STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1820

Scott Wickum, et al.,
Appellants,

vs.

Castle Rock Development, Inc., et al.,
Respondents.

Filed July 14, 2009
Reversed and remanded
Shumaker, Judge

Goodhue County District Court
File No. 25-CV-07-1433

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Considered and decided by Shumaker, Presiding Judge; Halbrooks, Judge; and Crippen, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

SHUMAKER, Judge

On appeal from summary judgment in favor of the lessors under an oral farm lease, appellants, as lessees, contend that the district court erred by deciding fact issues and by mischaracterizing the lease as creating a tenancy for years instead of a tenancy at will. Because the district court decided disputed, genuine fact issues, we reverse and remand.

FACTS

Claiming that they were entitled to possession of certain farmland under an oral lease that created a tenancy at will, terminable only upon proper notice, the appellants brought an action to establish the validity of the lease and for damages for breach of the lease because it was terminated without notice. The respondents, as lessors, contended that the oral lease created a tenancy for years and that the lease simply expired without renewal at the end of its final year. The district court agreed with the respondents and granted their motion for summary judgment. The appellants argue on appeal that the court erred by deciding a material fact in dispute and by mischaracterizing the nature of the lease.

Many of the underlying facts are not in dispute. They show that Ruben and Patricia Maisel owned farmland in Goodhue County. In 2002 and 2003, they leased 197 tillable acres of that land to Patricia Maisel's brother, appellant David Wickum, and to his son, appellant Scott Wickum, so that they could farm it. The Wickums paid annual rent of $20,000 in two installments, one in the spring and the other in the fall.

In August 2003, the Maisels sold all of their land, including the portion the Wickums were farming, to respondents Colin J. Garvey and his company, Garvey Construction Co. The Maisels leased back seven acres for a fixed term for their personal use, and they told Garvey about their lease with the Wickums.

During the fall of 2003, the Wickums made the second rent payment to Garvey, and Scott Wickum asked Colin Garvey about continuing to rent the farmland. Garvey indicated that he would rent the land to the Wickums but that he did not want to enter a long-term lease because he eventually planned to develop the property for residential use. They then agreed on a per-acre rental rate payable in two installments, as had been the arrangement under the Maisel lease. The Garvey lease was also oral.

The Wickums farmed the land in 2004, 2005, and 2006 under the terms to which the parties had agreed in 2003.

The Maisels' seven-acre lease expired in December 2006, and they vacated the property. In January 2007, Scott Wickum contacted Garvey to get his permission to use a building on the Maisel seven acres for equipment storage. Garvey told Wickum that he would no longer lease to the Wickums and that they should vacate the property. Garvey's determination precipitated the Wickums' lawsuit.

D E C I S I O N

When reviewing an appeal from summary judgment, we must determine whether any genuine issue of material fact exists and whether the district court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Our standard of review on these issues is de novo. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644

N.W.2d 72, 77 (Minn. 2002). The evidence is to be considered in a light most favorable to the nonmoving party. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). But the nonmoving party must do more than rest on the mere averments of the pleadings. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

In its memorandum in support of its order for summary judgment, the district court determined that "[a]t no time did . . . Garvey agree to automatic renewals or extensions of the lease." The court indicated that in the fall of 2004 and in the fall of 2005, Scott Wickum contacted Garvey to discuss a lease for the respective succeeding years and the parties agreed to the same terms as had been established for the 2004 lease. The court also noted that the parties had no discussions in 2006 about a lease for 2007. The court further observed that the Wickums had asked Garvey to sign a governmental farm subsidy form for 2005 and 2006 but they requested no signature for 2007. From these facts, the court concluded that it could not "agree with the [Wickums] that the agreement in dispute was a tenancy at will. In fact, the evidence suggests that the agreement between the parties was a series of year to year leases that were independent of each other."

The nature and terms of a lease of real property depend on the intent of the parties. *Larson v. Archer-Daniels-Midland Co.*, 226 Minn. 315, 318-19, 32 N.W.2d 649, 651 (1948). "Intent" is that which the parties have manifested objectively through their words, oral or written, and through their conduct. *Capital Warehouse Co. v. McGill-Warner-Farnham Co.*, 276 Minn. 108, 114, 149 N.W.2d 31, 35-36 (1967). The threshold question here is what type of lease did the Wickums and Garvey intend.

