

DOCKET NO: NWH-CV23-6008547-S

SUPERIOR COURT

TPW PARTNERS, LLC

2024 APR 23 PM 12:29

HOUSING SESSION

V.

OFFICE OF THE CLERK
SUPERIOR COURT

J.D. OF STAMFORD

RIKO'S NEWFIELD, LLC

APRIL 23, 2024

MEMORANDUM OF DECISION
AFTER TRIAL

The landlord, plaintiff, TPW Partners, LLC, brought this summary process action against its tenant, defendant, Riko's Newfield, LLC, for a violation of the terms of its commercial lease. Plaintiff alleges that Defendant did not pay additional rent when due from the inception of the lease agreement and as a result brings claims of nonpayment of rent, lapse of time, right or privilege terminated, and violation of the terms of the lease agreement. Defendant alleges the following special defenses 1. Defendant offered additional rent to Plaintiff prior to the service of the Notice to Quit but the payment was refused. 2. Plaintiff did not give Defendant notice or demand of additional rent as it was due as required under the lease. 3. At the time of the lease renewal, Defendant had a zero balance on rent due. And 4. Plaintiff failed to allege a valid reason why Defendant's right or privilege to occupy the premises had terminated.

After reviewing the oral and written arguments of the parties, the credibility of the witnesses, the relevant pleadings, evidence, and law, as well as, balancing the equitable positions of the parties, the court finds Defendant was in substantial compliance with the lease agreement. Plaintiff did not pursue its claims for additional rent in a timely manner to the detriment of Defendant and as such Plaintiff's claims are barred by the equitable doctrine of laches, and Defendant exercised its option to renew the contract pursuant to the operative lease so the lease

is still in full force and effect. As such, the court finds in favor of Defendant on all counts and awards possession to Defendant.

DISCUSSION

A brief recitation of facts and procedural history is necessary to understand the courts findings and reasoning. Plaintiff's predecessor in interest and Defendant entered into a commercial lease agreement commencing on February 1, 2016, for a six-year term. Section 38 of the lease gave Defendant an option to extend the term by another five-years. The lease could only be extended if the rent was current. According to Sections 4.01 and 35, Defendant was responsible for their usage of water and sewer and any additional property taxes above and beyond the base year (a/k/a Delta Tax).

The subject property, in its current form, consists of a pizza restaurant on the first floor with apartments above the restaurant. Defendant occupies the first floor and operates the restaurant. When the lease was entered into, the water and sewer lines were not separately metered. Shortly after taking possession of the property, Defendant installed a second meter for water in the basement. The water and sewer companies only sent one bill to Plaintiff for the usage at the property.

Defendant produced a lease statement showing a zero balance after paying rent due in the amount of \$6,753.00 for the months of January, February, and March of 2022. Plaintiff produced an account statement dated October 27, 2022, showing a \$46,882.00 balance representing Plaintiff's claims for Aquarion Water Company (\$14,380.00); Stamford WPCA (\$14,342.00); and Stamford Tax (\$11,204.00). These charges were for the entire water usage, sewer charges

and taxes from the beginning of the lease agreement through October 27, 2022. This was the first time Defendant was made aware of these delinquent charges.

Plaintiff calculated the amount owed using historic bills for the entire building and then “guesstimating” that Defendant was responsible for 50% of the Delta Tax and 70% of the water and sewer charges.

Defendant requested a five-year extension of the lease agreement on January 22, 2021, via email to Plaintiff’s principal, Prakash B. Wadhvani. Said request was in accordance with the lease agreement. Defendant paid, and Plaintiff accepted rent for February with the agreed 3% increase according to the lease.

Defendant has always been compliant with the payment of base rent. Neither Plaintiff nor Plaintiff’s predecessor ever made a claim for additional rent until after Defendant exercised its option to extend the lease term. Defendant is a pizzeria that operates four corporate stores and five franchises and employs 30 employees at the subject property. The buildout of the subject property took between six to eight months and cost Defendant over \$600,000. Defendant has also paid over \$500,000.00 in base rent to Plaintiff since the commencement of the lease. Defendant never missed a base rent payment throughout the pandemic even though its restaurant was closed for a period of time, and when it reopened, sales were very slow.

The parties discussed a separate water meter in 2016 and one was installed. The lease required Defendant to set up separate accounts for utilities. Defendant claims the water and sewer companies stated it could not set up a separate account or water line for the subject property. Plaintiff was always allowed on the premises and could access the separate water meter for readings at any time during the term of the lease.

