



0623639059

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

Cyrus Homes, Inc., an Illinois corporation,

vs.

Jose Venzor (correctly known as
Jose Venzor)

Case Number: 00L14496

Doc#: 0623639059 Fee: \$38.50
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/24/2006 03:37 PM Pg: 1 of 8

NOTICE OF ASSIGNMENT OF
JUDGMENT
AND MEMORANDUM

For consideration of the sum of \$10.00,
the receipt of which is acknowledged, Cyrus Homes, Inc. ("Assignor") has previously sold, transferred and assigned
to Chicago Title Insurance Company all of its right, title and interest to a certain judgment entered favor of Cyrus
Homes, Inc. in the circuit court and county listed above on March 19, 2004, against Jose Venzor (f/k/a Jose Venzor),
in the amount of \$170,617.80, and the Memorandum of that Judgment recorded in the Office of the Recorder of
Deeds Cook County, Illinois, on July 21, 2004, under document number 0420327163, affecting the following real
estate:

Legal Description: Lot 4 and the East 30.00 Feet of Lot 5 in Block 67 in the Original Village (now City) of
Evanston in the Southwest 1/4 of Section 18, Township 41 North, Range 14, East of the Third
Principal Meridian, in Cook County, Illinois

Common Address: 1012-1016 Church Street, Evanston, IL Real Estate PIN: 11-18-302-006-000
(Volume number 057)

A copy of the Assignment of the underlying judgment is attached as Exhibit A

Date: August 23, 2006

Chicago Title Insurance Company

By: Richard P. Sulkowski
Its: Vice President & Associate Counsel

State of Illinois) ss
County of Cook)

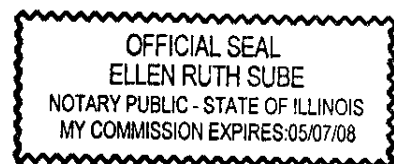
Acknowledged before me on August 23, 2006, by the individual in the corporate capacity listed above, as a free and voluntary
act, individually and on behalf of the corporation, for the uses and purposes set forth.

Notary Public

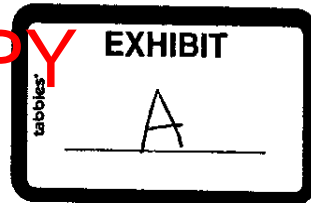
Prepared by and after recording mail to

Richard P. Sulkowski
Chicago Title Insurance Company
171 N. Clark Street, 8th Floor
Chicago, Illinois 60601

CL# 195383 (L28440)



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

CYRUS HOMES, INC an Illinois corporation)	
)	
Plaintiff)	Case No. 00L14496
)	
)	
v.)	
)	
JOSE VENSOR (CORRECTLY KNOWN AS JOSE VENZOR))	

ASSIGNMENT OF JUDGMENT

FOR VALUE RECEIVED, the Undersigned Cyrus Homes, Inc., an Illinois Corporation plaintiff herein, does hereby assign, set over and transfer that certain judgment entered in this cause on March 19, 2004, a copy of which is appended to this assignment, granting hereby to Chicago Title Insurance Company, assignee, all rights title and interest of any nature whatsoever, it has had or may hereafter have or subsequently acquire in the rights as plaintiff in this cause of action, and rights to enforce said judgment but without recourse, and granting to assignee Chicago Title Insurance Company full right and authority to proceed in the name of Cyrus Homes, Inc to enforce such rights of plaintiff as may exist under said judgment. Assignor warrants that no part of the judgment has been paid or satisfied.

Cyrus Homes, Inc.


President

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On this 19th day of May, 2006, Walter Kihm president of Cyrus Homes, Inc. , an Illinois corporation, appeared before me and confirmed that he executed the foregoing assignment as his voluntary act and deed and pursuant to all authority required to grant and assign the interests assigned.

Carleen Dal Santo
"OFFICIAL SEAL"
Notary Public
CARLEEN DAL SANTO
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 2/24/2007

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

)	
)	
Cyrus Homes, Inc., an Illinois corporation,)	
)	
Plaintiff,)	No. 00 L 14996
)	
vs.)	Calendar S
)	
Jose Venzor (correctly known as)	Judge Lee Preston
Jose Venzor),)	
)	
Defendant.)	

ORDER

THIS CAUSE COMING ON FOR TRIAL, and the court having heard and considered the testimony of witnesses, the documents offered and received in evidence, and the arguments of counsel, and the court being fully advised in the premises:

IT IS HEREBY ORDERED, the court finds and judgment is hereby entered in favor of plaintiff Cyrus Homes, Inc. and against defendant Jose Venzor in the amount of One Hundred Seventy Thousand Six Hundred Seventeen and 80/100 Dollars (\$170,617.80).

Exhibit B (Rent Roll) attached to the Real Estate Contract between Plaintiff Cyrus Homes, Inc. and Defendant Jose Venzor (Joint Exhibit 1) contains the main warranty by Mr. Venzor that "[a]ll of the above referenced occupancies are on a month to month basis." That warranty includes the occupancy of Dr. Michael Spiegel. Additionally, Ronald Fleckman, president of Cyrus Homes, Inc. testified that Mr. Venzor said at the closing of Cyrus Homes' purchase of the subject property from Mr. Venzor that "all the leases were cancelable on 30 day's notice." Mr. Fleckman testified further that Mr.



