

FILED

US DISTRICT COURT
WESTERN DISTRICT
OF ARKANSAS
Jun 30, 2017
OFFICE OF THE CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

MCDONALD'S CORPORATION

PLAINTIFF

v.

No. 17-2110

MAX RODRIGUEZ

DEFENDANT

COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF

McDonald's Corporation ("McDonald's"), for its complaint against Max Rodriguez, states:

PARTIES

1. McDonald's is a corporation organized and existing under the laws of the state of Delaware. Its principal place of business is in Oakbrook, Illinois. McDonald's leases certain real property located in Crawford County, Arkansas, as described below.

2. Max Rodriguez is citizen and resident of the State of Arkansas. Upon information and belief, he resides in Fort Smith, Sebastian County, Arkansas.

3. This is a declaratory judgment action brought pursuant to 28 U.S.C. §§ 2201 and 2202 in which McDonald's seek a declaration that it is the tenant under a valid lease of real property located in Crawford County, Arkansas, the lease is still in full force and effect, and McDonald's has properly exercised its option to extend the lease.

JURISDICTION AND VENUE

4. Federal subject matter jurisdiction exists in this action pursuant to 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds the minimum amount for federal jurisdiction, exclusive of interest and costs.¹

¹ This action involves an alleged default under a lease agreement. Monthly rent is \$500.00, and the lease term (with extensions) runs for another 300 months or more.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because the defendant resides in this District and a substantial part of the events or omissions giving rise to the claims at issue occurred in this District. Moreover, the real property at issue is located in this District.

FACTUAL BACKGROUND

6. On November 15, 1966, Mack C. Bolding, Jr. and Stevie Louise Bolding, husband and wife (the “Original Landlord”), entered into a Lease Agreement (the “Lease”) with W.O. Smith, an individual (the “Original Tenant”), for approximately two acres in Alma, Crawford County, Arkansas on the West side of U.S. Highway 71, just South of Interstate 40 (the “Property”). The original term of the Lease was for 10 years and eight (8) months, expiring on July 15, 1977. The Lease granted five (5) option periods of five (5) years each. The last of the options would have expired on July 15, 2002. The rent was established at \$250.00 per month (\$3,000.00 per year) during the initial term and through all of the option periods. The Lease expressly granted the tenant the absolute right to assign the Lease.

7. In October 1975, Ms. Stevie Louise Bolding died. Mr. Mack C. Bolding, Jr. became the sole landlord. The Original Tenant assigned the Lease to F&S Petroleum Company, an Arkansas corporation (“F&S”).

8. On July 1, 1986, Mr. Bolding and F&S signed an Amendment to Lease Agreement (the “First Amendment”). Pursuant to the First Amendment, F&S agreed to double the rent, effective immediately, to \$500.00 per month (\$6,000.00 per year). In exchange, Mr. Bolding granted F&S six (6) additional option periods of five (5) years each, for an additional 30 years of options. The rent remained \$500.00 per month through all of the option periods. As a

result of the First Amendment, the tenant agreed to pay an aggregate of \$48,000.00 in extra rent for the years 1986 through 2002.

9. Pamela Ann Bolding inherited the landlord's interest in the Property following Mr. Bolding's death. On or about April 12, 1988 F&S assigned its interest in the Lease (as amended by the First Amendment) to McDonald's (the "Assignment"). A true and correct copy of the Lease, First Amendment and Assignment are attached hereto, collectively as Exhibit A.

10. On April 12, 1988, McDonald's as tenant and Ms. Bolding as landlord signed an Agreement Amending Lease (the "Second Amendment"). A true and correct copy of the Second Amendment is attached hereto as Exhibit B.

11. On May 6, 1988 Ray Edwards, an attorney for Ms. Bolding, sent McDonald's a letter proposing two modifications to the Lease (the "1988 Letter Amendment"). The 1988 Letter Amendment proposed that McDonald's agree to begin paying the property taxes on the Property in exchange for adding "a 30 day grace period to cover any problems arising on [McDonald's] end." The 1988 Letter Amendment describes the grace period as being "for payments that may be late, lost in the mail, etc." The 1988 Letter Amendment was hand-marked by McDonald's representative to show agreement to both changes. From and after the 1988 Letter Amendment through the present McDonald's has paid the property taxes assessed against the Property. A true and correct copy of the 1988 Letter Amendment is attached hereto as Exhibit C.

12. The parties, by their conduct since May 16, 1988, have acknowledged that their leasehold relationship has been governed pursuant to the terms of the Lease, as amended by the First Amendment, Second Amendment and 1988 Letter Amendment.

