

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

DIRECT CAPITAL CORPORATION)	
)	
Plaintiff,)	
)	
v.)	C.A. No. N11C-02-087 PLA
)	
ULTRAFINE TECHNOLOGIES, INC.)	
and BERHAN TECLE,)	
)	
Defendants.)	

UPON PLAINTIFF DIRECT CAPITAL CORPORATION'S MOTION
FOR SUMMARY JUDGMENT

DENIED

Submitted: December 2, 2011

Decided: January 3, 2012

John R. Weaver, Jr., Esquire, Stark & Stark, Wilmington, Delaware,
Attorney for Plaintiff.

Neal J. Levitsky, Esquire, Fox Rothschild LLP, Wilmington, Delaware,
Attorney for Defendants.

ABLEMAN, J.

This 3rd day of January, 2012, it appears to the Court that:

1. This is a breach of contract action in which Plaintiff Direct Capital Corporation (“Direct Capital”) seeks to recover unpaid rent and associated fees in the amount of \$55,764.30 from Defendants Ultrafine Technologies, Inc. and its agent Behran Teclé (“Teclé”). The defendants concede that they stopped making rent payments in September 2010. Direct Capital now moves for summary judgment, claiming that no genuine issues of material fact exist in this case. After reviewing the record in this case, the Court finds that there remain issues of fact to be decided and will deny the plaintiff’s motion for summary judgment.

2. The present dispute arises from an equipment lease between Direct Capital and Ultrafine beginning November 14, 2007. Under the terms of the lease, Ultrafine was to make sixty monthly payments in the amount of \$1865.64 each to Direct Capital, with the option to purchase the equipment at the end of the lease term. Teclé, the president of Ultrafine, agreed to act as guarantor. According to the Complaint, Ultrafine and Teclé stopped making monthly payments in September 2010. The Complaint charged that a total of \$51,438.59 was owed under the lease. In connection with its motion for summary judgment, Direct Capital submitted an affidavit from one of its collection officers asserting that the amount owed under the lease

as of November 22, 2011 was \$55,764.30.¹ This total included (1) past due and current rent, (2) accelerated rent, (3) late fees, (4) a lease termination fee, (5) a \$1.00 lease buy-out, and (6) collection charges.² Direct Capital further asserted that there were no set-offs, credits or allowances due or allowed to grow due from Direct Capital to Ultrafine and Tecle.³

3. In their Answer to the Complaint, the defendants do not dispute that they stopped making payments on the lease in September 2010.

However, they assert that the actual monthly payments that they had made from November 2007 until September 2010 are greater than the amount required in the lease.⁴ Furthermore, in their response to Direct Capital's motion for summary judgment, Defendants contend that the amount owed under the lease is approximately \$48,506.64.⁵ In particular, Defendants dispute the \$4,428.77 in late fees on the grounds that this amount includes charges that they believe were not part of the original lease's terms.⁶

4. Summary judgment is appropriate where the record presents no genuine issue of material fact and the moving party is entitled to judgment as

¹ Ryan Hodson Affidavit, November 22, 2011 at ¶ 14.

² *Id.*

³ *Id.* at ¶ 15.

⁴ Answer at ¶ 8.

⁵ Defendants' Response in Opposition to Motion for Summary Judgment at ¶ 10.

⁶ *Id.* at ¶ 12.

a matter of law.⁷ When considering a motion for summary judgment, the Court must view the record in the light most favorable to the non-moving party, and the Court must draw all reasonable inferences in favor of the non-moving party.⁸ On a motion for summary judgment, the moving party bears the initial burden of showing that there are no material facts in dispute.⁹ If the moving party meets this burden, then the burden shifts to the non-moving party to set forth specific facts in its response to the motion for summary judgment that go beyond the bare allegations of the complaint.¹⁰

5. Upon review of the record in this case, the Court finds that the record shows that a genuine issue of material fact exists. Plaintiff and Defendants disagree on the appropriate amount of damages to be awarded in this case. At this stage of the litigation, the Court is faced with conflicting assertions between the parties concerning how much is owed under the lease, and it has no way to determine the merits of the parties' respective assertions without a factual hearing. As a result, the Court cannot as a matter of law grant summary judgment at this time.

8. The Court has previously registered its displeasure with premature summary judgment motions and feels compelled to do so again in

⁷ Super. Ct. Civ. R. 56(c).

⁸ *E.g.*, *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 100 (Del. 1992).

⁹ *Manucci v. The Stop 'n' Shop Companies, Inc.*, 1989 WL 48587, *2 (Del. Super. May 4, 1989).

¹⁰ *Id.* at *3.

the context of this motion.¹¹ Where, as here, the record has not been developed and it is clear that there *are* genuine issues that remain in dispute, motions for summary judgment waste the Court's time and impose an unnecessary burden on the opposing party. As it has done before, the Court advises counsel to refrain from filing motions for summary judgment where the basis for such relief is premature.¹² In the present case, summary judgment would be inappropriate at this time. Furthermore, this case may not be susceptible to resolution by summary judgment even after discovery has been completed. Accordingly, Direct Capital's motion for summary judgment is hereby DENIED.

IT IS SO ORDERED.

/s/ Peggy L. Ableman

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary

¹¹ *Acadia Brandywine Town Center, LLC v. Furniture Brands International, Inc.*, 2010 WL 629840, *3 (Del. Super. Feb. 17, 2010) (*Furniture Brands International*); *see also* *Acadia Brandywine Town Center, LLC v. Cresswell*, 2010 WL 629842 (Del. Super. Feb. 17, 2010) (*Cresswell*).

¹² *Furniture Brands International*, 2010 WL 629840 at *3.