

STATE OF MICHIGAN  
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

SBO, L.L.C., a Michigan limited liability  
company,

Plaintiff/Counter-Defendant,

Case No. 13-11383-CKB

vs.

HON. CHRISTOPHER P. YATES

TRANSNATION TITLE AGENCY OF  
MICHIGAN GREATER GRAND RAPIDS  
DIVISION, LLC, a Michigan limited liability  
company,

Defendant/Counter-Plaintiff.

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ORDER GRANTING DEFENDANT'S MOTION FOR  
SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

Who bears the cost when rental property remains unoccupied for more than a year despite the existence of a signed commercial lease? The answer to that question inevitably comes from the language of the lease agreement. Here, the commercial lease required Plaintiff SBO, L.L.C. ("SBO") to "deliver possession of the premises" to Defendant Transnation Title Agency of Michigan Greater Grand Rapids Division, LLC ("Transnation") on July 1, 2013. Because of a hold-over tenant, SBO was unable to deliver possession to Transnation until mid-July of 2013. Instead of moving into the premises later than anticipated, Transnation disclaimed the commercial lease by invoking language in the lease that provides: "Tenant may terminate this lease if possession is not delivered within one (1) day(s) of the commencement of the term hereof." The Court concludes that Transnation properly exercised its rights under the commercial lease based upon the delay in the delivery of possession, so the Court shall award summary disposition to Transnation under MCR 2.116(C)(10).

“Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” West v General Motors Corp, 469 Mich 177, 183 (2003). “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” Id. In considering Defendant Transnation’s motion for relief under MCR 2.116(C)(10), the Court must consider “affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to” Plaintiff SBO, which is “the party opposing the motion.” Maiden v Rozwood, 461 Mich 109, 120 (1999).

By all accounts, Plaintiff SBO intended to lease an office suite at 2301 East Paris Avenue, S.E., in Grand Rapids to Defendant Transnation as soon as the existing tenant, First American Title Insurance Company (“First American”), moved out of that suite. Indeed, in October of 2012, SBO and Transnation memorialized that understanding by executing a commercial lease. Significantly, the commercial lease contemplated a “start date” of February 15, 2013, and formally addressed the issue of possession in the following language:

If Landlord is unable to deliver possession of the premises at the commencement hereof, Landlord shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but Tenant shall not be liable for any rent until possession is delivered. Tenant may terminate this lease if possession is not delivered within one (1) day(s) of the commencement of the term hereof.

See Memorandum of Law in Support of Defendant’s Motion for Summary Disposition Exhibit D (Commercial Lease, § 13). When SBO learned that First American would not be able to move out by February 15, 2013, SBO and Transnation amended their lease to push back the commencement date to July 1, 2013, see id., Exhibit F (Commercial Lease Amendment), but that amendment did not alter in any way the provision of the commercial lease governing possession.

On July 1, 2013, First American had not yet vacated the leased premises. Plaintiff SBO had enjoyed the benefit of enhanced rent from First American for the hold-over period, see Memorandum of Law in Support of Defendant's Motion for Summary Disposition, Exhibit E (Second Amendment to Lease, § 1), but had failed to take the steps necessary to hold First American to its commitment to vacate the leased premises by July 1, 2013. As a result, SBO was unable to deliver possession of the leased space to Defendant Transnation until mid-July 2013, when First American finally moved out of the premises. On July 18, 2013, SBO sent a succinct letter to Transnation simply stating that "First American has vacated the building." Id., Exhibit H. Although First American had left behind some furniture purportedly for Transnation's benefit, Transnation never moved anything into the space. On September 11, 2013, Transnation sent a letter to SBO terminating the parties' commercial lease pursuant to the language of the provision of that lease discussing possession. With no tenant in place, SBO filed this lawsuit on December 4, 2013, alleging that Transnation had breached the terms of the commercial lease by failing to pay rent for the premises. Transnation responded with a motion for summary disposition under MCR 2.116(C)(10), contending that it simply exercised its rights under the commercial lease in response to SBO's failure to deliver possession by July 1, 2013, so SBO has no contractual right to rent payments.

In Michigan, a "fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written*." Rory v Continental Ins Co, 473 Mich 457, 468 (2005). The commercial lease spelled out the "commencement or start date" of Defendant Transnation's tenancy as July 1, 2013. See Memorandum of Law in Support of Defendant's Motion for Summary Disposition, Exhibit F (Commercial Lease Amendment). That commercial lease also prescribed the remedy for SBO's failure to comply with its obligation to deliver possession: "Tenant

may terminate this lease if possession is not delivered within one (1) day(s) of the commencement of the term hereof.” See id., Exhibit D (Commercial Lease, § 13). SBO did not advise Transnation that the hold-over tenant had “vacated the building” until July 18, 2013. See id., Exhibit H. Thus, Transnation had the unambiguous right under the parties’ commercial lease to “terminate this lease” because “possession [was] not delivered within one (1) days(s) of the commencement of the term” of the lease. See id., Exhibit D (Commercial Lease, § 13).

Plaintiff SBO implores the Court to invoke the anti-forfeiture doctrine to protect SBO from the language of its own commercial lease. This the Court cannot do under Michigan law. First, the anti-forfeiture doctrine – which broadly holds that “forfeitures are not favored in law[,]” Steinberg v Fine, 225 Mich 281, 285 (1923) – may be available to lessees in limited circumstances pursuant to Michigan law, see Geno Enterprises, Inc v Newstar Energy USA, Inc, No 232777, slip op at 10-11 (Mich App June 5, 2003) (unpublished decision), but the Court cannot find a single instance in the entirety of Michigan precedent allowing a landlord to invoke the anti-forfeiture doctrine. Second, courts may invoke the anti-forfeiture doctrine “[u]nless there is a provision in a contract clearly and expressly allowing forfeiture[.]” Id., slip op at 10. Here, the pellucid and unambiguous language of the commercial lease manifestly gave Transnation the right to “terminate this lease if possession is not delivered within one (1) day(s) of the commencement of the term hereof.” See Memorandum of Law in Support of Defendant’s Motion for Summary Disposition, Exhibit D (Commercial Lease, § 13). Even if Transnation’s termination of the commercial lease could be viewed as a forfeiture, the parties’ contract “clearly and expressly” permitted that result, so the Court cannot rely upon the anti-forfeiture doctrine to relieve SBO of the consequences of its unambiguous contract. See Geno Enterprises, No 232777, slip op at 10.

The Court's analysis leads to the ineluctable conclusion that Defendant Transnation acted well within its contractual rights in terminating its commercial lease agreement with Plaintiff SBO. Therefore, the Court must grant summary disposition to Transnation under MCR 2.116(C)(10) on SBO's claim for breach of contract, which rests upon the terms of the commercial lease agreement. This ruling not only brings to a close the litigation of SBO's only claim against Transnation, but also seems to render moot Transnation's counterclaims for rescission. Nevertheless, in an abundance of caution, the Court shall not yet declare this case closed. Instead, the Court shall schedule an interim status conference to determine whether anything remains to be done in this case.

IT IS SO ORDERED.

Dated: October 15, 2014



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HON. CHRISTOPHER P. YATES (P41017)  
Kent County Circuit Court Judge