Conclusion

For the reasons discussed above, Defendant's motion for summary disposition is GRANTED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order resolves the remaining claims and CLOSES this case.

IT IS SO ORDERED.

Date: MAY 18 2016

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge