

STATE OF MICHIGAN
COURT OF APPEALS

PALM BEACH POLO HOLDINGS, INC.,

Plaintiff/Counterdefendant-
Appellant,

v

DAVID R. RYDER, Trustee of the GERTRUDE
WINSLOW DENISON RESTATEMENT OF
DECLARATION OF TRUST DATED 2/19/88,
and DENNIS DELONG, Personal Representative
of the Estate of FRANKLIN A. DENISON, SR.,

Defendants/Counterplaintiffs-
Appellees.

UNPUBLISHED

July 25, 2006

No. 259730

Allegan Circuit Court

LC No. 02-031349-CH

Before: Talbot, P.J., and Owens and Murray, JJ.

PER CURIAM.

Plaintiff, Palm Beach Polo Holdings, appeals as of right the trial court's grant of defendants' motions for summary disposition on the ground that plaintiff failed to present any genuine issues of material fact regarding whether defendants breached the terms of a lease contract between the parties. We affirm.

I. Facts and Proceedings

Plaintiff was tenant and defendants were co-landlords under a lease for land in Saugatuck, Michigan, where plaintiff maintained a yacht-building facility. The lease provided plaintiff with an option for one renewal term of eight years, with the option being exercised by simply providing notice to defendants. Plaintiff exercised that option on March 6, 2000, leaving only the renewal amount of rent as a term to be determined under the renewal lease. Defendant Ryder began the negotiation process in May 2000. Ryder and plaintiff thereafter attempted to agree upon adjusted rent for the eight-year renewal term over the next twenty months. By an appraisal process specifically provided for in the lease, the parties eventually agreed that the renewal amount of rent would be \$25,450 per year. By that time, however, in late 2001, plaintiff had failed to pay rent for the years 2000 through 2002, even though the lease provided that the tenant should continue to pay rent at the previous amount until a new rent was determined for the renewal.

In March 2002, defendant Ryder filed a complaint in district court against plaintiff for non-payment of rent. Plaintiff responded with the instant action, alleging, among other causes of action that are irrelevant to this appeal, that Ryder breached the terms of the lease by delaying negotiations on the rent and that DeLong breached the terms of the lease by failing to take part in the rent negotiations. After discovery and extensive litigation by the parties, the trial court granted defendants' motions for summary disposition on the ground that there were no factual issues regarding plaintiff's breach of contract claim.

II. Analysis

This Court reviews de novo a trial court's grant of summary disposition to determine whether the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). In reviewing an order granting summary disposition under MCR 2.116(C)(10), a reviewing court examines all relevant documentary evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists on which reasonable minds could differ. *Shirilla v Detroit*, 208 Mich App 434, 437; 528 NW2d 763 (1995). 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. *Maiden, supra* at 120.

Plaintiff first argues on appeal that defendants breached the lease by failing to negotiate the new lease rate in good faith. We disagree. As it pertains to defendant Ryder, the documentary evidence in the record demonstrates that the rent negotiations were first mentioned in May 2000, by Ryder. Plaintiff responded in July 2000, and the negotiation process continued back and forth, without significant delay up until December 2001, when Ryder agreed to rent of \$25,450. Plaintiff can point to no supporting documentary evidence that Ryder delayed negotiations in bad faith where both parties negotiated, sometimes quickly, sometimes slowly, and where both adhered to the process for determining rent as provided in the lease. Therefore, we agree with the trial court that there was no genuine issue of material fact regarding whether Ryder breached the lease contract with respect to negotiating rent for the eight-year renewal term. The trial court appropriately granted defendants' motions for summary disposition on the breach of contract claim.¹

¹ Although plaintiff argued below that defendant DeLong's failure to participate in the negotiation process constituted a breach of the lease contract, plaintiff has failed to make that same argument on appeal. Further, plaintiff has failed to provide any authority for such a contention. An appellant's failure to properly address the merits of its assertion of error constitutes abandonment of the issue. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Therefore, we conclude that plaintiff has abandoned the issue of DeLong's alleged breach of contract based on failure to negotiate during the rent process.

