IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

WHC PROPERTIES, LLC,)	
Plaintiff,)	C.A. No. CPU4-12-003052
)	
v.)	SPEED
)	
MARTHA MORGAN and)	
METROPOLITAN APPAREL, INC.,)	
Defendants.)	

Submitted: February 18, 2013 Decided: March 7, 2013

DECISION AFTER TRIAL

ROCANELLI, J.

This is a breach of contract/debt collection action. Defendant Metropolitan Apparel, Inc. did not file an answer and a default judgment was entered on the docket. Trial proceeded against Defendant Martha Morgan.

The parties concede that a contract existed between Plaintiff WHC Properties, LLC ("WHC") and Ms. Morgan. Specifically, it was agreed that Ms. Morgan leased commercial property from WHC. The parties also agreed that Ms. Morgan breached her contractual obligation to pay rent to WHC. The only question the Court was called upon to decide was what damages have been suffered by WHC.

It is the position of WHC that Ms. Morgan failed to pay a total amount of \$28,241.66 in rental payments due. Plaintiff also requests an award for court costs and reasonable attorneys' fees. It is the position of Ms. Morgan that the lease agreement was modified by Timothy Humphries, a principal of WHC. Ms. Morgan contends that, under the modified agreement, she only owes WHC \$1,450.00.

Trial was held on February 18, 2013, and the Court reserved decision. At trial, the Court heard the testimony of two witnesses: Christopher Cresswell, who is employed as the controller for WHC, and Ms. Morgan. Also, documentary evidence was submitted by both parties. This is the Court's decision after trial.

Facts

On the Civil Case Management Order submitted January 10, 2013, WHC listed as its only witness Timothy Humphries, a principal in WHC and "the person most knowledgeable regarding the course of dealings with defendants." However, Mr. Humphries was not present for the trial. Instead, Christopher Cresswell was the sole witness to testify for WHC. Mr. Cresswell testified that he is employed by WHC as a controller, and that he is tasked with managing records and collecting rent that is in arrears. Mr. Cresswell testified that he reviewed the books and records pertaining to Ms. Morgan's account with WHC but that he had no personal knowledge about any discussions between Ms. Morgan and Mr. Humphries regarding the lease.

According to Mr. Cresswell, per the lease terms, WHC rented commercial space to Ms. Morgan at a rate of \$2,000 per month. In October 2010, the terms of the agreement were modified. Per the modification, the square footage of the rental unit was reduced and the lease rate was reduced to \$1,500 per month. Throughout her tenancy, Ms. Morgan periodically fell

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¹ Plaintiff's Exhibits 1, 3, 4, 5, and 6 were admitted into evidence. (There was no Plaintiff's Exhibit 2.) Defendant's Exhibits 1 and 2 were admitted into evidence. Joint Exhibits A through F were also admitted into evidence.

² Civil Case Management Order, ¶ 5.

³ On October 16, 2012, the parties were sent notice of the February 18, 2013 trial date. James W. Owen, Esquire, attorney for WHC, stated that Mr. Humphries was unavailable to appear at trial. According to Mr. Owens, Mr. Humphries did not realize trial was scheduled for Presidents' Day, and he was spending the holiday with his family. Ms. Morgan objected to the substitution of the Plaintiff's witness without proper notice.

behind on rental payments. According to Mr. Cresswell, when Ms. Morgan terminated her lease and vacated the premises in June 2012, the total outstanding balance due on her account was \$28,214.66.⁴

Ms. Morgan testified that, on a number of occasions, Mr. Humphries modified the terms of the lease agreement. According to Ms. Morgan, it was customary for such agreements to be made orally by herself and Mr. Humphries, and that Mr. Humphries would follow up with a written confirmation. Ms. Morgan submitted into evidence a handwritten note from Mr. Humphries on his business stationary in which Mr. Humphries indicated that Ms. Morgan owed only a total of \$2,200. This note was dated May 4, 2012 and represented, according to Ms. Morgan, the final modification of the contract. She claimed that Mr. Humphries waived past due amounts under the lease.

The May 4, 2012 note stated: "Martha – See attached for what is due. Let me know if you have any questions." Mr. Creswell agreed that the signature on the note was Mr. Humphries' signature. Attached to the hand-written note was a document from WHC Properties, LLC, titled "Payments and Credits for MORGAN'S." The document listed payments on the account from January 2012 through May 2012. Below the payments ledger was a handwritten message which read:

1500/mo x 5 mos = 7500 PAID IN (5300) DUE 2,200

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⁴ Mr. Cresswell testified that, when a payment is received, it is applied to the oldest outstanding obligation.

