

**HR MILAN, LLC**

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**NO. 2017-CA-0491**

**VERSUS**

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**COURT OF APPEAL**

**MONA'S RESTAURANT,  
KARIM TAHA**

\*

**FOURTH CIRCUIT**

**REPRESENTATIVE OF  
MONA'S RESTAURANT,  
NIHAD MONEM**

\*

**STATE OF LOUISIANA**

\* \* \* \* \*

**REPRESENTATIVE OF  
MONA'S ON ELYSIAN  
FIELD'S AND MIHAD  
MONEM**

APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2017-01825, DIVISION "E"  
Honorable Clare Jupiter, Judge

\* \* \* \* \*

**Judge Roland L. Belsome**

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(Court composed of Chief Judge James F. McKay, III, Judge Edwin A. Lombard,  
Judge Roland L. Belsome)

**McKay, C.J., Dissents with Reasons**

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**AFFIRMED  
DECEMBER 6, 2017**



The Appellants, Mona's Restaurant, Karim Taha representative of Mona's Restaurant, Nihad Monem representative of Mona's on Elysian Fields, and Nihad Monem, challenge the trial court's denial of their Exception of Insufficiency of Service of Process and the granting of a Petition of Eviction in favor of HR Milan, LLC. For the following reasons, we affirm.

**Statement of Facts**

On May 24, 2005, business partners, Karim Taha and Nihad Monem, executed a lease with HR Milan (Milan) to operate a restaurant at 1120 South Carrollton Avenue in New Orleans. Initially, the partners opened as Mona's Restaurant. That restaurant was an expansion for Mr. Taha and Mr. Monem's corporation, Mona's on Elysian Fields. At the time the lease was executed, Mona's on Elysian Fields was named as lessee. Mr. Taha executed the lease as a representative of Mona's Restaurant and Mr. Monem signed as an in solido obligor and guarantor.

The lease contained renewal options for five-year periods. The lease for Mona's Restaurant was renewed on June 7, 2010, and again on February 27, 2015. Both renewals adopted the terms and conditions of the original lease; and were signed by Mr. Taha as representative of Mona's Restaurant.

### **Procedural History**

In January of 2017, Mona's Restaurant failed to pay its monthly rent.<sup>1</sup> A notice of default was sent by Milan on January 12, 2017. Mona's Restaurant did not pay February's rent. Milan sent a notice to vacate the property on February 6, 2017.

On February 13, 2013, a Petition for Concursus was filed by Mr. Taha in Civil District Court for the Parish of Orleans seeking leave of court to deposit rent payments into the registry of the court.<sup>2</sup> The petition asserted that the monies deposited may be owed in all or in part to Milan, Mr. Monem, and/or the City of New Orleans.<sup>3</sup> Thereafter, Milan filed its Petition for Eviction on February 24, 2017. Mona's Restaurant and Mr. Taha filed an Exception of Insufficiency of Service of Process and an Answer to the Petition for Eviction.<sup>4</sup> In response to the Petition for Consursus, Milan filed an Exception of No Cause of Action and an Answer.

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<sup>1</sup> By January 2017, the restaurant was no longer being operated as Mona's Restaurant. Mr. Taha and Mr. Monem had changed the name to Uptown Pizza and Wings.

<sup>2</sup> The Petition for Concursus was captioned *Karim Taha v. HR Milan, LLC, Nihad Monem, and City of New Orleans*.

<sup>3</sup> The petition also sought to have all costs and fees deducted from the deposits.

<sup>4</sup> The named defendants in the Petition for Eviction are Mona's Restaurant, Karim Taha representative of Mona's Restaurant, Nihad Monem representative of Mona's on Elysian Fields, and Nihad Monem.

The Court held a hearing on April 2, 2017 to hear the Exception of Insufficiency of Service of Process and the Petition for Eviction.

After hearing the testimony of Mr. Monem, the trial court denied the exception.

After hearing additional testimony, the trial court granted the eviction. This appeal followed.

**Assignments of Error**

On appeal, the Appellants maintain that the trial court erred in finding that service of the Petition for Eviction was proper. The Appellants also argue that, for various reasons, the trial court erred in granting a Judgment of Eviction against them.

**Exception of Insufficiency of Service**

The returns on citation that are in the record indicate that personal service of the Petition for Eviction was made on Mr. Monem. Mr. Taha claims that he was never properly served. He asserts that since he signed the lease as the representative of Mona's Restaurant and he was "doing business as" ("DBA") Mona's Restaurant, the service had to be made on him not Mr. Monem. The trial court disagreed and found service to be proper and denied the exception.

Prior to denying the exception, the trial court heard the testimony of Mr. Monem. Mr. Monem testified that he and Mr. Taha were equal members of Mona's on Elysian Fields, LLC. That corporation originally opened the Carrollton Street location of Mona's Restaurant. He further testified that sometime after the execution of the original lease, Mona's on Elysian Fields, LLC ceased to exist. His testimony is clear, that after the corporation was dissolved he and Mr. Taha operated Mona's Restaurant as 50/50 partners/owners. The partnership was not

registered with the Louisiana Secretary of State. Mr. Monem claimed that the restaurant was a “DBA” for the two men. After hearing the testimony, the trial court denied the exception.

