

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

THE CLARKSBURG DEVELOPMENT TWO,
LIMITED LIABILITY COMPANY,

Plaintiff,

Vs.

Civil Action No. 15-C-404-2
(Judge Thomas Bedell)

IIAAMM, LLC,

Defendant.

FILED IN THE 15TH JUDICIAL CIRCUIT
Nov 16 2015
ATTEST: C. Sub
Circuit Clerk, Harrison County, West Virginia

ANSWER OF DEFENDANT

Defendant IIAAMM, LLC, by and through the undersigned counsel, James R. Christie, Esq., and for its answer to the complaint of Plaintiff states as follows:

FIRST SEPARATE DEFENSE

The complaint, in its entirety, fails to state a cause of action upon which relief can be granted against this Defendant.

SECOND SEPARATE DEFENSE

1. Paragraph No. 1 of the complaint states legal conclusions to which no response is required. To the extent a response is deemed necessary, this Defendant denies that any breach of contract has occurred.
2. Defendant admits the allegation of Paragraph No. 2 of the complaint.
3. Defendant admits the allegation of Paragraph No. 3 of the complaint.
4. Paragraph No. 4 of the complaint states legal conclusions to which no response is required.

5. Defendant admits that Harrison County is the proper venue.
6. Defendant admits the allegations of Paragraph No. 6 of the complaint.
7. Defendant admits the allegation of Paragraph No. 7 of the complaint.
8. Defendant admits the allegation of Paragraph No. 8 of the complaint.
9. Defendant denies that the Property was not used as a restaurant or office for at least nine (9) months, as alleged in Paragraph No. 9 of the complaint. Defendant avers that the Property was used as either an office or restaurant. Defendant admits that Plaintiff served upon Defendant a letter dated July 8, 2015, attempting to exercise the option to repurchase and naming an appraiser. Defendant avers, however, that the attempted exercise of the option is void and without merit for the reason that the right to exercise the option to repurchase had not been triggered. Strict proof is demanded at trial on these matters.
10. Defendant denies the allegation of Paragraph No. 10 of the complaint. Strict proof is demanded at trial on these matters.
11. Defendant restates and incorporates by reference the answers in Paragraphs No. 1 through 10 above as if fully set forth herein.
12. Defendant admits the allegations of Paragraph No. 12 of the complaint.
13. Defendant admits the allegations of Paragraph No. 13 of the complaint.
14. Defendant denies the allegation of Paragraph No. 14 of the complaint. Strict proof is demanded at trial on these matters.
15. Defendant denies the allegation of Paragraph No. 15 of the complaint. Strict proof is demanded at trial on these matters.
16. Defendant admits that it has not appointed an appraiser and avers that it has no duty to appoint an appraiser for the reason that the option to repurchase was not triggered. Strict proof is demanded at trial on these matters.

17. Defendant denies the allegation of Paragraph No. 17 of the complaint. Strict proof is demanded at trial on these matters.

18. Defendant denies the allegation of Paragraph No. 18 of the complaint. Strict proof is demanded at trial on these matters.

19. Defendant restates and incorporates by reference the answers in Paragraphs No. 1 through 18 above as if fully set forth herein.

20. Paragraph No. 20 states legal conclusions to which no response is required. To the extent a response is deemed necessary, Defendant denies all allegations of Paragraph No. 20. Strict proof is demanded at trial on these matters.

21. Defendant denies the allegation of Paragraph No. 21 of the complaint. Strict proof is demanded at trial on these matters.

22. Defendant denies the allegation of Paragraph No. 22 of the complaint. Strict proof is demanded at trial on these matters.

23. Defendant denies the allegation of Paragraph No. 23 of the complaint. Strict proof is demanded at trial on these matters.

24. Defendant avers that it has complied with its obligations under the Agreement and is not required to convey the Property to Plaintiff. Defendant denies all other allegations of Paragraph No. 24 of the complaint. Strict proof is demanded at trial on these matters.

25. Defendant denies the allegation of Paragraph No. 25 of the complaint. Strict proof is demanded at trial on these matters.

26. Defendant denies the allegation of Paragraph No. 26 of the complaint. Strict proof is demanded at trial on these matters.

