

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

PR LYCOMING LIMITED PARTNERSHIP,	:	
Plaintiff	:	DOCKET NO. 11-01,425
	:	CIVIL ACTION – LAW
vs.	:	
	:	MOTION FOR PARTIAL
ROLES AMUSEMENT CO., L.P., its general partner	:	JUDGMENT ON THE
ROLES, INC., ROBERT L. ROLES, JR., MARLEE M.	:	PLEADINGS
ROLES, and DANIEL KLINGERMAN,	:	
Defendants	:	MOTIONS TO COMPEL

OPINION AND ORDER

AND NOW, this 10th day of July, 2012, following oral argument on Plaintiff’s Motion for Partial Judgment on the Pleadings, Plaintiff’s Motion to Compel Discovery, and Defendants’ joint motion to Strike Objections of Plaintiff to Discovery and to Compel Discovery from Plaintiff, it is hereby ORDERED and DIRECTED as follows:

Plaintiff’s Motions

1. Plaintiff’s Motion for Partial Judgment on the Pleadings is DENIED, without prejudice.

The Court finds that there are disputed issues of fact in the underlying case, and Plaintiff is not entitled to judgment as a matter of law. In this matter, Plaintiff cites to *Bird Hill Farms, Inc. v. U.S. Cargo & Courier Service, Inc.*, 845 A.2d 900 (Pa. Super. Ct. 2004), to support its claim that this Court should grant its motion in regard to Count I of its Complaint, entitled Breach of Lease. This Court does not agree.

The relevant facts of the *Bird Hill* case are as follows: Plaintiff Bird Hill owned a commercial property that it leased to Defendant Courier. 845 A.2d at 902. During the term of its lease, Defendant Courier executed an asset purchase agreement with Defendant U.S. Cargo. *Id.* The purchase agreement provided that Defendant Courier would obtain Plaintiff’s consent to assign Defendant Courier’s rights and obligations under the lease to Defendant U.S. Cargo. *Id.*

Defendant U.S. Cargo and Plaintiff failed to negotiate new lease terms. *Id.* However, despite being unable to negotiate a new lease, Defendant U.S. Cargo paid rent and utilities for the property until it abandoned the site, without giving notice to Plaintiff. *Id.* The site remained unoccupied for approximately six (6) months until Plaintiff could acquire new tenants. *Id.*

Plaintiff Bird Hill filed a landlord-tenant claim against Defendant U.S. Cargo for rent, repairs, and maintenance of the commercial property. *Id.* In response, Defendant U.S. Cargo claimed that it was not bound by the lease between Plaintiff and Defendant Courier. *Id.* Plaintiff Bird Hill moved for summary judgment, and the trial court granted its motion. *Id.* That Court held that U.S. Courier “implicitly assumed the lease as a matter of law under the principles of corporate successor liability.” *Id.* On appeal, our Superior Court affirmed the trial court’s ruling. *Id.*

The matter in the instant case comes before this Court on Plaintiff’s motion for partial judgment on the pleadings. Pursuant to Pa. R.C.P. 1034 “[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings.” Pa. R.C.P. 1304. A motion for judgment on the pleadings may be entered by the Court “when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law,” similar to a demurrer. *Mellon Bank, N.A., v. Nat’l Union Inc.*, 768 A.2d 865, 868 (Pa. Super. Ct. 2001) (citations omitted). In the instant case, Plaintiff claims that its motion for judgment on the pleadings pursuant to Count I (Breach of Lease) should be granted because Roles Amusement Co., L.P., allegedly assumed the lease of its affiliate and predecessor Roles Amusement Co., Inc. At this point in the proceedings, this Court cannot agree with Plaintiff that judgment on the pleadings is warranted in the above-captioned matter.

The Court finds that judgment on the pleadings is not warranted in this matter because there are disputed issues of fact regarding the relationship between Plaintiff and Roles Amusement Co., Inc., Roles Amusement Co., L.P., Roles, Inc., the individual Defendants, and Lycoming County Docket Nos. 10-01,011 and 11-01,425. The main issue in the underlying case is whether or not a subsequent rental agreement was entered into by the individual Defendants and Plaintiff. Defendants allege that a new lease agreement was entered into between Defendants and Plaintiff, and that Defendants paid this new lease amount, in full, for the entirety of the lease term. Therefore, it is clear there are disputed facts regarding the extension, modification, assumption, and/or assignment of the lease, requiring its denial of Plaintiff's motion for judgment on the pleadings.