In affirming the trial court's grant of summary disposition in favor of defendants, we find in the alternative that summary disposition was appropriate for defendants because, even if plaintiff could establish a question of material fact regarding breach of the lease contract, it cannot establish damages related to the breach. A party to a contract who is injured by another's breach is entitled to recover damages, but only for such injuries as are the "direct, natural, and proximate result of the breach." *Farm Credit Svcs of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 679; 591 NW2d 438 (1998). Damages are not recoverable for injuries that are too remote from defendant's breach-causing conduct. 11 Corbin on Contracts (rev ed), § 55.7, p 24. Plaintiff argues that its decision to abandon the premises was justified because of an "atmosphere of uncertainty" and "an aura of uneasiness" because it was "unable to know for certain that it will be in possession of the Property for the next 8 years." However, plaintiff was unambiguously entitled to possession under the lease, even if defendants breached the rent negotiation process. The renewal option in the lease was not conditional and, once the option was exercised by plaintiff in March 2000, plaintiff was entitled to possession under the lease for the next eight years. Therefore, summary disposition was granted to defendants on the alternate basis that plaintiff failed to show that its damages were caused by any breach.

Plaintiff also argues that the trial court improperly granted attorney fees. We disagree. The lease at issue provided that "[t]he prevailing party in any litigation hereunder shall be entitled to recover its reasonable attorneys' fees and costs, including any appeals." In a very thoughtful and well-reasoned opinion, the trial court determined that defendants were the prevailing parties and granted them most, but not all, of their fees and costs. Plaintiff challenges that finding on appeal, arguing that, because it received "some recovery" and prevailed on a few non-dispositive motions, the trial court's finding was in error.

The determination of who is a prevailing party as provided by the lease is a matter of contract interpretation, which we review de novo. *Morley v Auto Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998). A prevailing party is "[a] party in whose favor a judgment is rendered." Black's Law Dictionary (7th ed).

Plaintiff argues that it prevailed on some counts of its complaint because rent that had been escrowed in this matter was deemed appropriate and it avoided eviction, and because it obtained a confirmation that the fair market value rent was in the \$26,000 per year range. Although these facts may be true, plaintiff did not "prevail" on its issues regarding eviction and rent. The counts of the complaint pertaining to those issues were actually dismissed by the trial court because there was "not really a dispute anymore" and the issues had "been resolved." It dismissed the counts for failure to state a claim. Plaintiff, therefore, did not "prevail" on those counts.

With respect to this same argument, plaintiff argues that it was successful on many motions pertaining to discovery, amendment of pleadings, and other non-dispositive motions. Not surprisingly, plaintiff fails to cite any authority for this argument, and we are unaware of any case law holding that a prevailing party is one who is successful on non-dispositive motions, but is otherwise unsuccessful on dispositive ones. It has therefore failed to properly address the merits of its assertion, and it need not be considered. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Accordingly, we hold that the trial court correctly ruled that defendants were the prevailing parties in the litigation, thus entitling them to attorney fees and costs under the provisions of the lease.

Finally, plaintiff challenges the award of attorney fees, contending that the hourly rates charged by defendants' attorneys were not reasonable. The trial court provided a lengthy opinion and analysis below regarding whether the amount of fees sought were reasonable under the factors set forth in *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973). Plaintiff has not disputed or addressed any of the trial court's specific findings, but makes a cursory, general argument. If an appellant fails to dispute or address the basis of the trial court's ruling, this Court need not grant the relief sought. *Derderian v Genesys Health Care Systems*, 263 Mich App 364, 381; 689 NW2d 145 (2004). In any event, the trial court's decision was thorough, thoughtful, and correct.

Affirmed.

/s/ Michael J. Talbot

/s/ Donald S. Owens

/s/ Christopher M. Murray