27. Defendant restates and incorporates by reference the answers in Paragraphs No. 1 through 26 above as if fully set forth herein.

28. Defendant denies the allegation of Paragraph No. 28 of the complaint. Strict proof is demanded at trial on these matters.

THIRD SEPARATE DEFENSE

This Defendant acted at all times within its lawful property rights.

FOURTH SEPARATE DEFENSE

Plaintiff's claims are barred by the doctrine of acquiescence.

FIFTH SEPARATE DEFENSE

Plaintiff's claims are barred by the doctrine of estoppel.

SIXTH SEPARATE DEFENSE

Plaintiff raises, so as not to waive, "all waivable" defenses contained within the West Virginia Rules of Civil Procedure.

SEVENTH SEPARATE DEFENSE

Plaintiff hereby incorporate by reference, as if specifically set forth herein, any and all affirmative defenses to Plaintiff's claim as are generally recognized as being applicable to the claims of the type asserted by Plaintiff.

EIGHTH SEPARATE & AFFIRMATIVE DEFENSE

1. Section 3 of the Supplemental Agreement provides that the "Parcel shall be used as a restaurant or for office purposes and for no other use." After the closing of a restaurant upon the Property in late October, 2014, the Property was used as an office for Defendant and Rosewood Development, LLC, an affiliate of Defendant.

2. Section 3 of the Supplemental Agreement does not require the continuing use of the Property as a restaurant. It only requires the cessation of a "permitted use" for more than nine (9) months. Use of the Property by Defendant as its office is a permitted use.

3. By Lease Agreement dated March 31, 2015 (the "Lease"), Defendant leased the Property to Primanti Corporation ("Primanti") for the operation of a restaurant, a permitted use. Pursuant to the terms of the Lease, Defendant was to deliver possession of the Property to Primanti upon receipt of all Required Approvals (as defined in the Lease), which included Plaintiff's approval of the construction plans for the renovation of improvements to the Property.

4. On May 6, 2015, Primanti received notice that Plaintiff had approved the construction drawings and elevations, all being part of the improvements of the Property under the Lease.

5. On May 20, 2015, Plaintiff, by Michael Staenberg, approved the 30' pylon sign for Primanti, being part of the improvements of the Property under the Lease.

6. On or before June 8, 2015, Plaintiff approved Primanti's panel sign design for the pylon sign of McDonald's, being part of the improvements of the Property under the Lease.

7. On June 23, 2015, the City of Clarksburg issued to Primanti the Municipal License, a Required Approval.

8. On June 24, 2015, the City of Clarksburg issued to Primanti a Building Permit for the improvement to the Property, a Required Approval.

9. On June 26, 2015, the Property was delivered by Plaintiff to Primanti, pursuant to the terms of the Lease.

10. Defendant's use of the Property as an office ended on June 26, 2015, when possession of the Property, pursuant to the Lease, was delivered to Primanti Corporation.

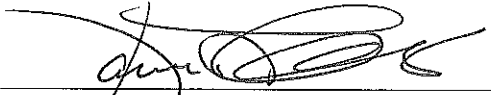
11. Notwithstanding the permitted use of the Property by Defendant as an office, the entering into the Lease for a restaurant, being is a permitted use, would have stopped or stayed the running of the nine (9) period if same had commenced, which Plaintiff denies. The entering into the Lease constituted compliance with the Supplement Agreement. The construction of

improvements, in order to conform to the needs and policies of Primanti Corporation, is a prerequisite to opening and operating the restaurant. Therefore, such construction, which was approved by Plaintiff, is and was an integral part of the restaurant and a permitted use.

12. The nine (9) month period never commenced. Therefore, the option to repurchase was not triggered and Plaintiff's attempted exercise of the option to repurchase was void and without merit.

WHEREFORE, Defendant prays that the Complaint filed against it herein be dismissed with prejudice, and that it be awarded its costs and reasonable attorney fees incurred in the defense of this action, and such other and further relief as the Court deems to be just and equitable.

**IIAAMM, LLC
BY COUNSEL**


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Counsel for Defendant

LOBBED BY DEFENDANT JUDICIAL CIRCUIT

Nov 16 2015
ATTEST: C. L. L. L.
Circuit Clerk, Judicial Circuit West Virginia