IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

A. NICK NASTATOS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No.: 2002-10-284
	)	
HAMDI HALLAK,	)	
	)	
Defendant.	)	

Date Submitted: May 3, 2004
Date Decided: May 19, 2004

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FINAL ORDER AND OPINION

This is an appeal *de novo* brought pursuant to 10 Del. C. § 9570 *et seq.* Trial in the above captioned matter took place on Monday, May 3, 2004. Following the receipt of evidence and testimony, the Court reserved decision. This is the final order and decision by the Court.

This is a debt action for unpaid rent, property taxes, equipment rental and property damage. Plaintiff, A. Nick Nastatos (hereinafter "Nastatos"), alleges that Defendant, Hamdi Hallak (hereinafter "Hallak") failed to pay an agreed upon $200 increase in rent per month from December 2001 to May, 2002. Nastatos further alleges Hallak failed to pay rent for the months of June, July, and August of 2002 at $1050 per month and failed to pay for 23 days in September in the amount of $805. Nastatos' complaint also seeks $958.18 for equipment rental, $900 for

unpaid property taxes for 2001-2002 and $2,181.00 for property damage. Nastatos' total claim is for $9, 189.18 plus pre- and post-judgment interest and costs.

Hallak admitted liability in his answer for rent up to September 9, 2002, but has denied the rate claiming the parties had agreed to modify the lease. Hallak also admitted liability for the unpaid equipment rental fees and property taxes. Halluk denied liability for any property damage. Hallak asserted a counter-claim for a set-off for Nastatos failure to return his $2,000 security deposit and $7,450 for valuable property he was not able to remove from the property. Therefore, the only issues for this Court to decide are the applicable rental rate, amount due if any for alleged property damage, and whether Defendant's counterclaim was proven by a preponderance of the evidence.

THE FACTS

The testimony at trial indicated that on or about March 23, 2001, Nastatos and Hallak entered into a commercial lease agreement for Hallak to lease a unit in his shopping center located at 3322 Old Capital Trail, Wilmington, Delaware. Hallak was to use the unit as a deli/pizzeria. The lease was to begin May 1, 2001 and run for five years with the lessee having the option of renewing the lease for an additional five years. (Plaintiff's Exhibit "1"). The payment schedule set forth in a rider to the lease indicated that for the first six months the rent due would be $800 a month and thereafter would escalate to $1000 a month for the next six months. Following the first year of the lease, the rent would increase on a yearly basis.

At trial, Nastatos testified that Hallak paid the rent for the first six months of the lease with no problems. The rent was increased after December of 2001 to $1000 but Hallak was unable to pay the increase. Nastatos testified Hallak was behind in the rent because his business was not doing well. Nastatos agreed to allow Hallak to pay $800 a month with the understanding that once Hallak sold his business, he would pay the additional amount due on the rent. Nastatos

testified that he never agreed to waive the increase in rent altogether and Hallak was supposed to pay the amount due at a later date.

Nastatos testified that sometime in September of 2002, a sign was placed in the window of the rental unit saying the pizzeria was closed for vacation, but would reopen September 13, 2002. Sometime after that, someone notified Nastatos that they had seen Hallak moving items out of the unit in the middle of the night. Police were later notified and came to the premises to ensure Hallak did not remove any property belonging to Nastatos. Nastatos further testified as to the condition in which Hallak left the property and photographs were introduced into evidence. (Plaintiff's Exhibit "2"). Nastatos also submitted "proposals" for the alleged damage to the property. (Plaintiff's Exhibits 3 through 6)[1].

On cross-examination, Nastatos admitted that he had drawn up three of the four proposals admitted into evidence for the work done to the unit. He testified he did not have any cancelled checks. He also testified that he had not returned the $2,000 security deposit to Hallak.

