IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* ILLINOIS DEPARTMENT OF CENTRAL MANAGEMENT SERVICES,	)	**No. 11 L 12727**
Plaintiff-Counter/Defendant,	)	**Commercial Calendar Q**
v.	)	**Honorable Frank B. Castiglione**
3500 W. GRAND (CHIICAGO), LLC, an Illinois limited Liability company,	)	
Defendant-Counter/Plaintiff.	)	

ORDER

This matter having come before the Court; the Court having considered Defendant-Counter/Plaintiff 3500 W. Grand (Chicago), LLC's ("3500") Motion for Summary Judgment as to Counts I and II of Plaintiff's First Amended Complaint and Plaintiff-Counter/Defendant Illinois Department of Central Management Services' ("CMS") Motion for Summary Judgment as to Count I of Defendants-Counter/Plaintiffs Counterclaim pursuant to 735 ILCS 5/2-1005; the Court having reviewed the parties' written submissions in connection therewith; the Court being advised of the premises,

Finds:

FACTS

The following is a brief summation of the litigation before the Court. CMS was a tenant of the real estate located at 3500 W. Grand Avenue in Chicago ("Property"). Since September 9, 2005, 3500 owned the Property. CMS was a holdover tenant of the Property when 3500 succeeded the original lessor upon taking ownership of the property. CMS paid and 3500 accepted monthly payments at the rate of $16,830.00/month in rent for the property. Before December, 2009, CMS determined that it was making overpayments to 3500. According to the Lease, amortization payments began with the start of the Lease and ended after 120 months. The amortization payments should have ended on March 31, 2004. CMS argues it was making the

amortization payments after the time required by the lease. Subsequently, CMS decided to abate the overpayments. CMS brought a suit against 3500 to recover the rest of the overpaid rent through a Breach of Contract Claim (Count I) and an Unjust Enrichment Claim (Count II). 3500 brought a counterclaim for Breach of Contract based on CMS's failure to make rental payments during abatement and failure to pay a portion of the real estate taxes for the Property because the Cook County Assessor's Office failed to include all relevant PINs for the Property. 3500 also alleges that CMS owes interest for its abatement based on the Illinois Prompt Payment Act. CMS now seeks a summary judgment in its favor based on Counts I and II of the Amended Complaint. 3500 also seeks summary judgment in its favor based on the voluntary payment doctrine and for recovery of rent during the abatement period based on the Lease.

ANALYSIS

Summary judgment is appropriate when the pleadings, depositions, admissions and affidavits, viewed in a light most favorable to the nonmovant, fail to establish a genuine issue of material fact, thereby entitling the moving party to judgment as a matter of law. 735 ILCS 5/2-1005; *Progressive Universal Ins. Co. v. Liberty Mut. Fire Ins. Co.*, 215 Ill. 2d 121, 127-28 (2005). The purpose of summary judgment is not to try a question of fact, but simply to determine whether one exists. *Jackson v. TLC Assoc., Inc.*, 185 Ill. 2d 418, 423 (1998). A "genuine issue of material fact exists where either the material facts are disputed or the material facts are undisputed but reasonable people may draw different inferences from those facts." *Sardiga v. The Northern Trust Company*, 2011 Ill. App. LEXIS 223, *9 (1st Dist. 2011)(March 15, 2011); *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008).

Moreover, a trial court is required to construe the record against the moving party and may only grant summary judgment if the record shows that the movant's right to relief is clear and free from doubt. *Id.* citing *People ex rel. Department of Labor v. MCC Home Health Care, Inc.*, 339 Ill. App. 3d 10, 19 (1st Dist. 2003). If disputes as to material facts exist or if reasonable minds may differ with respect to the inferences drawn from the evidence, summary judgment may not be granted. *Assoc. Underwriters of Am. Agency, Inc. v. McCarthy*, 356 Ill. App. 3d 1010, 1016-17 (1st Dist. 2005). If the plaintiff fails to establish an element of the cause of action, summary judgment for the defendant is proper. *See Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 114 (1995). Although a plaintiff is not required to prove his case at the summary

judgment stage, in order to survive a motion for summary judgment, the nonmoving party must present a factual basis that would arguably entitle the party to a judgment." *Robidoux v. Oliphant*, 201 Ill.2d 324, 335-36 (2002).

