



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: @2511
BESTFIELD PROPERTIES LLC
200 MARY ELLA DRIVE
WILMINGTON, DE 19805

VS.

Civil Action No.: JP13-17-001760

SYSTEM ID: @2937689
MANNA MINISTRIES
430 CENTURY BLVD
WILMINGTON DE 19808

Appearances:

Plaintiff Bestfield Properties LLC, represented by Robert J. Valihura, Jr., Esq.
Defendant Manna Ministries Inc., represented by Form 50 Agent Philbert Davenport

Before: Lee, D.C.M.; Ross, J.; Hanby, J.

Heard: April 17, 2017
Decided: May 24, 2017

ORDER ON TRIAL DE NOVO

This matter comes before a three-judge panel as an appeal of a summary possession action pursuant to 25 Del. C. 5717. The case was originally heard before a single Judge (Roberts, J.) on March 22, 2017. At the conclusion of that trial, a judgment of dismissal without prejudice was entered against the Plaintiff Bestfield Properties, LLC against Defendant Manna Ministries. Plaintiff filed a timely appeal. Trial de novo was held on April 17, 2017. This written Order memorializes the decision rendered in open court following trial.

The parties entered into lease agreement for a commercial property located at 430 Century Blvd, in New Castle, De. On December 19, 2017, the landlord sent thirty day letter to the Defendant demanding rent for November and December plus late fees in the amount of \$13,920.97. The thirty day letter was sent Federal Express and certified mail. On February 6, 2016, Plaintiff filed the instant summary possession case for unpaid rent and possession. Plaintiff received payment of \$13,920.97 on February 7, 2017. Plaintiff sent a reservation of rights letter on February 9, 2017, acknowledging receipt of the rental payment on February 7, 2017, in the amount of \$13,920.97. The letter also advised the Defendant that although the rent payment was being accepted, Plaintiff intended to pursue an action for summary possession.

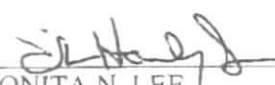
Plaintiff argues it sent proper notice under the commercial lease and is therefore entitled to judgment for rent and possession. Rodman Mullins, leasing agent for the Plaintiff submitted evidence that the demand letter sent Federal Express was delivered on December 20, 2016, and signed for by R. Jackson. Plaintiff points to paragraph 27 of the lease which states that all notices and any exercise of a right of termination must be in writing and shall be deemed effective either: (a) on the date personally delivered to the address provided in the lease; (b) on the third business day after being sent, by certified or registered mail; (c) on the first business day after being deposited with a nationally recognized overnight delivery service, or (d) on the first business day after the date delivered by facsimile to the number provided in the lease.


Defendant argues it paid all rent due and owing during the 30 day cure period, therefore Plaintiff could not bring an action for summary possession. Defense witness, Sylvia Hall testified the delinquent rent notice was received January 10, 2017, and the entire amount of rent demanded was tendered to the building owner on February 7, 2017. Defendant points to paragraph 21 of the lease, which allows thirty days after receipt of written notice of default to cure the default, and if not cured, authorized the landlord to pursue an action for possession. She submits a USPS tracking receipt for certified mail that was accepted at the post office on December 19, 2016, and delivered January 10, 2017. Although the tracking receipt shows attempted delivery on December 31, 2016, the notice was not received by the Defendant until January 10th. The witness denied receipt of the thirty day notice sent by Federal Express. According to her testimony, the church was closed for the Christmas holiday until after New Year's Day and no employees of the church would have been present to sign for a mail delivery. She further denied knowledge of anyone named R. Jackson.

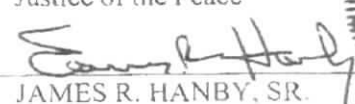
Finding

After consideration of the testimony and evidence, and applying the preponderance of evidence standard, the Court finds the Defendant acted in accordance with the contract by paying the delinquent rent within the 30 day cure period. The Court finds the testimony and evidence supports the Defense position that the default notice was not received by them until January 10, 2017, to be credible. Therefore, the February 6, 2017 filing of the instant action, demanding rent in the amount of \$13,920.97 and possession was filed prematurely. Accordingly, the case is dismissed and possession remains with the Defendant.

IT IS SO ORDERED this 24th day of May, 2017.

(for) 
BONITA N. LEE
Deputy Chief Magistrate

(for) 
KATHARINE B. ROSS
Justice of the Peace


JAMES R. HANBY, SR.
Justice of the Peace

