



STATE OF DELAWARE
JUSTICE OF THE PEACE COURT No. 13
1010 CONCORD AVENUE
CONCORD PROFESSIONAL CENTER
WILMINGTON, DELAWARE 19802

TELEPHONE: (302) 577-2550

SYSTEM ID: @2610401
MATASSINO PROPERTIES, LLC
C/O JANET Z. CHARLTON, ESQUIRE
1 RIGHTER PARKWAY
SUITE 130
WILMINGTON, DE 19803

VS.

Civil Action No: JP13-13-010849

SYSTEM ID: @2610402
ALPINE AUTO SALES, LLC
1602 N. DUPONT HIGHWAY
NEW CASTLE, DE 19720

SYSTEM ID: @2610403
HEIDI CEDENO EL ABBADI
4 MELANIE DRIVE
NEW CASTLE, DE 19720

ORDER

March 20, 2014. Trial de novo held. The panel consisted of Judges Bonita N. Lee, Katharine B. Ross, and James R. Hanby, Sr. Plaintiff Matassino Properties, LLC, who is the landlord, was represented by Janet Z. Charlton, Esq. Defendants Alpine Auto Sales, LLC and Heidi Cedeno El Abbadi were represented by Elwood Eveland, Esq. Trial was originally heard January 23, 2014 were judgment for possession was awarded to Plaintiff.

Plaintiff filed suit for possession of commercial property when rent was not timely paid. When rent was paid, a reservation of rights letter was sent, preserving Plaintiff's right to go forward with the action. Defendants have consistently paid rent late.

Defendants' position was they have not wrongfully failed to pay the rent. They admit they pay late, but question whether or not it is a breach of the contract.

Matassino Properties, LLC and Alpine Auto Sales, LLC entered into a lease agreement on 9/14/06. The rental term was for four years and nine months beginning 9/1/06 and ending 4/30/11. On 12/29/06, the lease was amended, which did not affect the payment schedule. A 2nd option was taken,

and the lease continued, an individual lease agreement guaranty was signed by Heidi Cedeno El Abbadi on 5/1/11. This option expires in 2016.

Defendant uses the property for the sale of used cars. Rent is due monthly on the 1st. Any monthly rent not paid within five days of the due date is subject to a late charge of 5%. Any rent not paid for more than five days after the due date is in default of the lease.

Plaintiff witness, Daniel M. Matassino, testified that a 5 day letter went out 8/6/13 for nonpayment of rent, and including a 5% late fee for the month of August. He states a partial payment was not made until 9/3/13, which was after the suit was filed on August 23rd. A reservation of rights letter was mailed 9/6/13. He testified to other months when rent was not timely paid in 2013. Demand letters were sent January 17th, February 11th, March 6th, and July 10th. After each payment was made Plaintiff testified a reservation of rights letter went out. He stated that as of the date of trial, all rent has been paid. However there are some late fees still outstanding.

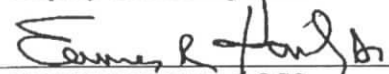
Any rental agreement for a commercial rental unit is excluded from the Landlord Tenant Code except for chapters 57, 61 & 63. The lease is governed by general contract principles. The lease provides what occurs during a default and the remedies the landlord has in paragraph 20. While the Court acknowledges that this paragraph could have been written better, it was not persuaded that the paragraph was ambiguous. Reading the entire paragraph makes it clear what the landlord's remedies are when the tenant defaults. The paragraph provides for seven instances when the lease would be defaulted. In this case, subsection (b) states that the *Tenant shall be in default in the payment of any installment of Rent, or any other sum herein specified to be paid by Tenant for more than five (5) days after the date the same is due.* The paragraph gave the landlord several remedies they could take. One remedy under the paragraph was to file for ... *summary dispossession proceedings or by any suitable action or proceeding at law....*

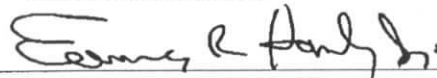
After hearing the testimony of Mr. Matassino and reviewing the various notices sent to the Defendants and other documents presented, the Court holds Plaintiff satisfied their burden of proof based on the preponderance of evidence standard that they are entitled to possession. Plaintiff's testimony showed Defendants' pattern of lateness, not a onetime occurrence. The Defendant therefore breached the lease by not timely paying the rent. Plaintiff's testimony was unrefuted as no defense was presented.

Judgment for possession and court costs is therefore awarded to Plaintiff Mastassino Properties, LLC against Defendants Alpine Auto Sales, LLC and Heidi Cedeno El Abbadi.

IT IS SO ORDERED this 01st day of May, 2014


for BONITA N. LEE
Deputy Chief Magistrate


for KATHARINE B. ROSS
Justice of the Peace


JAMES R. HANBY, SR.
Justice of the Peace

