

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

MELISSA RICHARDSON, )  
TRADING POST PLAZA, LLC, )

Plaintiff, )

v. )

C.A. No. CPU6-14-000114

JENNIFER LAYFIELD, )

Defendant, )

Submitted November 18, 2014

Decided December 3, 2014

*Dierdre McCartney, Esquire, counsel for Plaintiff*

*Defendant is pro se*

**DECISION AFTER TRIAL**

In this case the Court must determine whether Plaintiff Melissa Richardson and/or Trading Post Plaza, LLC, is entitled to unpaid rent pursuant to a commercial lease agreement with Defendant Jennifer Layfield. Plaintiffs allege that they are the proper party in interest to sue for the unpaid rent and that they are entitled to \$36,677 which represents the unpaid rent, bad check fees, service fees, and late charges.

Plaintiffs are not seeking rent for any period after Defendant vacated the premises on January 9, 2014 despite there being over 18 months left on the lease term. Defendant claims that she is relieved of any obligation to pay rent to Plaintiffs as the lease was

between her and Robert L. Richardson, Melissa Richardson's husband, who is now deceased. Defendant further claims that Plaintiff has not obtained a new business license since Mr. Richardson died, and thus she is not legally entitled to recover the delinquent rent. For the reasons stated below, the Court finds for the Plaintiffs.

### **FACTUAL BACKGROUND**

Robert L. Richardson/Trading Post Plaza, (hereinafter "Trading Post") entered into a commercial lease with Jennifer Layfield in her capacity as owner of Dragon's Lair on August 20, 2008. According to the lease, Dragon's Lair is a retail store selling adult novelties, tattoos, and piercings. Defendant Layfield is the owner of this business.<sup>1</sup> The term of the lease was for five years commencing on August 1, 2010 with a monthly rent of \$2,300.<sup>2</sup> Defendant Layfield signed the lease on behalf of Dragon's Lair as the owner of the business and also signed as guarantor personally guaranteeing all financial obligations under the lease.<sup>3</sup> The parties performed under the lease until January 9, 2014 when Defendant vacated the premises at Plaintiff's request due to nonpayment of rent.<sup>4</sup> Unfortunately, through the course of the lease Defendant fell behind in rent by either submitting bad rent checks or failing to make any payment at all.<sup>5</sup>

Plaintiff Melissa Richardson was called as a witness to establish ownership of the property, its line of succession, and her standing to recover the delinquent rent on

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<sup>1</sup> See Plaintiff's Exhibit 1.

<sup>2</sup> The lease agreement lists the rent as \$2,415. The parties later orally stipulated that the rent be \$2,300.

<sup>3</sup> See Plaintiff's Exhibit 1.

<sup>4</sup> See Plaintiff's Exhibit 5.

<sup>5</sup> See Plaintiff's Exhibits 1 and 2, Defendant's Exhibit 1.

behalf of Trading Post. Melissa Richardson testified that she and Robert, her husband, were owners of the property where Trading Post is located. She stated that at the time of the execution of the lease, she and her husband owned the property as tenants by the entirety with the right of survivorship.<sup>6</sup> Melissa Richardson testified that upon her husband's death on January 24, 2009,<sup>7</sup> all of his interest and rights to the property passed to her by operation of law and that she is the successor in interest due to her husband's death.

Melissa Richardson testified that on March 28, 2012, she deeded the property to Trading Post Plaza, LLC, a limited liability corporation which she created to consolidate certain tracts of land she owned that had previously been conveyed to Trading Post Plaza. Melissa Richardson further testified that she is the managing member of Trading Post Plaza, LLC. She testified that she recognized the March 28, 2012 deed to the property<sup>8</sup> and the death certificate of her husband<sup>9</sup>. She further testified that she was the successor in interest under the terms of the lease agreement. The Court found Melissa Richardson's testimony to be credible and supported by her documentary evidence.

Defendant called Victoria Wolverson (hereinafter "Wolverson") to testify. According to the Defendant, Wolverson is Defendant's bookkeeper. Wolverson presented hearsay testimony that she spoke with someone at the Delaware Department

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<sup>6</sup> See Plaintiff's Exhibit 7.

<sup>7</sup> See Plaintiff's Exhibit 6.

