

MMSTATE OF MICHIGAN
IN THE 14TH CIRCUIT COURT

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WEST MICHIGAN DOCK & MARKET
CORPORATION,
Plaintiff,

Case No. 22-3962-CZ

v

HON. KENNETH S. HOOPES

THE CITY OF MUSKEGON,
Defendant.

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Opinion and Order Granting Plaintiff's Motion for Summary Disposition

Plaintiff, West Michigan Dock & Market Corporation (Mart Dock), moves for summary disposition of this action in its favor under MCR 2.116(C)(8) and (C)(10). Motions under MCR 2.116(C)(8) test the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). The court, however, assumes that Mart Dock is not challenging the legal sufficiency of its own complaint. Defendant, The City of Muskegon, argues that the court should decide this motion under MCR 2.116(C)(9), for the legal sufficiency of its answer. But Mart Dock does not discuss the legal sufficiency of either pleading. It argues facts instead. Relief under MCR 2.116(C)(8) is therefore DENIED and the court will examine the factual sufficiency of Mart Dock's claims.

Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The opponent must set forth specific facts showing that there is a genuine issue for trial. MCR 2.116(G)(4). The court must make all reasonable inferences from the evidence and in favor of the non-movant to decide whether a genuine issue of material fact exists. *Skinner v Square D Co*, 445 Mich 153, 161–62; 516 NW2d 475 (1994).

The City executed a contract, the Development Agreement, with a private developer. The agreement called for the City to convey a certain parcel of real estate to the developer and to extinguish easements on it that were dedicated to public use. The agreement also recites that the developer “plans” to build a marina and boat-storage facility on the parcel, the Project. The easements were to be extinguished when the city conveyed the property. The pertinent documents show that the city conveyed the parcel for the consideration of \$1 and extinguished the two easements for \$1 as well. (that is, 50 cents each). Mart Dock complains that these transactions violated Michigan’s 1963 Constitution. And there was no public hearing on the extinguishments, which Mart Dock complains violates the Muskegon City Code.

The City questions Mart Dock’s standing—without having moved to reconsider the finding that it does. The rule is that “a resident taxpayer of a municipality has sufficient interest, and has the right to maintain a bill . . . to restrain the diversion of money or property in his town or city from any public use in which he shares to which it has been dedicated.” *Kirchen v Remenga*, 291 Mich 94, 106; 288 NW 344 (1939). Mart Dock, a resident taxpayer, seeks to restrain the City from diverting property from its dedicated public use that Mart Dock shares in. Mart Dock has standing.

For this motion, Mart Dock argues that the court found the conveyance and extinguishments are void. That is a misreading of the January 2023 Opinion and Order. The court ruled that the Development Agreement is void for lack of consideration but that questions remain of whether the disputed transactions violated the 1963 Michigan Constitution and the Muskegon City Code.

Without moving to reconsider the ruling that the Development Agreement is void, the City reargues the issue here. The City contends that because the court cannot summarily decide factual questions, it could not have ruled on consideration. But proper interpretation of a contract is a question of law. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002). A valid contract requires legal consideration. *Innovation Ventures v Liquid Manufacturing*, 499 Mich 491, 508; 885 NW2d 861 (2016). This court decided only a legal question: not that there was insufficient consideration but that there was no consideration and so the Development Agreement has no legal effect.

As to the issues raised in this motion: Municipalities may not give away public property without a consideration. *Kaplan v Huntington Woods*, 357 Mich 612, 619; 99 NW2d 514 (1959). Mere inadequacy of consideration, not accompanied by other elements of bad faith, will not warrant cancellation of a deed unless it is so inadequate as to be convincing evidence of fraud or so grossly inadequate as to shock the conscience of the court. *Olson v Rasmussen*, 304 Mich 639, 643; 8 NW2d 668 (1943). The court must respect the judgment of the Legislative and Executive Branches unless either has clearly abused its discretion. *Alan v Wayne Co*, 388 Mich 210, 326–27; 200 NW2d 628 (1972). If the City made a valuable conveyance for next to no consideration, then it abused its discretion. See *Id.* at 327.

The sole consideration recited in the deed conveying the parcel to the developer was \$1, and that in the Termination of Dedication of the easements together was \$1. Neither document recites any other consideration and the City itself describes the amounts as “nominal.” The parcel is valuable lakefront property and the easements are dedicated public spaces. The City gave them to the developer for \$2 and nothing else. The court found in its January 2023 Opinion and Order that the lack of consideration for the Development Agreement shows bad faith in these transactions. Also, as discussed below, the City was out of compliance with the Muskegon City Code in the manner in which it terminated the easements. This is another instance of bad faith. The court finds that \$2 for the transactions is insignificant and was accompanied by bad faith. The City therefore violated Article 7, § 26, of Michigan’s 1963 Constitution. It gave City of Muskegon property away for a private purpose without compensation.

Finally, the court does not agree that the “proper public purpose” of improving the economy is legal consideration for the transactions, because the Project is not authorized by statute. A city is barred from loaning its credit for any public purpose “except as provided by law.” Const 1963, art 7, § 26. This means that the City cannot give away land without statutory authority for a public purpose. *Sinas v Lansing*, 382 Mich 407, 412; 170 NW2d 23 (1969). There is no evidence or argument from the City that the “public purpose” it asserts was authorized by statute. The transactions are void.

Regarding Count II, for the City’s violation of the Muskegon City Code’s provisions for closing streets: The court must liberally construe the Code’s provisions to give effect to the city council’s intent. Code 2023, § 1-2. “The term ‘street’ means any . . . public place . . . dedicated or devoted to public use.” *Id.* The “Dedication” recorded

in 1991 states that the grantor “does hereby forever dedicate and set apart for the use and enjoyment by the general public the use of” the easements at issue here. The court finds that these easements, dedicated to public use, are streets by definition under the Muskegon City Code. Streets “shall be” vacated according to Chapter 74, Article VII, of the Code. Muskegon City Code 2023, § 74-271. A request to vacate a street must first be presented by petition to the zoning administrator. Code 2023, § 74-272. The zoning administrator must submit the petition to the planning commission, which must give notice of and hold a public hearing on the petition. Code 2023, § 74-273. Following the hearing, the commission must recommend to the city commission whether all or part of the petition should be granted. *Id.* The city commission must then determine whether to grant all or part of the petition. Code 2023, § 74-274.

None of these required steps took place when the City extinguished the public-use easements. The extinguishments of the easements are therefore void for this reason as well as being unconstitutional.

The 1963 Michigan Constitution bars the transactions here, and the easement terminations violate the City’s Code as well. This motion is therefore GRANTED.

IT IS SO ORDERED. This order resolves all issues and closes the case.


February 19, 2023



Kenneth S. Hoopes (P53469)
Circuit Judge

CERTIFICATE OF MAILING

I hereby certify that on the 20 day of February 2023 I personally handed or mailed copies of this order to the parties above named at their respective addresses by ordinary mail.



Annette Jones, 14th Circuit Court
Assistant to the Hon. Kenneth S. Hoopes