

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CIVIL**

TRO AVENUE OF THE ARTS, LP,	:	NOVEMBER TERM, 2009
	:	
Plaintiff,	:	NO. 02481
	:	
v.	:	COMMERCE PROGRAM
	:	
THE ART INSTITUTE OF PHILADELPHIA, LLC,	:	
	:	
Defendant.	:	
THE ART INSTITUTE OF PHILADELPHIA, LLC,	:	AUGUST TERM, 2010
	:	
Plaintiff,	:	NO. 02286
	:	
v.	:	
	:	
TRO AVENUE OF THE ARTS, LP,	:	
	:	
Defendant.	:	

12-00169-000000
PROF. AUTH.

OPINION

Landlord, TRO Avenue of the Arts, LP (“TRO”), appeals from this court’s Order entered on March 1, 2012 (the “March 1st Order”), in which the court enforced the parties’ settlement agreement, which was previously placed on the record on August 17, 2011, during the trial of these consolidated actions. These actions are two of at least four currently pending in this court between TRO and its tenant, The Art Institute of Philadelphia, LLC, (“AIP”), concerning various alleged breaches of the parties’ Lease.¹ It should be noted that the parties’ landlord/tenant

¹ AIP leases the premises as housing for its students.



relationship continues to this day,² so it behooves them to settle all of their ongoing differences, as they did here.

In November 2009, TRO filed the first of these consolidated actions (the “First Action”) alleging that AIP breached the parties’ Lease by failing to reimburse TRO approximately \$900,000 “for repairs, maintenance and other costs incurred as a result of [AIP’s] abuse and neglect of the premises.”³ In August, 2010, AIP filed the second action (the “Second Action”) alleging that TRO breached the Lease by “failing to maintain, repair and replace the cracked, corroded and rusted boiler tubes, exhaust flue and other equipment, which caused [a] carbon monoxide leak,” which, in turn, caused AIP to incur costs of approximately \$247,000 to relocate its students while the leak was, presumably, corrected.⁴

The parties went to trial on their claims beginning on August, 15, 2011. On August 17th, in the midst of trial, they jointly announced to the court that they had settled their claims. They put the terms of their settlement on the record, as follows:

Term Number 1, mutual releases for any and all claims related to monthly charges for maintenance and repairs from the beginning of time to the date of release, that have been or could have been asserted in the [first action]. Mutual releases as well for the [second action] for all claims that were asserted in that case.

TRO agrees to pay The Art Institute \$125,000 within five days of the execution of a written settlement agreement. The payment will be by check or money order.

* * *

Each party agrees in both [First and Second] action to bear their own legal expenses and costs.

The parties also agree not to bring further lawsuits related to monthly repair and maintenance charges, but rather agree to a binding dispute resolution process with

² The latest renewal of the Lease apparently expires in October, 2014. *See* AIP’s Amended Complaint in the Second Action, ¶ 15.

³ *See* TRO’s Amended Complaint, ¶¶ 11, 14. Most of the alleged abuse and neglect appears to have been committed by AIP’s students.

⁴ *See* AIP’s Amended Complaint, ¶¶ 41- 45.

no discovery permitted. The parties will work out the terms of that binding dispute resolution process.

TRO agrees that it shall only seek reimbursement for monthly repair and maintenance charges based on Paragraph 10C of the lease. And TRO specifically agrees that it shall only seek reimbursement for monthly repair and maintenance charges based on Paragraph 10C of the lease. And TRO specifically agrees not to seek reimbursement for monthly repair and maintenance charges based on Paragraph 9J of the lease.

The terms of this agreement are going to be memorialized in a written settlement agreement drafted by defendants, reviewed by plaintiffs and it will include all other standard terms and conditions found in such settlement agreements and releases.⁵

TRO's counsel then modified the provision regarding the extent of the release given in the First Action as follows:

The release for charge backs in this case will only apply to what's been billed as of today.⁶

Both parties' counsel and authorized representatives of the clients then expressly agreed, on the record, to the terms set forth above. The court then terminated the trial and marked the case settled.

Three months later, AIP moved to enforce the written settlement agreement it had drafted. The court ordered both parties to submit form settlement agreements and, based on the terms memorialized on the record, the court crafted a written settlement agreement from the drafts submitted by the parties (the "Settlement Agreement").⁷ In the March 1st Order, the court deemed the Settlement Agreement to have been executed and agreed to as of March 5, 2012. TRO filed a Motion for Reconsideration of that Order. In its Motion, TRO took issue with only the following release language of the Settlement Agreement:

⁵ Trial Transcript, pp. 4-7 (08/17/11).

⁶ *Id.*, p. 8. The parties do not dispute that the date agreed to is May 31, 2011.

⁷ A copy of that Settlement Agreement is attached to the March 1st Order.

1. TRO, for itself and for all other persons or entities that could make claims through it, including its officers, directors, employees, members, agents, successors in interest, predecessors in interest, heirs, beneficiaries, companies, affiliates (including, but not limited to, Ashkenazy Acquisition Corporation and AAC Management), representatives, parents, subsidiaries, partners and attorneys (collectively, "TRO Releasers"), does hereby forever release, acquit, discharge, and covenant not to sue AIP, and each of its successors in interest, predecessors in interest, parent companies, subsidiaries, members, officers, directors, shareholders, partners, independent contractors, representatives, agents, attorneys, employees, independent contractors, authorized licensees, successors and assigns (collectively, the "AIP Released Parties") of and from any and all claims, losses, debts, charges, damages, demands, obligations, fees, costs, expenses, allegations, causes of action or rights of action at law or in equity **arising out of or in any way related to repair and maintenance costs for the Property that were billed to AIP**, including claims that were or could have been asserted in TRO Avenue of the Arts, LP v. The Art Institute of Philadelphia, LLC, November Term 2009, Case No. 2481 (the "2009 Action"), as well as any claims for subrogation and/or indemnification in connection with any such repair and maintenance costs, whether known, unknown, foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, **from the beginning of time until May 31, 2011.**⁸

TRO's objection to the release appears to be based on a misunderstanding of its import.

TRO insists that it only agreed to release "claims relating specifically to monthly repair and maintenance charges that had already been billed prior to May 31, 2011."⁹ As the highlighted language above shows, that agreed upon limitations is contained in, and restricts the applicability of, the release.

TRO quibbles that it agreed only to release claims "relating to" repair and maintenance costs and now it is being forced to release claims "arising out of or in any way related to" such costs. The court does not see a substantive difference between the two phrasings. TRO also objects that it agreed to release only those repair claims that it was entitled, under the Lease, to bill to AIP on a monthly basis and not those repairs that it is entitled to bill for at the end of the Lease. However, the release is specifically limited "to repair and maintenance costs for the

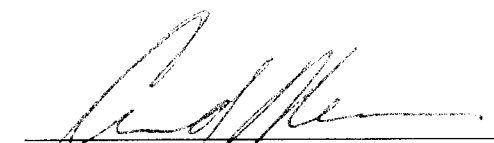
⁸ Settlement Agreement, pp. 1-2.

⁹ Motion for Reconsideration, ¶ 22.

Property that **were billed** to AIP,” and does not encompass those that have yet to be billed, so it does not preclude claims for repairs that are supposed to be billed later, at the end of the Lease.

For all the foregoing reasons, TRO’s objections to the language of the release lack merit, and the court respectfully requests that its March 1st Order enforcing the Settlement Agreement between the parties be affirmed on appeal.

Dated: June 28, 2012


ARNOLD L. NEW, J.