November 30, 2004

Stephen J. Gehouskey
73 Springbrook Lane
Newark, DE 19711
Pro-se Plaintiff

Mr. Eric Eisenberg
1993 Carol Drive
Wilmington, DE 19808
Pro-se Defendant

Re: ***Stephen J. Gehouskey v. Eric Eisenberg***
Case No. 2003-06-656

Date Submitted: November 15, 2004
Date Decided: November 30, 2004

LETTER OPINION

Dear Mr. Gehouskey and Mr. Eisenberg:

This is an *appeal de* novo brought from Magistrate's Court pursuant to 10 *Del. C.* §9570 *et* seq. Trial in the above captioned matter took place on Monday, November 15, 2004. Following the receipt of evidence and testimony the Court reserved decision. This is the Court's Final Decision and Order. For the reasons set forth below the Court enters judgment in the amount of $38.30 in favor of the Plaintiff. The Court finds that the balance of plaintiffs claims were not proven by preponderance of the evidence and therefore enters judgment in favor of the defendant. Costs shall be borne equally by the parties.

THE FACTS

Stephen J. Gehouskey ("Plaintiff") seeks in his *pro-se* Complaint filed in the Court of Common Pleas certain monies as a result of a rental dispute with Eric Eisenberg ("Defendant").

The total amount sought by Plaintiff is $13,708.30. The amount sought represents late fees for garages A1, B1 and C1 constituting $3,420.00; rent for a storage area and late fees constituting $9,900.00; and finally Plaintiff seeks in his prayer for relief late fees for garage A2 constituting $350.00. These claims were plead in Magistrate's Court as well as his complaint *de novo* in this Court. Finally, the Court notes that there is an electrical charge claim by the plaintiff for the month of March, 2003 in the amount of $38.30.

Defendant has answered the Complaint and denied all allegations. In the pretrial stipulation the Defendant asserted that "no late fees or storage fees were requested by Plaintiff until a physical confrontation (Stephen assaulted me) took place."

Plaintiff presented his case in chief at trial as follows.[1]

Plaintiff has been in the storage rental business since 1986 and rents property such as garages, open space and other buildings at Old Harmony Road in Newark, Delaware. Since 1973 he has increased Defendant's rent at Building A2 from $250.00 to $350.00. In January 1996 he increased Building A1 to $400.00 per year and in 1996 Building B1 was $250.00 per year after Defendant moved out of A2. In July 1998, Building D1 was rented for $200.00 per month and in January 1999 Building C1 was $300.00, but Defendant moved out to Building D1. In February, 2002 Building A2 was rented to Defendant for $250.00.

In January 2002 there was a fire in Buildings A, B and C. Defendant continued to use the storage area 50' x 60' and 75' x 15' squares detailed in Plaintiff's Exhibit No. 1. Plaintiff claims Defendant has been continuously late for approximately ten years in making payments

[1] Plaintiff's introduced the following exhibits at trial; Plaintiff's Exhibit No.: 1 was a cardboard sketch of the property detailing the storage areas; Plaintiff's Exhibit No.: 2 was photographs A-I detailing the subject rental property which is the subject of this dispute; Plaintiff's Exhibit No.: 3 were leases marked A-E; Plaintiff's Exhibit No.: 4 was a copy of an electrical bill which is the subject of $38.30; Plaintiff's Exhibit No.: 5 was a letter from Gehouskey to Eisenberg; Plaintiff's Exhibit No.: 6 was an invoice dated June 27, 2001; and finally, Plaintiff's Exhibit No.: 7 was a letter from Gehouskey to Eisenberg dated October 1, 2001.

and rental fees and therefore seeks these monies. These items are detailed in his Complaint in subparagraph 1.