13. On or about April 4, 2017 Max Rodriguez filed an affidavit for collection of small estate in the Crawford County Circuit Court averring that Ms. Bolding died on December 23, 2016, and that he was her sole surviving heir. A true and correct copy of the affidavit is attached hereto as Exhibit D. Furthermore, Ms. Bolding's interest in the Property appears to have passed by operation of law at her death to her son, Max Rodriguez, by virtue of the beneficiary deed that is attached hereto as Exhibit E.

14. McDonald's was never notified of Ms. Bolding's death, and continued to send monthly rent checks to her for the months of January through June 2017, inclusive. The checks were mailed by McDonald's to the address on file for, and made payable to, Pamela Bolding (by way of example, the April 2017 check is attached hereto as Exhibit F). McDonald's rent checks to Ms. Bolding for the months of January, February, March and April were cashed by someone, presumably Max Rodriguez.

15. By letter dated March 17, 2017 McDonald's exercised its option to renew the Lease for another five (5) years. A true and correct copy of the March 17, 2017 letter is attached hereto as Exhibit G.

16. The March 17, 2017 letter was refused by the addressee or returned unclaimed on April 14, 2017 (*see*, Exhibit H attached hereto). After the letter was returned to McDonald's, on April 14, 2017 it sent another letter to Ms. Bolding as a courtesy to inform her that it had exercised its option to renew. A true and correct copy of the second letter is attached hereto as Exhibit I.

17. McDonald's sent its May 2017 rent check to the same address as the April rent check (Ex. E) and all monthly rent checks that McDonald's had previously sent to Ms. Bolding over the course of the last several years. The May rent check was never cashed, nor was it

returned to McDonald's as undeliverable. A copy of the detail of the May rent check retained by McDonald's accounting department is attached hereto as Exhibit J.

18. McDonald's sent its June 2017 rent check to the same address as the previous monthly rent checks. In response, McDonald's received a letter from counsel for Max Rodriguez alleging that McDonald's failed to pay rent that was due on May 15, 2017, the lease was being terminated and McDonald's June 2017 rent check was being returned (the "June 20, 2017 Landlord's Letter"). A true and correct copy of the June 20, 2017 Landlord's Letter is attached hereto as Exhibit K. The June 20, 2017 Landlord's Letter provided no formal notice that Ms. Bolding was dead, although McDonald's was able to piece together that fact after conducting research following McDonald's receipt of the June 20, 2017 Landlord's Letter.

19. Counsel for McDonald's responded by letter dated June 27, 2017, a true and correct copy of which is attached hereto as Exhibit L, disputing that McDonald's had failed to pay May 2017 rent, disputing that the Lease was subject to termination, reiterating that McDonald's had exercised its option to renew, and tendering a check for the combined sum of the May and June 2017 rent.

20. In a telephone call on June 28, 2017 between counsel for both parties, counsel for Max Rodriguez reiterated his position that McDonald's was in default under the Lease and must vacate the Property by June 30, 2017, which was the deadline for the demand to vacate stated in the June 20, 2017 Landlord's Letter.

DECLARATORY JUDGMENT

21. Paragraphs 1 through 20 of this complaint are incorporated herein by reference as if set forth word for word.

22. McDonald's holds a valid leasehold interest in the Property, and has properly exercised its option to renew the lease for another five (5) year term from July 15, 2017 until July 15, 2022.

23. The June 20, 2017 Landlord's Letter alleges the Lease terminated because: (i) McDonald's did not pay the May 2017 rent; (ii) McDonald's did not pay the June 2017 rent; and (iii) McDonald's did not exercise its five year renewal option. As outlined below, all of these allegations are incorrect, and the Lease remains in full force and effect.

24. McDonald's timely mailed both the May 2017 and June 2017 rent checks, as McDonald's has faithfully and automatically done for decades. As shown by Exhibit I, McDonald's mailed check #5000654571 in the amount of \$500.00 payable to Pamela Bolding on May 3, 2017. McDonald's timely sent this check in the same time and manner as it has all previous checks and the more recent June 2017 check, which Max Rodriguez received as evidenced by his counsel's return of the check. McDonald's is unaware of what happened to the May 2017 check after it was mailed but had no reason to believe it was not delivered as it was never returned to McDonald's. As an accommodation, however, on or about June 27, 2017 McDonald's tendered a check to counsel for Max Rodriguez for \$1,000 for both the May and June 2017 rent checks.

25. McDonald's firmly contends that all rent payments were timely sent. However, even if McDonald's failed to timely mail the May 2017 rent check, McDonald's is nevertheless entitled to the 30 day grace period set out in the 1988 Letter Amendment. The 1988 Letter Amendment modified the terms of the Lease. The landlord originally was obligated to pay the taxes on the Property instead of the tenant (i.e., McDonald's). By paying the property taxes McDonald's has fulfilled its side of the bargain and is accordingly entitled to the 30 day grace set

out in the 1988 Letter Agreement as the benefit of that bargain. Although not explicitly provided in the 1988 Letter Amendment, the 30 day grace period must run from McDonald's receipt of notice of an alleged default, otherwise the 30 day grace period would serve no purpose for problems such as "payments that may be late, lost in the mail, etc.", since McDonald's would have no way of knowing of an alleged default without receipt of notice from the landlord. McDonald's is entitled to the 30 day grace period, which began no earlier than the date of the June 20, 2017 Landlord's Letter.

