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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1168**

Two Harbors Country Inn, LLC,
Appellant,

vs.

Reid Lassonde,
Respondent.

**Filed May 11, 2010
Reversed and remanded
Shumaker, Judge**

Lake County District Court
File No. 38-CV-08-516

William D. Paul, Duluth, Minnesota (for appellant)

Gerald J. Brown, Chanhassen, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Klaphake, Judge; and Shumaker, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

In a dispute over entitlement to a billboard after the expiration of the lease of the property on which the billboard was erected, the district court granted summary judgment, awarding the billboard to the lessor landowner. Appellant lessee contends that

a genuine fact issue exists as to whether appellant abandoned the billboard. We agree and reverse and remand.

FACTS

In 1995, appellant Two Harbors Country Inn, LLC leased a portion of William Ostman's land on which to erect a billboard to advertise Country Inn's business. Ostman sold the land on April 3, 2007, subject to the lease, to respondent Reid Lassonde.

The term of the lease was 36 months, but the parties agreed that the lease would automatically renew for an additional 36 months unless terminated in writing 60 days before the lease expired. The parties also agreed that the billboard, called the "ad display" in the lease, would remain Country Inn's property and that County Inn would have 60 days to remove it after termination or expiration of the lease.

Country Inn and Lassonde engaged in a dispute over whether the lease continued to renew automatically for successive 36-month terms unless terminated, or rather converted to a month-to-month at-will tenancy after the expiration of the first renewal term.

Country Inn sued Lassonde in 2008, seeking the district court's declaration that the lease remained in effect through successive automatic renewals, or, in the alternative, seeking permission to remove the billboard and related structures and equipment.

Lassonde counterclaimed. Among the affirmative relief he sought were money damages for rent and continuing trespass, and a court order declaring the billboard abandoned if Country Inn failed to remove it within 20 days.

Lassonde moved for summary judgment. The district court granted the motion, dismissing Country Inn's action, ruling that the lease had terminated in 2007, awarding money damages to Lassonde, and awarding to Lassonde "all rights of ownership, dominion over and control of the land and all improvements and structures located thereon on the date hereof." Thus, the district court awarded the billboard to Lassonde. The court did not state any basis for the award of the billboard. This appeal followed.

D E C I S I O N

"On appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

Because the district court provided neither a statement in its order nor a memorandum explaining the reason for its award of the billboard to Lassonde, we are left to infer the basis for that award. The only plausible inference we can draw from the facts of the case is that the district court concluded that, because Country Inn left its billboard on Lassonde's property well after the lease allegedly terminated or expired, Country Inn abandoned the billboard.

"Abandonment is the voluntary relinquishment of an interest by the owner with the intent of terminating his ownership." *Loppe v. Steiner*, 699 N.W.2d 342, 350 (Minn. App. 2005) (quotation omitted). Intent to relinquish rights to property is an essential element of abandonment. *Erickson v. Sinykin*, 223 Minn. 232, 240, 26 N.W.2d 172, 176 (1947). An express declaration of intent is not required for intent "may be inferred from

the situation of the property and the conduct of the person who has placed it so as to lead to the conclusion that it has been abandoned.” *Id.*

Equally unhelpful to us as the court’s order are the parties’ briefs. Country Inn cites no legal authority for its arguments except one case on the general proposition of when summary judgment is appropriate. Similarly, Lassonde cites no authority on the issue of abandonment, although he argues it in the brief.

Despite the fact that all concerned persons have left us to engage in some speculation, the record demonstrates sufficient admissible evidence to create a genuine issue of material fact on the question of abandonment. Thus, summary judgment was inappropriately granted.

Furthermore, the court’s award of damages is potentially contradictory because, if Country Inn had no lease rights and had abandoned the billboard, there was no legal basis for an award of damages in either rent due or compensation for trespass. All issues must be remanded.

Reversed and remanded.