<sup>8</sup> See Plaintiff's Exhibit 5.

<sup>9</sup> See Plaintiff's Exhibit 7.

of Revenue who told her Robert Richardson's business license was in effect until 2016, that it was an error, and that it should have been deleted and reissued under Melissa Richardson's name.

Plaintiff called Jodi Thompson (hereinafter "Thompson") of Wilgus Associates to testify regarding Defendant's rent account. Thompson testified that she is a Property Manager for Wilgus Associates and that she has been with Wilgus Associates for 21 years. Thompson served as the property manager of Trading Post at all times during the term of the lease. Thompson identified Plaintiff's Exhibit 2 as the Dragon's Lair Consumer Balance Detail which represents an accounting of the monthly rent charges and payments made during the lease term.<sup>10</sup> Thompson testified that during 2011, 2012, and 2013, Defendant sporadically paid rent with checks that were returned due to insufficient funds and/or did not pay the monthly rent.<sup>11</sup> Thompson also testified that as of the time Defendant vacated, there were missed rental payments totaling \$35,024.94.<sup>12</sup> In addition to delinquent rent, Thompson testified that Defendant had accumulated \$42.00 in returned check fees and \$1,601.24 in late fees on the account.<sup>13</sup>

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<sup>10</sup> Plaintiff's Exhibit 2 also includes an accounting of Defendant's account from February 1, 2009 through July 1, 2010. As of August 1, 2010, Defendant had an outstanding balance of \$2,900.

<sup>11</sup> See Plaintiff's Exhibit 4.

<sup>12</sup> See Plaintiff's Exhibit 2 at 3.

<sup>13</sup> See Plaintiff's Exhibit 3.

Defendant, through Wolverton's testimony, introduced 22 checks made out to "Trading Post Plaza" ranging from \$2,300 to \$3,000.<sup>14</sup> Wolverton presented hearsay testimony that Trading Post Plaza LLC was not formed until June 2009. She testified that she did not find a business license for Trading Post Plaza or a business license with Melissa Richardson's name attached to it through the Delaware Department of Revenue.

On cross-examination, Plaintiff's counsel cross-referenced the checks from Defendant's Exhibit 1 with Plaintiff's Exhibit 2 – the Customer Balance Detail. Plaintiff's counsel directed Wolverton to the check date and the corresponding receipts in the Customer Balance Detail for all 22 checks. All of the checks were accounted for in the Customer Balance Detail.

### DISCUSSION

To prevail on a breach of contract claim, a plaintiff must prove three (3) elements by a preponderance of the evidence:

- (1) the existence of a contract, whether express or implied;
- (2) the breach of an obligation imposed by the contract; and
- (3) resultant damage to the plaintiff.<sup>15</sup>

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<sup>14</sup> See Defendant's Exhibit 1. The check dates were as follows: January 4, 2011; February 5, 2011; March 2, 2011; April 1, 2011; May 10, 2011; June 1, 2011; July 14, 2011; August 6, 2011; September 15, 2011; October 10, 2011; October 19, 2011; November 9, 2011; December 9, 2011; April 6, 2012; May 21, 2012; July 6, 2012; August 1, 2012; September 4, 2012; January 25, 2013; February 5, 2013; and March 19, 2013.

<sup>15</sup> *VLIW Technology, LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

Before the Court determines the breach of contract claim, it must first address Defendant's argument that Plaintiff lacks standing to bring suit.

#### **A. Plaintiff's Standing to Bring Suit**

Defendant argues that Plaintiff has no standing to bring suit against her because of the death of Robert Richardson, the original lessor. Specifically, Defendant argues that the lease agreement should have terminated upon Robert Richardson's death.

Defendant also made arguments regarding Robert Richardson and Melissa Richardson's business licenses or lack thereof.

The Court finds Defendant's arguments frivolous for two reasons. First, Melissa Richardson is the successor in interest under the lease agreement. Under Section 20 of the lease agreement titled "Heirs, Assigns, Successors," the lease states: "This lease is binding and inures to the benefit of the heirs, assigns, and successors in interest to the parties."<sup>16</sup> According to the March 28, 2012 deed transfer<sup>17</sup> and Melissa Richardson's testimony, all of the interests and rights to the property passed to her as tenants by the entirety with right of survivorship as a result of her husband Robert Richardson's death on January 24, 2009. Moreover, Melissa Richardson testified that she, along with her husband, was an owner of the property when the lease was executed. Therefore, during the term of the lease – August 1, 2010 to January 9, 2014 – the right to enforce the lease belonged to Melissa Richardson.