⁵ Joint Exhibit E.

⁶ Joint Exhibit F.

Ms. Morgan also submitted into evidence a receipt for a payment of \$750.00 made on May 7, 2012.⁷ Ms. Morgan argued that since she already paid \$750.00 on the \$2,200.00 balance due, she owes WHC \$1,450.00.

Ms. Morgan's testimony and presentation of documentary evidence were uncontroverted. Mr. Cresswell testified that he was not privy to any conversations between Mr. Humphries and Ms. Morgan or any or modifications of the lease to which they agreed. Indeed, according to Mr. Cresswell, he did not even begin working for WHC until on or about May 21, 2012 – after the May 4, 2012 note was written and just a few days before Ms. Morgan vacated the premises at the conclusion of her almost twenty-year tenancy at this location. Therefore, Ms. Morgan's testimony and the May 4, 2012 note are the sole evidence of the final modification of the lease terms.

Analysis

A written contract may be modified by subsequent oral agreement.⁸ A provision in a contract prohibiting amendment except by writing does not conclusively invalidate subsequent oral modifications.⁹ The parties to a contract are free to "amend the agreement in any way they see fit and by any mode of expression they see fit. They may, by their conduct, substitute a new oral contract without a formal abrogation of the written agreement."¹⁰ The burden is on the party asserting the oral modification to "prove the intended change with 'specificity and directness as

⁷ Joint Exhibit F.

⁸ Reeder v. Sanford School, Inc., 397 A.2d 139, 141 (Del. 1979).

⁹ See Pepsi-Cola Bottling Co. of Asbury Park v. Pepsico, Inc., 297 A.2d 28, 32 (Del. 1972).

¹⁰ *Id.* at 33.

to leave no doubt of the intention of the parties to change what they previously solemnized by formal document."

WHC argued that, although Mr. Humphries "generously tried to work with [Ms. Morgan]," the terms of the lease could not be modified except in writing. Paragraph 32(d) of the lease agreement reads:

(d) This Agreement contains all the terms and conditions agreed to by the Owner and Tenant and shall not be amended or revoked except by a written instrument executed with the same formality as this Agreement.

However, despite the prohibition of oral modifications in lease paragraph 32(d), the record evidence supported Ms. Morgan's contention that the parties modified the written lease many times over the years. For example, the parties agreed that the lease agreement was modified by Mr. Humphries and Ms. Morgan in October 2011, when rent was decreased to \$1,500.00 per month and the lease space was reduced. The modification was not made by a formal written instrument, as required by Paragraph 32(d). Rather, the only written record of the oral modification is a brief reference to the modification in a letter from Mr. Humphries to Ms. Morgan dated December 31, 2010.¹²

Therefore, the May 4, 2012 modification conforms to the prior conduct of the parties who previously modified important lease terms such as payments due and owing and the space being leased by Ms. Morgan. Like the October 2011 modification, the May 4, 2012 modification was not executed by formal written instrument. Instead, it was made by an oral agreement, and was subsequently confirmed by an informal reference in writing by Mr. Humphries. The writing was sufficiently specific and direct to indicate that the balance due on the Morgan account was

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¹¹ Continental Ins. Co. v. Rutledge & Co., Inc., 750 A.2d 1219, at 1230 (Del. Ch. 2000) (quoting Reeder, 397 A.2d 139, at 141).

¹² Plaintiff's Exhibit 4.

\$2,200.00. It is WHC who characterized Mr. Humphries as "generous," and there is nothing to

contradict Ms. Morgan's testimony that the generous Mr. Humphries specifically and directly

made the oral modification on May 4, 2012.

Based on the evidence presented, the Court finds that the oral and written

communications between Mr. Humphries and Ms. Morgan constituted a valid modification of the

lease agreement, pursuant to which WHC is entitled to a judgment in the amount of \$1,450.00.

THEREFORE, JUDGMENT IS HEREBY ENTERED in favor of WHC

Properties, LLC and against Martha Morgan in the amount of \$1,450.00, pre-judgment

interest from the date of suit until today, court costs, and post-judgment interest at the

legal rate.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli

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