Hallak testified that his business was not doing well after September 11, 2001. He and Nastatos made an agreement for him to continue to pay only $800 in rent. According to Hallak, Nastatos told him not to worry about the rest. Hallak testified that he and Nastatos were friends so their agreement was not put into writing. He admitted to leaving before the lease expired since the business was not doing well. He rented a U-haul truck to remove his property. He was unable to retrieve all of his property because the police told him not to return. He testified that

[1] Plaintiff's Exhibit "3" is a proposal from All About Glass for furnishing and replacing a glass door. Plaintiff's Exhibit "4" is a proposal for replacing a bathroom door. Plaintiff's Exhibit "5" is a proposal for cleaning up restaurant equipment from the parking lot. Plaintiff's Exhibit "6" is a proposal for painting the interior of the unit. The Court notes that Plaintiff's Exhibits "3" through "6" appear to be form proposals. It is unclear from viewing Exhibits "3" through "5" who prepared the proposals. The handwritten name "A. Picky Painter, Inc." appears at the top of Exhibit "6."

he did not damage the property and his security deposit was never returned to him. Defendant's Exhibits "1" through "3" were admitted into evidence in support of Defendant's counterclaim.[2]

The Court received testimony on rebuttal from Kyong-Suk Asamoto. Ms. Asamoto testified that she is the fiancé of Nastatos. She testified that certain property owned by Nastatos was missing from the rental unit, in particular a showcase. She testified that she contacted the police.

OPINION AND ORDER

Plaintiff has a burden of proving the underlying debt action by a preponderance of the evidence. *See, e.g. Asset Recovery Services, Inc., LLC. v. Process Systems Integration, Inc*., C.A. No.: 1999-10-124, Court of Common Pleas, N.C. 2002 Lexis C.P. 55, Welch, J. (February 6, 2002). As to the issue of the rental rate, this Court finds by a preponderance of the evidence that Defendant breached the commercial lease agreement by failing to pay the increased rental rate as scheduled in the rider to the lease. It was undisputed the parties signed the instant lease and rider. The interpretation of contractual language is a question of law to be decided by the Courts. *Pellaton v. Bank of New York*, Del. Supr., 592 A.2d 473, 478 (1991). If the language is clear and unambiguous, Courts must give the language its plain meaning. *Phillips Home Builders v. The Travelers Ins. Co.*, Del. Supr., 700 A.2d 127, 129 (1997).

There are no ambiguities in the instant lease and this Court does not find there was a waiver by the Plaintiff of the rental rate increase. Therefore, Defendant is responsible for the rental rate increases as scheduled in the rider of the lease. Defendant must pay rent due from December 2001 through May 2002 in the amount of $1200. The Court finds Defendant is also responsible for rent due for June, July, and August, 2002 in the amount of $3,150. This Court

[2] Defendant's Exhibit "1" is a video showing the rental unit and property located therein. Defendant's Exhibit "2" is a proposal/contract dated May 8, 2001 from Commercial Equipment & Design, Inc. showing restaurant equipment purchased by Hallak. Defendant's Exhibit "3", handwritten by Hallak, is a list of equipment and their values which Hallak alleges were not returned to him.

also finds that Defendant must pay the $805 rent for the 23 days in September 2002. Defendant admitted liability for equipment rental in the amount of $953.18 and for unpaid property taxes in the amount of $900. The Court awards Plaintiff Five Thousand and Eight Dollars and Eighteen Cents ($5,008.18) with pre- and post-judgment interest at the legal rate.[3] *See e.g.,* 6 *Del. C.*. §2301 *et seq*.

As to the issue of property damage, this Court finds by a preponderance of the evidence that Plaintiff has failed to prove the Defendant damaged the rental unit. This Court finds no evidence of actual damages. Plaintiff, by his own admission, produced self-serving documents to show damages. No cancelled checks were marked or received into evidence. Furthermore, this action was not brought seeking recovery under a theory of *quantum meruit*.

As to Defendant's counter-claim, the Court finds by a preponderance of evidence that the Defendant is entitled to a set-off for the failure of the Plaintiff to return his security deposit in the amount of $2,000. The Court enters judgment in favor of Defendant and against the Plaintiff on defendant's counterclaim for the security deposit as a set-off in the amount of Two Thousand Dollars ($2,000). The Court finds on Defendant's counter-claim for replevin or set-off in the amount of $7,450 was not proven by a preponderance of the evidence and enters judgment in favor of Plaintiff, as said counter-claim was not proven by a preponderance of evidence in the trial record. Each party shall bear their own costs.

IT IS SO ORDERED this 19th day of May, 2004.

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John K. Welch
Associate Judge

[3] The amount of damages awarded by the Court takes into consideration the set-off in the amount of $2,000 for Plaintiff's failure to return of Defendant's security deposit.