As detailed in Plaintiff's Exhibit No.: 1 there is a pink area on a sectional chart detailing the subject storage areas for which Plaintiff seeks monies from defendant for rent. Plaintiff contends that Defendant did not pay rent for this storage area and has also incurred late fees in defendant failing to make timely rental payments. Plaintiff also introduced a bill for $38.30 in electrical services into evidence without objection which allegedly has not been paid by the Defendant. Plaintiff contends that he "is in the business to make money from rent" and has never rented properties to defendant "for free". Plaintiff believes that the monies sought in paragraph 3 of his Complaint total $13,708.30 for late fees for garages A1, B1 and C1 and rent for storage area as well as late fees for garage A2. Plaintiff testified at trial that this is the substance of his lawsuit brought *de novo* in this Court and is clearly detailed in paragraph 1 of the Complaint.

Defendant cross-examined in detail the Plaintiff concerning his own exhibits, which were also moved into evidence by stipulation with no objection by Plaintiff.[2]

Plaintiff admitted that following the fire in 2002 at the subject rental property the parties never executed a separate Lease for the outside storage areas which is detailed in Plaintiff's Exhibit No.: 1. In fact, Plaintiff concedes no Lease was signed after all leases expired after the initial one year term when they were originally executed.

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[2] Defendant's Exhibit No.: 1 was an invoice from Schneider Trailer and Container Rental dated August 23, 2003; Defendant's Exhibit No.: 2 was a listing of payments and accounts receivable; Defendant's Exhibit No.: 3 was a check no.: 3538 from Eric Eisenberg to Lynn Gehouskey dated March 30, 2002; Defendant's Exhibit No.: 4 was a check no.: 3608 from Eric Eisenberg to Lynn Gehouskey dated May 31, 2002; Defendant's Exhibit No.: 8 was an invoice dated November 17, 2001; Defendant's Exhibit No. 9 was a letter from Mary to Steve dated December 15, 2000; and finally Defendant's Exhibit No.: 10 was a letter from Mary to Steve regarding $3,550.00 payment.

The Defense presented its case in chief. Marilou Eisenberg ("Marilou") presented testimony and detailed the payments Defendant has already made to plaintiff on late fees. Marilou agrees that "some rental payments" were late but usually maintenance water problems in the buildings caused by Plaintiff's failure to maintain the building were the result of withheld rent by Eisenberg in order to get repairs done on the rental properties. Marilou testified that check No.: 3538 was made out for $3550.00 and on the front of the check was a notation that "February, March 2A plus late fees PD in full to date". Marilou contends that as of the date of the check, March 30, 2002, all late fees were paid that were due and owing to the Plaintiff. Marilou presented testimony that there was no such agreement with the defendant to pay rent for the outside storage area. Marilou contends that there was no claim for the outside storage area by the Plaintiff after the fire. Marilou testified that the Plaintiff told defendant in her presence "I'll give you space in the upper shop rates for $250.00" but "absolutely" discussed no such rental payment for the outside storage area. Nor did she indicate at trial that a signed lease agreement was ever entered into between the parties.

On cross-examination Marilou denied the check no. 3538 had been changed or altered in any way.

Finally, Marilou agreed with the Plaintiff's testimony that no new Leases were executed after all first original Leases for the rental buildings were signed by the parties. The parties simply "rolled over" the agreement previously entered into in writing without further written agreement. In January 2002 though March 2003. No new Lease agreements were ever executed or signed by the parties for Building A-2.

Erika R. Morton ("Morton") presented testimony at trial. Morton was present on the evening of the fire in the buildings which burnt to the ground. Morton contends that Plaintiff

offered the previous buildings rented by the Defendant for $250.00 and never mentioned fees for the outside storage area. See, Plaintiff's Exhibit 1. She is the fiancée to the Defendant. Morton testified these statements by the plaintiff were made on the date of the fire in front of all parties, including the defendant, while they were talking to the Plaintiff about the fire.

On rebuttal, Plaintiff called Defendant as his witness. Eric Eisenberg was sworn and testified. He testified Building A2 included a rental fee of $250.00 but he paid $350.00 instead as his exhibits introduced into evidence indicated.