26. Although McDonald's mailed the May 2017 rent check to the landlord in the same time and manner as the preceding decades in which it has sent monthly rent checks to Ms. Bolding with no issue, the tender of the \$1,000 check for May and June 2017 rent by counsel for McDonald's cured any actual or alleged default. Furthermore, even if the 30 day grace period did not apply, Arkansas has held that the late payment of rent is not necessarily a material breach of a lease and not necessarily the basis for termination. *See, e.g., Vereen v. Hargrove*, 80 Ark. App. 385 (2003). Notably, the Lease does not provide that time is of the essence.

27. Max Rodriguez's assertion that the Lease has not been renewed for an additional five years is also incorrect. As a courtesy, McDonald's sent notice of the exercise of its option to renew on March 17, 2017 and sent a follow-up letter on April 14, 2017 (Exhibits G and H). These letters, however, are not necessary as the Lease provides, "Exercise of said options respectively shall be indicated merely by the holding over of Lessee beyond the then current '5 year' extension." (Exhibit A to this Complaint, "Lease Agreement," Page -2-) McDonald's is not in default under the Lease, and McDonald's intends to stay past July 15, 2017, so the Lease has automatically renewed for another five years under its own terms.

28. As a result of the foregoing, McDonald's is entitled to a declaration that the lease is in full force and effect, McDonald's is not in default, McDonald's has properly exercised its option to extend the lease for another term of five (5) years.

INJUNCTIVE RELIEF

29. Paragraphs 1 through 28 of this complaint are incorporated herein by reference as if set forth word for word.

30. Max Rodriguez has mistakenly interpreted the facts and law as they apply to Lease and sought to impose on McDonald's the results of that incorrect interpretation.

31. Max Rodriguez has also improperly refused to recognize the continuing validity of the Lease, claiming that the Lease expired on May 15, 2017. Max Rodriguez is now threatening an eviction action unless McDonald's vacates the Property by June 30, 2017.

32. An interpretation of the Lease terms and Max Rodriguez's unilateral determination of Lease termination and threatened eviction of McDonald's will resolve the dispute and mitigate the damages to McDonald's arising out of the current situation. A judgment declaring the proper application of the requirements of the Lease and the rights and obligations of the parties to the Lease will also help avoid the threat of new litigation such as eviction actions or damages suits.

33. Injunctive relief in aid of the declaratory relief is appropriate in order to prevent Max Rodriguez from terminating McDonald's tenancy or otherwise restricting McDonald's rights under the Lease. McDonald's faces immediate and irreparable injury to its business as a result of Max Rodriguez's demand that McDonald's vacate the Property and threatened disruption in its business through an eviction action. McDonald's should not be forced to risk a claim of eviction. McDonald's will suffer irreparable harm and injury unless Max Rodriguez is temporarily

restrained and preliminarily and permanently enjoined from interfering with McDonald's rights under the Lease (including without implied limitation the right of quiet enjoyment) or otherwise disturbing McDonald's business operations conducted on the Property.

34. Pursuant to Fed. R. Civ. P. 62(b), the verification of Greg Brown, as Asset Manager for McDonald's USA, LLC, a Delaware limited liability company and wholly owned subsidiary of McDonald's, is attached in support of McDonald's request for injunctive relief.

LEGAL FEES

35. Paragraphs 1 through 34 of this complaint are incorporated herein by reference as if set forth word for word.

36. Because the landlord has alleged that McDonald's has breached the Lease, McDonald's is also entitled an award of attorney's fees pursuant to Ark. Code Ann. § 16-22-308.

WHEREFORE, McDonald's prays that this Court:

- a. enter a judgment declaring that the Lease, as amended by the First Amendment, Second Amendment and 1988 Letter Amendment, is in full force and effect;
- b. enter a judgment declaring that McDonald's is not in default; and
- c. enter a judgment declaring that McDonald's has properly exercised its option to extend the lease for another term of five (5) years;
- d. temporarily restrain and preliminarily and permanently enjoin Max Rodriguez from interfering with McDonald's rights under the Lease (including without implied limitation the right of quiet enjoyment), otherwise disturbing McDonald's business operations conducted on the Property. or attempting to force McDonald's to vacate the Property;
- e. award McDonald's its legal fees incurred herein in contesting Max Rodriguez's declaration of default and demand to vacate; and

f. award McDonald's all other relief to which it may be entitled.

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