Where parties have filed cross-motions for summary judgment, they agree that no genuine issue as to any material fact exists and that only a question of law is involved. They invite a court to decide the issues based on the record. Home Ins. Co. v. Cincinnati Ins. Co., 345 Ill. App. 3d 40 (1st Dist. 2004); see also *Home Insurance Company v. Cincinnati Insurance Co.*, 345 Ill.App.3d 40, 44 (2003). However, such a tacit agreement among the parties does not compel the court to conclude that there is no issue of material fact, and it does not obligate the trial court to render summary judgment in either party's favor. See *Andrews v. Cramer,* 256 Ill.App.3d 766, 769 (1993).

1. Voluntary Payment Doctrine

The Court must first discuss the issue of whether CMS is entitled to recover its overpayments. 3500 asserts that the rental payments made by CMS with amortization were not overpayments, but full rental payments as stated in the Lease. The Lease, however, is clear on its face that the amortization payments were to be made during a 120-month period, starting March 31, 1994 and ending March 31, 2004. The Lease does state a total cost per square foot, but this price includes the amortization portion of the rent. Additionally, immediately preceding the total cost per square foot is the statement that the amortization has a 120-month period. Therefore, CMS was in fact making overpayments based on the Lease once the period ended. Thus, that argument is not well taken.

3500 also argues in the alternative that the voluntary payment doctrine bars recovery of the overpayments. The voluntary payment doctrine holds, "money voluntarily paid under a claim of right to the payment, and with knowledge of the facts by the person making the payment, cannot be recovered by the payor solely because the claim was illegal." *Smith v. Prime Cable*, 658 N.E.2d 1325, 1329 (Ill. App. Ct. 1st Dist. 1995). The doctrine provides that, "absent fraud, duress or mistake of fact, money voluntarily paid on a claim of right to the payment cannot be recovered on the ground that the claim was illegal." *Ramirez v. Smart Corp.*, 371 Ill. App. 3d 797, 801 (3d Dist. 2007) citing *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, (2005). Additionally, the court stated in *Ramirez* that the doctrine will apply to claims premised

on a contractual relationship or a statutory obligation. *Id.* citing *Smith v. Prime Cable of Chicago,* 276 Ill. App. 3d 843(1995). 3500 has made an initial showing that CMS had knowledge of overpayment based on the Lease. The Lease was clear and indicated all relevant time periods for the amortization payments.

CMS generally argues the overpayments were inadvertent and were a mistake of fact, which is an exception that would preclude the application of the voluntary payment doctrine. That argument is not well taken. "[F]ailure to recognize error in making a voluntary payment does not constitute mistake of fact under the doctrine when the relevant facts were not obscured or inaccessible." *Harris v. ChartOne*, 841 N.E.2d 1028, 1032 (5th Dist. Ill. App. Ct. 2005). The Lease bestowed knowledge of overpayment. The relevant fact in this case is the term of the amortization payments, which was clearly designated in the Lease as a 120-month period.

Lastly, CMS argues its claim of unjust enrichment bars recovery under the voluntary payment doctrine. This argument is misplaced, because "where there is a specific contract that governs the relationship of the parties, the doctrine of unjust enrichment has no application" *Guinn v. Hoskins Chevrolet*, 361 Ill. App. 3d 575, 604, (1st Dist. 2005). Although CMS is arguing the claim of unjust enrichment in the alternative, both parties claim the Lease is a valid contract. Therefore, the unjust enrichment claim does not bar the application of the voluntary payment doctrine.

In conclusion, 3500 is entitled to rental payments in the amount of the base rent for the months of abatement. As previously stated, 3500 is not entitled to amortization during the abatement period, because of the explicit terms in the Lease. Lastly, the voluntary payment doctrine bars CMS from recovering any of its overpayment. Thus, 3500's Motion for Summary Judgment as to CMS's failure to make rental payments under the Lease is GRANTED for the amount during the abatement and DENIED as to the amortization payments.

2. Undisclosed PIN

Next, 3500 argues that CMS should pay for the undisclosed PIN for the Property because it received incorrect information from the Cook County Assessor's Office. 3500 failed to include a relevant PIN for the Property in the Disclosure Statement to CMS. CMS argues that, because the PIN was not included in the Disclosure Statement made upon 3500 taking ownership of the rented property according to Illinois law (50 ILCS 105/3.1), which was made part of the Lease,

CMS should not have to pay for the taxes associated with that undisclosed PIN. Although 3500 was unable to ascertain the correct PINs for the rented property, this Court can only consider the "four corners" of the contract when determining if CMS is obligated to pay a prorated portion of the undisclosed PIN. 3500 did not argue rescission or mutual mistake.