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<sup>16</sup> See Plaintiff's Exhibit 1 at 5.

<sup>17</sup> See Plaintiff's Exhibit 6 at 2.

Second, Defendant's argument that the lease must be terminated due to the death of one party is prohibited by her performance on the contract. Defendant performed under the lease agreement by occupying the property and made 31 rent payments after Robert Richardson's death. Defendant cannot claim there was no lease when her actions were of a person engaged in a lease agreement.

Defendant's argument regarding the lack of a business license for Melissa Richardson is moot. Melissa Richardson was the rightful owner of the property and possessed the right to enforce the lease. Additionally, the Court applied no weight to the testimony of Defendant's witness Victoria Wolverton pertaining to the business license as she lacked the proper foundation to testify on the issues at trial.

Therefore, this Court finds that the Plaintiff established standing to recover the unpaid rent. Further, Plaintiff has established a contractual relationship between Plaintiff and Defendant, has proven a breach through non-payment of rent and has proven damages based on documentary evidence and testimony.

#### **B. Damages**

At the end of trial, Plaintiff requested the Court render a verdict in its favor in the amount of \$36,667. Plaintiff provided the Court with Exhibit 2 – the Customer Balance Detail, and Exhibit 3 – a detail of past-due rent and late fees totaling \$36,668.18. The Court has carefully considered the evidence presented by each party. After

consideration, the Court has determined that the Plaintiff is entitled to \$34,954.94 in damages.

**1. Rollover Balance**

Plaintiff's Customer Balance Detail provided a listing of payments made and charges rendered to Defendant's account. Prior to August 1, 2010, the starting date of the lease agreement, Defendant had an outstanding account balance of \$2,900 from some prior rental agreement with Plaintiff. On January 11, 2011, Defendant's account was credited with a "Credit Memo" of \$2,300. On April 18, 2011, Defendant made a payment of \$600. Each of the payments were made in addition to the monthly rent payment. After the \$600 payment was made, Defendant's account balance was reduced to \$0 thereby eliminating the delinquent rent of \$2,900 under the prior agreement. The Court has determined that these two payments were made in conjunction with the \$2,900 rollover balance. Thus, Defendant's balance on its account as of April 18, 2011 was reset to \$0.

**2. Late Fees**

Plaintiff's Exhibit 3 – a detail of past-due rent and late fees – lists late fees totaling \$1,601.24. There are no explicit terms under the lease agreement that contemplate late fees, return check fees or service fees. Therefore the Court will not impose outstanding late fees, return check fees or service fees on Defendant as they were not contemplated in the agreement.



### 3. Total Damages

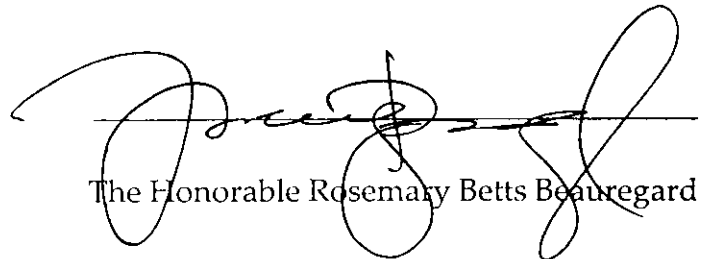
From May 1, 2011 to January 9, 2014, Defendant occupied the premises and owed \$74,289.94 in rent at the rate of \$2,300 per month. Of that amount, Defendant paid only \$39,335, leaving a balance of \$34,954.94.

The Court finds from the evidence presented that Plaintiff is entitled to damages in the amount of \$34,954.94.

### CONCLUSION

The Court finds that Defendant breached its lease agreement with Plaintiff by failing to pay \$34,954.94 in rent. Therefore, the Court finds that the Defendant is liable to the Plaintiff in the amount of \$34,954.94, court costs and post-judgment interest.

IT IS SO ORDERED, this 3<sup>rd</sup> day of December 2014.



The Honorable Rosemary Betts Beaugard