THE LAW

A party seeking judgment in an action for debt must prove the underlying claim and subject dispute by a preponderance of evidence in order to recover. *See e.g.. Wirt v. Matthews,* C.C.P. N.C., C.A. No. 199-12-271, 2002 CP Lexis 17, January 17, 2002 (Welch, J.); *Asset Recovery Asset Recovery Services LLC. v. 12th Street Associates, L.P.,* C.C.P. N.C., C.A. No. 2002-03-384, 2003 Del. C.P. Lexis 13, March 6, 2003 (Welch, J.).

OPINION AND ORDER

A review of the original Lease Agreement dated November 6, 1995 details the terms and conditions of the rental agreement between the parties. See, Plaintiff's Exhibit No. 3. Plaintiff outlined at trial in his testimony the relationship between the parties and the agreed upon rent for these rental properties that were made with the Defendant. The issue before the Court is whether the monies sought by Plaintiff in his complaint and specifically paragraph 3 for late fees for garages A1, B1 and C1 for $3,400.00; the rent for storage areas and late fees for all buildings in the amount of $9,900.00; and finally the late fees for garage A2 sought in paragraph 3 of Plaintiff's Complaint of $350.00 were proven by a preponderance of the evidence at trial.

From the testimony presented at trial it appears the only claim proven by a preponderance of evidence at trial was the $38.30 for the electrical charge for March, 2003. Clearly Plaintiff entered into these written agreements and as his testimony provided at trial, the parties never formally executed new leases in writing once the original Lease expired. Instead, the parties assumed the agreement between the parties was a "roll-over" with no formal written rental contract. Much of the documentary evidence introduced at trial by both parties were handwritten writings detailing the parties dispute as to rent and late payments. No contemporaneous contracts or writings memorialize what is a confusing record before the court. In addition, the Court also finds the credibility of the parties was equally balanced. In short, neither party told a more credible story at trial. After consideration of the exhibits offered into evidence at trial by both parties the Court is unable to reconcile whether the judgment Plaintiff seeks in this Court de novo is a bona fide debt as a result of the parties oral agreements. Nor did Plaintiff's own testimony at trial convince the court he should be awarded these monies by a preponderance of the evidence.

Finally, it is clear to this Court that rent for the outside storage area was not contemplated between the parties. No writing was offered into evidence which could cause the court to conclude such a rental agreement was consummated. In fact, several fact witnesses for the Defendant, including the Defendant's fiancée, provided factual specificity that on the night of the fire the Plaintiff offered the storage are at no cost to the defendant. The Court therefore declines to award judgment for these monies to the Plaintiff and enters judgment in Defendant's favor.

The Court also finds the late fees as sought in Plaintiff's Complaint in the amount of $3,420.00 for January, 1999 were not proven by a preponderance of evidence following trial. By Defendant's own admission and as the witnesses for the defendant so testified, Plaintiff assumed

the Rental Agreements were "rolled over" without any further execution of a written document. Judging the credibility of both parties' witnesses at trial, as well as Plaintiff's and Defendant's exhibits introduced into evidence without objection, Plaintiff simply did not meet the necessary burden of proof of preponderance of evidence. *See, e.g.* *Wirt v. Matthews*, C.C.P. C.A. No. 199-12-271, 2002 CP Lexis 17, January 17, 2002 (Welch, J.)

The Court therefore finds all claims Plaintiff asserted at trial absent the electrical bill of $38.30 were not proven by a preponderance of the evidence.

The Court therefore enters judgment in the amount of the electrical bill for March 2003 in the amount of $38.30 plus post-judgment and pre-judgment interest from the date of the filing of the complaint. 6 *Del. C.* §2301 *et seq.* Each party shall bear their own costs.

IT IS SO ORDERED this ____ day of November, 2004.

John K. Welch
Associate Judge

Cc: Barbara C. Dooley
CCP Case Manager