1. Plaintiff's claims for nonpayment of rent, and breach of lease agreement fail because Defendant was in substantial compliance with the lease agreement and no demand was made for additional rent until years after it was due.

The court finds that Plaintiff is the owner of the subject property. There was a lease agreement between the parties. The lease agreement required Defendant to pay base rent and additional rent. Defendant never missed a base rent payment since the lease agreement took effect on February 1, 2016. These base rent payments were made in full and on time throughout the pandemic, even though the restaurant was closed for a period of time due to state mandates.

Plaintiff on the other hand, never demanded payment of the additional rent from February of 2016 through September of 2022. For six years Plaintiff ignored or excused the sections of the lease agreement that required Defendant to make those payments. Furthermore, Plaintiff failed to provide Defendant notice of the additional rent that was due in violation of Section 4.01 of the operative lease. Plaintiff relies upon *Lynwood Place, LLC v. Sandy Hook Hydro, LLC*, 150 Conn. App. 682, 92 A.3d 996, (2014) to argue that additional rent due under the lease is grounds to obtain possession in a summary process action. *Lynwood* is distinguishable from this case in that the lease in *Lynwood*, had a predetermined amount of additional rent that was due¹ and the parties had ongoing discussions over a period of years about the additional rent that was due. In this case, Plaintiff never provided an invoice or specific amount of money due each month for additional rent during the entire six-year term of the original lease. There were no discussions between the parties for over six years before Plaintiff made its first demand. Without an invoice or a specific amount, Defendant would have to rely upon speculation and guesswork to determine what was owed each month.

¹ "When you negotiated this lease you absolutely knew that your [pro]portional share of the additional rent was 6 percent. Correct?" Fattibene answered: "Yes, it was written in the lease." The plaintiff's counsel then asked: "And you've never paid 6 percent of the operating expenses for the building, have you?" *Id.* At 690, 1002.

The court finds that Defendant was in substantial compliance with the terms of the lease agreement when the Notice to Quit was served.² Defendant made over \$500,000.00 base rent payments in full and on time and maintained a zero balance for base rent due for over six years. The amount of additional rent, which was owed under the lease is diminimus considering Defendant's compliance with all the other terms of the lease and Defendant's significant investment in the property to date:

Regarding Defendant's duty to establish its own accounts for the sewer and water use on the property, the court finds that it substantially complied with those requirements in the lease. Defendant was unable to establish their own accounts with the water authority because of Aquarion's policy, so it installed a separate meter to account for its usage. Plaintiff was able to determine Defendant's usage if it bothered to check the meter and could then charge Defendant what was owed. Instead, Plaintiff failed to undertake that simple task for six-years and then "guestimated" how much was owed and demanded payment.

For the above noted reasons, Plaintiff has failed to prove by a preponderance of evidence its claims of nonpayment of additional rent and breach of the lease agreement.

2. The equitable special defense of laches defeats the Plaintiff from gaining possession on its claims for nonpayment of additional rent.

Although the court finds that that Plaintiff failed to meet its burden on counts one and two, the court also finds that if the Plaintiff did prevail, it's claim would be defeated by Defendant's second special defense. Defendant alleges that Plaintiff failed to make a timely

² Joseph Mastroianni v Fairfield Count Paving, LLC et al., 106 Conn.App 330, 942 A.2d 418 (2008) states as follows, The doctrine of substantial performance shields contracting parties from the harsh effects of being held to the letter of their agreements. Pursuant to the doctrine of substantial performance, a technical breach of the terms of a contract is excused, not because compliance with the terms is objectively impossible, but because actual performance is so similar to the required performance that any breach that may have been committed is immaterial." (Internal quotation marks omitted.).

demand for additional rent based upon contemporaneous, accurate and itemized demand. In other words, Plaintiff's claims are barred by the equitable doctrine of laches.

Laches is an equitable defense; and equitable special defenses may be raised in summary process actions. See General Statutes § 47a-33a. The burden is on the party alleging laches to establish that defense. Laches consists of two elements. First, there must have been a delay that was inexcusable, and, second, that delay must have prejudiced the defendants.... A mere lapse of time does not constitute laches unless it results in prejudice to the defendants. Such prejudice results if the defendants are led to change their position with respect to the matter in question.... Whether a plaintiff is guilty of laches is a question of fact for the trier and not one to be answered by this court unless the subordinate facts found make such conclusion inevitable as a matter of law.

