

IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY  
COURT NO. 17

COURT ADDRESS:  
23730 SHORTLY ROAD  
GEORGETOWN DE 19947

CIVIL ACTION NO: JP17-13-003264

PIRAEUS REALTY VS TIDELINE GALLERY ET AL

SYSTEM ID: @2595964  
TIDELINE GALLERY INC  
146 REHOBOTH AVE  
UNIT 4  
REHOBOTH BEACH DE 19971

Appearances: Deirdre A. McCartney, Esquire, represented the plaintiff.  
John F. Brady, Esquire, represented the defendants.

Before: Sheila G. Blakely, Deputy Chief Magistrate; John C. Martin  
and Michelle Jewell, Justices of the Peace

Martin for the Court

**NOTICE OF JUDGMENT/ORDER**

The Court has entered a judgment or order in the following form:

On July 1, 2013 the plaintiff filed this action seeking to recover unpaid rent, attorney's fees and possession of the commercial property located at 146 Rehoboth Avenue, Unit 4, Rehoboth Beach, Delaware. Trial was held on August 5, 2013 and on August 9, 2013 a judgment was entered on behalf of the plaintiff. On August 15, 2013 a timely appeal of this judgment was filed by the defendant pursuant to 25 *Del.C.* §5717. This is the judgment and Interim Order of the three Judge Panel hearing this appeal as a *trial de novo*.

**HISTORY**

The plaintiff's Office Manager testified that the parties entered into a commercial lease agreement for the subject property effective January 1, 2012 to December 31, 2014. The base rent began at \$3,570.00 per month and increased over the term of the lease. Rent was due on the first of every month and was considered late after the tenth of the month. The Office Manager testified that the rent was paid late almost every month since the lease began. In mid 2013 she received a copy of a letter dated June 20, 2013 directed to the defendants by the plaintiff's counsel. This letter demanded the payment, within five days, of \$9,589.50 in rent and other charges, which were then due, or the lease would be considered terminated. The letter cited 25 *Del.C.* §5502 as the authority for this demand. The amount due was not paid within the five day period and as a result, this action was filed. As of the

date of trial, the defendants still owed the plaintiff a total of \$5,455.15, consisting of unpaid rent of \$311.86, real estate taxes of \$1,164.23, property insurance of \$446.14 and attorney's fees of \$3,532.92.

## DISCUSSION

During the trial the defendants objected to the introduction of the plaintiff's notice letter because there was no evidence that the notice had actually been mailed or otherwise delivered to the defendants. The Court withheld a ruling on this objection but now sustains it and prohibits consideration of the document as to its value as a notice.

That is because the letter was prepared by the plaintiff's counsel, who appeared at the trial as an advocate for the plaintiff, not a witness, and of course, could not testify about the document. *Gay v. Delmarva Pole Building Supply Inc*, 2008 WL 2943400 (Del.Super.) The plaintiff's Property Manager testified that she received a copy of the letter but did not testify in any way about how it was prepared or if it was ever sent to the defendants. Mr. Hammond was never questioned as to whether or not he ever received the letter. Therefore, there was no evidence to support the authenticity of the letter and lacking this, the Court cannot consider it for the value imputed by the plaintiff, which was that the defendants were given notice of their default in making payments to the plaintiff as specified therein.

In any event, the value of this document as a notice was largely meaningless because there is no requirement in the lease that the defendants be notified about anything, including their default of its terms. So, the plaintiff was under no obligation to have sent the notice at all.

The plaintiff never presented a clear statement as to the basis of its claim that the defendants' alleged defaults should lead to possession of the property being awarded to it. For example, the notice letter described above stated that its demands were being taken pursuant to §5502 of Delaware's Landlord-Tenant Code (Code); however, this section relates to evictions from residential property, not commercial property. In fact, §5101(b) of the Code specifically excludes commercial rental agreements from most of its coverage and states that the legal rights, remedies and obligations under any agreement for the rental of a commercial unit shall be governed by general contract principles.

In this case, these principles are reflected in the parties' written lease. The language of this lease fails to establish any grounds for eviction except for paragraph 9, which states that "The parties agree that Lessee's failure...to pay late fees...shall constitute a default of this lease and shall be grounds for eviction". The plaintiff only presented one witness in this case and that person made no mention of late fees and whether they were even considered as part of the plaintiff's complaint.

The lease did mention other possible defaults by the defendants but none connected the defaults to eviction. For example, another part of paragraph 9 mentions late payments and states that such failure "constitutes a default of this Lease, and incurs a late fee of ten percent of such unpaid amount". This language makes it clear that remedies other than eviction were included in the lease.

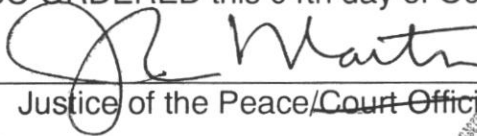
The plaintiff bears the burden of proof by a preponderance of the evidence. In view of the above, the Court finds that this burden was not met because the plaintiff never established that it was entitled to possession of the rental property, based on applicable law or the remedial provisions of the lease.

However, the Court does find that the plaintiff met its burden of proof as to the rent, taxes and insurance owed by the defendants, which totaled \$1,922.23. But, before the Court can make a final decision on damages, the plaintiff must submit a detailed affidavit of attorney fees it has assessed against the defendants.

INTERIM ORDER

The plaintiff is ordered to provide the Court with a detailed affidavit of attorney fees within five days. The defendants have an additional five days to submit any comments on the affidavit. The Court will enter a final order in this case after review of these responses.

IT IS SO ORDERED this 04th day of October, 2013



Justice of the Peace/Court Official (SEAL)