In determining whether the trial court erroneously denied the exception we first look to La. C.C.P. art. 4701. Article 4701 provides in pertinent part:

When a lessee's right of occupancy has ceased because of the termination of the lease by expiration of its term, action by the lessor, nonpayment of rent, or for any other reason, and the lessor wishes to obtain possession of the premises, the lessor or his agent ***shall cause written notice to vacate the premises to be delivered to the lessee.***

We find that the record clearly shows that the lease was signed by Karim Taha ***as a representative of Mona’s Restaurant.*** Each signed extension of the original lease agreement is titled “Lease Agreement for Mona’s Restaurant.” Mona’s Restaurant was the lessee.

Furthermore, regardless of whether Mr. Taha and Mr. Monem’s business structure is considered a partnership or an unincorporated association, service of process would be proper on Mr. Monem. La.C.C.P. art. 1263 provides that ***“Service of citation or other process on a partnership is made by personal service on a partner”***; and La. C.C.P. art. 1264 provides that service on an unincorporated association is properly made by personal service on “a managing official, at any place where the business of the association is regularly conducted.”

Mr. Monem’s testimony established he was a 50% owner of Mona’s Restaurant. Service of the Petition for Eviction on Mr. Monem was proper. Therefore, we find no error on the part of the trial court in denying the exception.

### **Petition for Eviction**

Again, the Petition for Eviction was predicated on the failure to pay rent for the months of January 2017 and February 2017. Prior to granting the judgment of

eviction, the trial court heard the testimony of Laura Russell, representative for Milan and Mr. Monem, co-owner of Mona's Restaurant.

Ms. Russell's testimony was that in 2016 it was brought to her attention that Mona's Restaurant was experiencing some electrical problems. She claimed it was a matter that was resolved with a new electrical panel being installed on the building at a cost of \$5,000.00. Ms. Russell also acknowledged some complaints about an unusual smell that possibly related to a plumbing problem. She testified that a plumber was sent out to trouble shoot and make any necessary repairs on more than one occasion. Other than those two issues, Ms. Russell stated that no other complaints about the building or lease were made to her prior to Mona's Restaurant failing to pay rent for January 2017 and February 2017.

Mr. Monem through his testimony suggested that although the electrical panel had been replaced he still experienced intermittent electrical problems. Additionally, he stated that he thought there was a smell present on the premises, a complaint that he previously raised with Milan to be remedied. However, he did not contradict Ms. Russell's testimony that plumbers had been sent to investigate the smell on more than one occasion. Mr. Monem further testified that after approximately twelve years of occupying the premises he read the lease and felt as though he was paying too much for rent. He claims that conclusion was drawn from the fact that he should have been occupying the entire building which included two upstairs residential units.<sup>5</sup> That concern was never presented to Milan. Instead, once Mr. Monem came to that conclusion, he acknowledged that he unilaterally decided to withhold the rent.

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<sup>5</sup> Paragraph 5 of the lease provides in pertinent part: "[t]his lease is made for use by Lessee of the premises let as a RESTAURANT..."

In the trial court and on appeal, the Appellants maintain that the deposit of rents into the registry of the court, through the Petition for Concursus, prior to the judgment of eviction was sufficient to vitiate the notice to vacate. In support of this argument the Appellants cite to *Kingfish Development, L.L.C. v. Press It No.1*.<sup>6</sup> In *Kingfish*, this Court acknowledged that Press It was in default of the lease for failure to timely pay electrical utility payments, but found that Kingfish's subsequent acceptance of the payments by its attorney vitiated that default. On that issue, this Court wrote:

Louisiana law is well-settled that the *acceptance* of rent vitiates default. Courts in this state have consistently held that when rental payments have been accepted after the notice to vacate, the notice is vitiated and the tenant's possession is maintained.<sup>7</sup>

In this case, the Appellants suggest that Milan's filing of an answer to the Petition for Concursus, asserting a claim to the money deposited in the registry court, equates to "constructive acceptance." Therefore, the notice to vacate was vitiated. The Appellants have not cited to and this Court was unable to find any case law that supports the theory of "constructive acceptance" of rents in an eviction proceeding. Also, the Appellants' Petition for Concursus alleges that several parties, including Mr. Monem, may have rights to the money deposited. So, even though Milan filed an answer to assert its rights, Milan was not deemed to be the rightful owner of the funds nor was Milan put in possession of the funds any time prior to the judgment of eviction. Therefore, this case is distinguishable from *Kingfish* because Milan did not receive or accept any past due rental payments prior to the judgment of eviction.

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<sup>6</sup> *Kingfish Dev., L.L.C. v. Press It No. 1 New Orleans, LLC*, 13-1113 (La. App. 4 Cir. 3/26/14), 135 So.3d 1232.

<sup>7</sup> *Kingfish*, p. 6, 135 So.3d at 1235 (citations omitted) (emphasis added).



**Conclusion**

For the reasons discussed, the trial court's rulings are affirmed.

**AFFIRMED**