Lynwood Place, LLC v. Sandy Hook Hydro, LLC, 150 Conn. App. 682, 690-91, 92 A.3d 996, 1002 (2014) (internal quotation marks and citations omitted). In this case Plaintiff waited six years to make claims for additional rent. There was no invoicing, or accounting, or itemization of the additional rent due by Plaintiff for the first six-years of the lease. The claim was made after Defendant had already exercised its option to extend the lease period. Then, for some unknown reason, Plaintiff made a claim for the additional rent just before the lease extension was to take effect, essentially using the nonpayment as a crowbar to create a summary process cause of action upon which a Notice to Quit could be served.

The court finds that Defendant proved the special defense of laches³ by a preponderance of evidence. The Plaintiff's delay of six years before making a claim for additional rent was inexcusable. Additionally, Defendant was prejudiced because the delay in demanding additional rent jeopardized the lease extension for an additional five years.

³ Although Defendant did not specifically plead the word "laches" in its second special defense, the court reasonably concluded from the allegations made that Defendant was pleading the equitable special defense of laches.

Considering the equitable positions of the parties, Plaintiff's claim that Section 30 of the lease defeats the special defense of laches is not persuasive. A summary process eviction action is an equitable proceeding. While it may be true, that as a matter of law, Plaintiff did not waive its claims to additional rent, that claim does not, by itself, entitle the Plaintiff to possession of the premises. In other words, if Plaintiff were bringing an action in law, for money damages for collection of additional rent, it may rely upon Article 30, No Waiver: Entire Agreement, to excuse their failure to make claims in a timely manner while continuing to accept base rent. But, in this case, Plaintiff is seeking possession of the property and the court finds the equities favor Defendant.

3. Plaintiff's claims for lapse of time and right or privilege terminated must fail because Defendant was in substantial compliance with the lease agreement at the time Defendant exercised its option to extend the lease for another five years.

For Plaintiff to prevail on a claim of lapse of time, it must prove by a preponderance of evidence that Plaintiff is the owner or lessor of the subject property; there was a lease agreement in place; the term of the lease agreement expired, and Defendant remains. For a right or privilege terminated claim, Plaintiff must prove that Plaintiff is the owner or the lessor of the subject property; Defendant once had a right or a privilege to occupy the property; that right or privilege has terminated; and Defendant remains.

Plaintiff claims that the original lease term ended on January 31, 2022. Plaintiff claims Defendant's attempt to extend the lease for another 5 years, from February 2022, through January 31, 2027, was not in compliance with Section 38 of the lease. Specifically, that Defendant must be current on all rent payments when it exercises its option.

Defendant claims it was in compliance with the lease at the time it exercised their option to extend and produced Exhibit C which showed a zero balance as of January 4, 2022, for rent

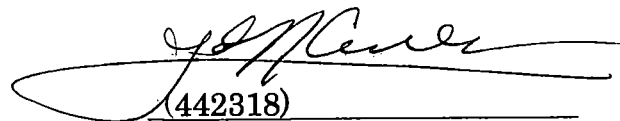
due. This exhibit was an email sent from Plaintiff's rental payment portal on March 27, 2022. Furthermore, Plaintiff's accepted Defendant's rent check for February of 2022, in the amount of \$6,956.00 representing a 3% increase from the previous months rent according to the lease agreement and its extension provisions.

As stated above, the court finds that Defendant was in substantial compliance with the lease agreement at the time Defendant exercised its option to extend the lease for another five-year period. As such, the lease term was extended another five years pursuant to Section 38 of the lease agreement. Defendant was in rightful possession of the property under the extended lease agreement at the time the Notice to Quit was served. Therefore, the Plaintiff has failed to prove its claim for lapse of time and right or privilege terminated by a preponderance of evidence.

CONCLUSION

For the foregoing reasons, judgment of possession shall enter in favor of Defendant, RIKO'S NEWFIELD, LLC. Plaintiff, TPW PARTNERS, LLC, has failed to prove its claims for nonpayment of rent, breach of lease, lapse of time and right or privilege terminated by a preponderance of evidence. Additionally, Defendant has satisfied the elements of the equitable special defense of laches.

BY THE COURT


(442318)
Hon. John A. Cirello