It is well settled that a court, when construing a contract, should ascertain the intent of the parties and give effect to that intent. *Eichengreen v. Rollins, Inc.*, 325 Ill. App. 3d 517, 521 (1st Dist. 2001). *In re Marriage of Olsen,* 124 Ill. 2d 19, 25-26, 528 N.E.2d 684, 687, 123 Ill. Dec. 980 (1988). As the Illinois Supreme Court has further explained:

> Traditional contract interpretation principles in Illinois require that: 'an agreement, when reduced to writing, must be presumed to speak the intention of the parties who signed it. It speaks for itself, and the intention with which it was executed must be determined from the language used. It is not to be changed by extrinsic evidence.' [Citation.]

Id., citing *Air Safety, Inc. v. Teachers Realty Corp.,* 185 Ill. 2d 457, 462, 706 N.E.2d 882, 884, 236 Ill. Dec. 8 (1999). The *Air Safety* court noted that this approach has been referred to as the "four corners" rule. *Id.* The "four corners" rule has been described as related, although not identical to the parol evidence rule. *Id.* The parol evidence rule has been explained as follows: "[The parol evidence] rule generally precludes evidence of understandings, not reflected in a writing, reached before or at the time of its execution which would vary or modify its terms." *Id.* "Under the parol evidence rule, extrinsic or parol evidence concerning a prior or contemporaneous agreement is not admissible to vary or contradict *a fully integrated writing."* (Emphasis added.) *Id.* A party may not introduce parol or extrinsic evidence to show additional consistent terms of a contract unless the writing is incomplete or ambiguous. *Id.* at 522, citing *Geoquest Productions,* 229 Ill. App. at 44-45, 593 N.E.2d at 730.

The Disclosure Statement is complete and is made part of the Lease. Therefore, the Disclosure Statement is all that can be considered in determine what real estate taxes CMS is obligated to pay. Because the Disclosure Statement does not include the undisclosed PIN, CMS cannot be obligated to pay the real estate taxes associated with that PIN. Thus, 3500's Motion for Summary Judgment as to the undisclosed PIN is DENIED.

3. Illinois Prompt Payment Act

Finally, 3500 asserts that the statement on the checks CMS previously used to make rental payments require CMS to comply with the Illinois Prompt Payment Act. The statement is

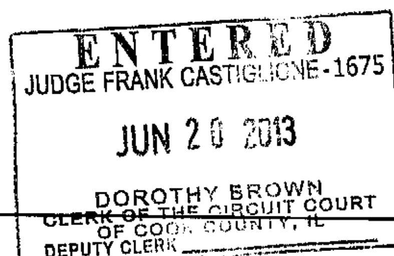
as follows, "Payment of interest may be available if the State fails to comply with the Illinois Prompt Payment Act (30 ILCS 540/1)."

The Illinois Prompt Payment Act is not applicable in this case because it is specifically meant for the payments by a government organization for "goods and services." *See* 30 ILCS 540/1. 3500 has not argued that the Lease amounts to goods or services. Furthermore, 3500 has not shown how the statement on the rental payment checks from CMS requires invocation of the Illinois Prompt Payment Act. Therefore, this argument is not well taken. Thus, 3500's Motion for Summary Judgment as to interest due under the Illinois Prompt Payment Act is DENIED.

Wherefore, it is hereby ORDERED:

1. CMS's Motion for Summary Judgment is DENIED.
2. 3500's Motion for Summary Judgment is DENIED in part and GRANTED in part:
    a. Motion for summary judgment as to CMS's failure to make rental payments under the Lease is GRANTED for the amount during the abatement and DENIED as to the amortization payments. The amount used to calculate the amount owed is the base rent per month without amortization payments, $10,879.00. The total amount that CMS abated is $130,790.16, which consists of the nine months it did not pay rent plus the $32,879.16 in real estate taxes owed for that period;
    b. Motion for summary judgment as to the undisclosed PIN is DENIED;
    c. Motion for summary judgment as to interest due under the Illinois Prompt Payment Act is DENIED.

Date: June 20, 2013



Judge Frank B. Castiglione
Circuit Court of Cook County, Illinois
County Department, Law Division