The Wickums argue that the parties intended a tenancy at will. When a tenant possesses land for an indefinite period with the landlord's consent, a tenancy at will exists. *Thompson v. Baxter*, 107 Minn. 122, 124, 119 N.W. 797, 798 (1909); *see also* Minn. Stat. § 504B.001, subd. 13 (2008). The principal characteristics of this type of tenancy are the uncertainty of the term of the lease and the right of either party to terminate it upon proper notice. *Thompson*, 107 Minn. at 124, 119 N.W. at 798. The Wickums contend that Garvey did not give to them the requisite notice to terminate their tenancy at will.

Garvey urges that his agreement with the Wickums created a tenancy for years. Such a tenancy exists when a lease provides for a definite term and then expires at the end of that term unless it is renewed by the parties. *Quade v. Fitzloff*, 93 Minn. 115, 116, 100 N.W. 660, 661 (1904). Because a tenancy for years expires at the end of the term fixed by the lease, no notice of termination is required.

In concluding that the lease in question was a tenancy for years, the district court relied on four facts that the district court believed were undisputed. First, Garvey never agreed to automatic renewals of the lease. It is undisputed that Garvey never expressly agreed to automatic renewals, but evidence presented through Scott Wickum's affidavit submitted in opposition to the motion for summary judgment describes conduct by Garvey that supports an inference of a continuous lease for an indefinite period. Factual inferences, issues of credibility, and the weight of the evidence are questions for a jury to decide. *Nord v. Herreid*, 305 N.W.2d 337, 339 (Minn. 1981); *see also PJ Acquisition Corp. v. Skoglund*, 453 N.W.2d 1, 17 (Minn. 1990) ("Its function on a motion for

summary judgment is not to resolve issues of fact, but to determine whether they exist."). By drawing the inference that Garvey never agreed to automatic extensions of the tenancy, the district court usurped the jury's function.

The second fact the district court viewed as undisputed was that in the fall of 2004, and then again in the fall of 2005, Scott Wickum discussed with Garvey "a new lease for [the] upcoming season." This conduct supports an inference that the parties considered each lease to be for a one-year term and that, at the end of each term, the parties affirmatively renewed the lease. Garvey's affidavit supports this inference, but Scott Wickum's affidavit is entirely to the contrary. He states that he spoke to Garvey in 2003 to obtain a lease beginning in 2004 and then "only had one other conversation . . . with him, that being on January 24, 2007." In his affidavit, David Wickum states that he never contacted Garvey in the fall of 2004 or 2005 to discuss the lease. In ruling that Scott Wickum had contacted Garvey in 2004 and 2005 to discuss renewals of the lease, the district court chose to accept as true Garvey's statement to that effect and thus improperly decided a credibility issue.

The third fact on which the district court relied in granting summary judgment related to the governmental farm-subsidy form the Wickums asked Garvey, as landowner, to sign. The court noted that the form referred only to a specific crop year rather than to an indefinite duration. From that fact, which is undisputed, the court concluded that "the parties were working under the assumption that the particular lease pertained to that year only," showing that the parties had entered a fixed-term lease that ended in 2006. The Wickums argue that the subsidy form had nothing to do with the

duration of their tenancy but rather is a yearly verification of the fact of their farming of the land so as to be eligible for a subsidy for that year. They further note that their omission of a 2007 form is irrelevant because the form is not due until April 1. The district court necessarily inferred from the submitted and omitted forms an acknowledgment by the Wickums that their leases were for fixed one-year terms. This is an inference to be drawn, if at all, by a trier of fact and is not proper on summary judgment. If the district court weighs facts, the summary judgment should be reversed. *Smith v. Woodwind Homes, Inc.*, 605 N.W.2d 418, 423 (Minn. App. 2000).

Finally, the district court notes that, in January 2007, the Wickums delivered a written lease for 2007 to Garvey and states that "[i]f the [Wickums] had believed they had a tenancy at will for the farm property in 2007, they certainly would not have produced a written lease agreement in attempt to rent the property." As with the other conduct the district court accepted as established fact, the district court draws an inference as to the meaning and significance of the proposal of a written lease for 2007. That is an inference the trier of fact may draw, but the district court may not on summary judgment.

Thus, the district court erred by granting summary judgment when there are genuine issues of material fact to be decided. These issues must be resolved to determine whether the parties intended a tenancy at will, requiring notice to terminate, or a tenancy for years, which expired in 2006 and was not renewed.

The district court also briefly discussed Garvey's defense that the statute of frauds bars the enforcement of an oral lease. The proper resolution of this issue also likely

depends on the determination of the threshold question of what the parties intended their lease relationship to be.

Reversed and remanded.