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

HOTEL FURNITURE LIQUIDATORS OF PHILADELPHIA, INC.,	:	December Term 2014
Plaintiff,	:	No. 855
v.	:	
CASTOR AVENUE PROPERTIES, LLC,	:	COMMERCE PROGRAM
Defendant.	:	

Opinion

The instant action arises from a lease dispute between the parties. The tenant is plaintiff Hotel Furniture Liquidators of Philadelphia, Inc. (hereinafter "Plaintiff"). The landlord is defendant Castor Avenue Properties, LLC. On or about December 31, 2010, plaintiff entered into a lease agreement for 50,000 square feet of rental space located at 2222-2230 Castor Avenue, Philadelphia, Pa. 19134. The property consists of three separate rental units, the leased property and two other rental units. Paragraph 1 of the lease provides that tenant is permitted to use the leased premises for the purpose of warehouse storage and selling furniture and fixates to other businesses and the public. Paragraph 2 of the lease provides as follows:

> Compliance with Law. Each party, its officers, employees, agents and servants, shall comply fully and promptly with all applicable laws....

The lease was for a period of five (5) years, commencing on August 15, 2010 and expiring on October 31, 2015 with a five year option. On October 15, 2012, the City of Philadelphia commenced a lawsuit against defendant in the Court of Common Pleas of Philadelphia County under docket number October Term 2012 No. 1842 in code enforcement. The court found defendant in violation of the City of Philadelphia Code and Fire Code and stated the following:

> "The subject premises with existing Fire Code and other violations, poses a serious fire hazard, safety threat, and immediate serious danger to any occupants of the subject premises. The structure is therefore in a seriously dangerous condition due to inadequate maintenance, and may result in potential serious injury to persons occupying the subject building."

On March 17, 2014, the City of Philadelphia Department of Licenses and Inspections directed plaintiff to vacate the leased premises on four hours notice. Plaintiff was ordered to remove all furniture and other items warehoused at the leased premises. Plaintiff leased vehicles to remove its inventory from the leased premises, employed personnel to remove the inventory and employed fire watch personnel from an outside professional security company trained in and devoted to fire watch services. Plaintiff vacated the premises with as much inventory as could be removed on short notice.

On May 1, 2014, plaintiff leased a facility which was much smaller than the leased property. The new space at 4343 Widacor Avenue in Philadelphia was only 25, 000 square feet. As a result, plaintiff was forced to leave some of its inventory at the leased premises, discard some and donate some. Sixty percent of its inventory was dumped, donated or recycled. Forty percent was transported to the new space. The new space was not as visible or accessible as the leased property to the public and walk in traffic declined significantly.

On December 3, 2014, plaintiff filed a complaint against defendant alleging breach of lease, breach of implied covenant of quiet enjoyment and constructive eviction.[1] An affidavit of service was filed on December 24, 2014. On February 24, 2015, judgment was entered by default against defendant for failure to answer the complaint. On March 19, 2015, an assessment

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[1]The objective of these causes of actions is to make the plaintiff whole. See, *Empire Properties, Inc. v. Equireal, Inc.*, 449 Pa. Super. 476, 490, 674 A.2d 297, 304 (1996)(The purpose of damages in a breach of contract is to put the plaintiff in the position he or she would have been in but for the breach.); *Pollock v. Morelli*, 245 Pa. Super. 388, 397, 369 A.2d 458, 462-63 (1976)(Lessee may recover for all losses which he can prove he has actually sustained, or which he will necessarily sustain, under the circumstances, as a result of the unlawful eviction. The measure of damages has been liberally extended to include even well established profits of the business.).

of damages hearing was scheduled for April 1, 2015 and subsequently rescheduled to April 9, 2015. On April 10, 2015, defendant filed a petition to open the default judgment. On May 28, 2015, the petition was denied. On June 11, 2015, an assessment of damages hearing was conducted.

During the hearing, an officer of plaintiff testified that in 2013 its net profit after unusual expenses was $214,251.00. The officer further testified that prior to the cease and desist order, the first three months of 2014 showed an upward trend in sales. For instance, in January 2014 the growth was 19,151.00, representing a percentage change of 38% from 2013, in February 2014 the growth was $19,162.00, representing a percentage change of 24.17% and in March 2014 the growth was $2,805.00, representing a percentage change of 12%. [2] The officer testified that in April 2014, plaintiff recorded no sales since it was looking for space to lease and that from May to December 2014, losses were recorded. The losses were attributed to the reduced space available for plaintiff to house inventory as well as the location of the new rental space. The new space leased was one half the space previously leased and was not visible to the public despite plaintiff's efforts to draw attention to itself. The accountant's testimony was consistent with the testimony of the officer. Based on the testimonial evidence, which the court found credible and the exhibits, the court finds that plaintiff is entitled to an assessment of damages for lost profits for the year 2014[3] in the amount of $265,671.24.[4]

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[2] Plaintiff's Exhibit P-5 tab A identifies the growth as $99,934.00 for March 2014. However, the officer of plaintiff testified that $89,809 should not be included in the growth calculation since this sum is unrelated to the sales of plaintiff but another business. As such said amount was deducted from the Loss or Growth column and the % Change column was also revised based on the reduction in the Loss or Growth column.

[3] Although, plaintiff requested loss profits for 2015, the court found said damages to be speculative.

[4] This figure represents the 2013 net profit after expenses $214,251 + the average percent change for January 2014, February 2014 and March 2014 which is 25%.

Plaintiff's officer further testified to the expenses incurred as a result of the move. Plaintiff's officer testified that it incurred $109,717 in expenses for the move. The expenses are itemized as follows: donated furniture $37, 240; losses on inventory sold on recycling $34,706; moving and storage expenses $7,544, trash removal $3,707 and labor and fire watch costs $26,520. Based on the forgoing, the court finds that plaintiff is entitled to $265,671.24 in lost profits and $109,717 in expenses associated from the move.

Plaintiff is not entitled to recover attorney fees since it failed to provide a basis for same. The attorney fees requested derive from fees associated with counsel's representation of plaintiff in this action and not as an expense incurred during the lease period. Under the American Rule, applicable in Pennsylvania, a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties, or some other established exception.[5] The applicable lease does not contain any provision regarding the payment of attorney fees, nor does plaintiff direct this court to any statutory authority to support its request. Plaintiff relies upon a non binding trial court opinion in *3000 B.C. v. Bowman Properties Ltd*, 2008 WL 5544414 (2008) for an award of attorney fees. Although, the court in *3000 B.C.* did award attorney fees, there is no discussion as to basis for the attorney fees; contract or statutory provision. This court elects not to follow *3000 B.C.* as it pertains to the award of attorneys fees.

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[5] *Trizechahn Gateway LLC v. Titus*, 601 Pa. 637, 652, 976 A.2d 474, 482-83 (2009), citing *Mosaica Charter Sch. v. Commonwealth, Dep't of Educ.*, 572 Pa. 191, 206–07, 813 A.2d 813, 822 (2002).

Based on the forgoing, the sum of $375,388.24 is assessed in favor of the plaintiff and against defendant.

BY THE COURT,

PATRICIA A. McINERNEY, J.