Additionally, it is clear to this Court that the facts in this case differentiate from the above-referenced *Bird Hill* case. This matter came before the court on a motion for judgment on the pleadings, while the *Bird Hill* case came before the trial court on a motion for summary judgment. In this matter, one of the main issues in the case relates to whether or not a subsequent lease was entered into by the parties, while in the *Bird Hill* case, the parties agreed that no subsequent lease was entered into. In this matter, Defendants contend that the full amount of the new lease agreement was paid and that they remained on the premises until the end of their lease term, while in the *Bird Hill* case, Defendants abandoned the property before the end of the lease term. Also, in this matter, the Court is concerned about the prior judgment obtained by Plaintiff at Lycoming County Docket No. 10-01,011. The Court notes that Plaintiff obtained a judgment against Roles Amusement Co., Inc., based on the contention that Roles Amusement Co., Inc., was its tenant. *See* Lycoming County Docket No. 10-01,011. Therefore,

for the above-stated reasons, Plaintiff's Motion for Partial Judgment on the Pleadings is DENIED, without prejudice.

2. Plaintiff's Motion to Compel Discovery is GRANTED, in part, and DENIED, in part. In particular, Plaintiff's motion to compel regarding the tax returns of individual Defendants Robert L. Roles, Jr., Marlee M. Roles, and Daniel Klingerman is DENIED.
3. Plaintiff's motion to compel regarding the payroll documents from Roles Amusement Co., L.P., and Roles Amusement Co., Inc., from 2006 to present, is GRANTED in respect to Roles Amusement Co., L.P., and DENIED in respect to Roles Amusement Co., Inc.
4. Additionally, Defendants shall file written responses to Plaintiff's First Request for Production of Documents within twenty (20) days, if not already done.

Defendants' Motions

5. Defendants' motion to strike the general objections by Plaintiff to the Interrogatories and document requests is DENIED, and Plaintiff's objections are SUSTAINED.
6. Defendants' motion to strike Plaintiff's objection to Interrogatory 12 is GRANTED, and Plaintiff's objections are OVERRULED. Plaintiff is DIRECTED to answer with as much detail as possible any verbal communication by John Thirkell with any of the named Defendants regarding any extension, modification, assumption, and/or assignment of the lease in question within twenty (20) days.
7. Defendants' motion to strike Plaintiff's objection to Interrogatory 13 is GRANTED, and Plaintiff's objections are OVERRULED. Plaintiff is DIRECTED to produce any written communication between John Thirkell and any of the named Defendants regarding any extension, modification, assumption, and/or assignment of the lease in question within twenty (20) days.

8. Defendants' motion to compel regarding Interrogatories 17-19 is DENIED, and Plaintiff's objections are SUSTAINED.
9. Defendants' motion to compel regarding Interrogatory 20 is GRANTED in part, and Plaintiff's objection is OVERRULED in part. Plaintiff is DIRECTED to identify the tenants, if any, from whom the Lycoming Mall accepted reduce lease rates from in the years of 2008, 2009, and 2010, within twenty (20) days. The names of these tenants and any other identifying information may be redacted by Plaintiff.
10. Defendants' motion to compel regarding Interrogatory 21 is GRANTED in part, and Plaintiff's objection is OVERRULED in part. Plaintiff is DIRECTED to produce copies of documents, if any, reflecting lease rate adjustments from 2008 to 2010, as provided for by Interrogatory 20, within twenty (20) days.
11. Defendants' motion to compel regarding Interrogatory 22 is GRANTED, and Plaintiff's objection is OVERRULED. However, Plaintiff has answered "none" and this response need not be supplemented if the answer remains accurate.

BY THE COURT,

Date

Richard A. Gray, J.

RAG/abn

cc: Stephen S. Zubrow, Esquire
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Joseph R. Musto, Esquire
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