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Venzor several times told Mr. Fleckman and Mr. Kihm that the leases were cancelable on 30 day's notice.

There is also in evidence, Plaintiff's Exhibit 10, which is a proposed lease extension agreed to by Dr. Spiegel and Evanston Venture, through its agent, John Faro. The court finds that Dr. Spiegel exercised his option to extend the lease, since he remained on the premises, paid rent and both Dr. Spiegel and the landlord, Mr. Venzor, treated the lease agreement as having been extended. Indeed, entering into the agreement for a 12-month cancellation provision indicates to the court that the parties considered the option to extend the lease as having been exercised.

Regarding Joint Exhibits 4 and 5, the court finds that Mr. Faro had either actual or apparent authority to bind Mr. Venzor and Evanston Venture to the agreement providing for a 12-month notice of cancellation of Dr. Spiegel's lease. More specifically, the court finds that Mr. Faro executed Joint Exhibit 5 in two places. The court further finds that Mr. Faro's testimony to the contrary is not credible. The bald assertion that he affixed his signature only on the top signature line is not credible to the court because no handwriting expert was called to testify as to the legitimacy or illegitimacy of the signature. Further, while this court does not hold itself out as an expert on handwriting, both of the signatures appear to be the signature of the same person, John Faro. After comparing Mr. Faro's signatures on Joint Exhibits 4 and 5 and on Plaintiff's Exhibit 10 (both in the letter, dated December 19, 1991, from Evanston Venture to Dr. Spiegel and on the Office Lease, dated 3-6-96, with Joy Yee Noodle Kitchen), each of the signatures on these documents appeared to the court as having been affixed by the same person, again John Faro.

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It may have been that Mr. Faro executed Joint Exhibit 5 in both places and delivered the signed document to Dr. Spiegel and then spoke with Mr. Venzor to find that Mr. Venzor objected to giving a 12-month cancellation provision. However, in any event, Dr. Spiegel, a long time tenant at the subject premises, believed Mr. Faro to be the manager of the building. Further, Mr. Faro dealt with him as the manager and rent was collected by Mr. Faro for Mr. Venzor. Therefore the court finds that Mr. Faro was held out by Mr. Venzor as the manager of the subject premises and was Mr. Venzor's agent. As such, by Mr. Faro executing Joint Exhibit 5 in both places, Jose Venzor, as principal, was bound to the provisions of the lease extension and cancellation agreement and its terms.

Mr. Venzor testified that Mr. Faro was not authorized by him to do anything other than to collect rent from tenants and that he, Mr. Venzor, told the tenants that Mr. Faro had no other authority. However, Dr. Spiegel's testimony contradicts this assertion and no other tenant witnesses were called to corroborate Mr. Venzor's testimony. Even Mr. Faro's testimony indicated that his authority from Mr. Venzor was more than simply to receive rent checks. Further, Mr. Venzor testified that he "did not remember" if he gave Mr. Faro the authority to enter into the 12-month cancellation agreement with Dr. Spiegel. The court finds this testimony unconvincing. Therefore, as to liability for breach of warranty, the court finds in favor of plaintiff Cyrus Homes, Inc. and against defendant Jose Venzor.

In regards to damages, it is black letter law that damages for breach of contract should only place the aggrieved party in the position it would have been in had the contract been performed. *Lanterman, et al. v. Edwards, et al.*, 294 Ill.App. 3d 350 (5th Dist. 1998). In determining damages, a party may recover damages that: (1) naturally

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result from the breach; or (2) are the consequence of special or unusual circumstances which were within the reasonable contemplation of the parties when making a contract. *Edward E. Gillen Company v. The City of Lake Forest*, 221 Ill.App. 3d 5 (2d Dist. 1991). Further, damages are not recoverable for loss that a breaching party did not have reason to foresee as a probable result of the breach when the contract was made. *Talerico, et al. v. Olivarri, et al.*, 343 Ill.App. 3d 128 (1st Dist. 2003).

In the case at bar, plaintiff Cyrus Homes paid defendant \$2,200,000.00 to purchase the subject property. The Real Estate Contract contained the warranty that all of the tenants listed on the Rent Roll (Exhibit B to the Real Estate Contract, Joint Exhibit 1) had leaseholds with 30-day cancellation provisions. It must have been known to the defendant that it was meaningful and important to the plaintiff that this warranty be accurate. Further, it should have been known to the defendant that plaintiff, following its purchase of the subject property, may want to further develop the property, may want to sell the property or may want to do with it what might require the removal of listed tenants within 30-days.

The evidence is undisputed that Cyrus Homes, after first learning of Dr. Spiegel's lease and lease cancellation provisions, entered into an agreement with Dr. Spiegel in order to convince him to terminate his lease on the subject premises early. (See Plaintiff's Exhibit 6.) Under the provisions of that agreement, the Amendment to Escrow Agreement (Plaintiff's Exhibit 7) and as testified to by Dr. Spiegel, Cyrus Homes paid Dr. Spiegel \$126,794.00 in 2 installments. Additionally, that agreement (Plaintiff's Exhibit 6) forgives Dr. Spiegel's obligation to pay the \$1,209.60 per month rent for the months of September, October and November of 2000. Walter Kihm further testified that Cyrus Homes had to pay \$27,775.00 for construction of new offices for Dr. Spiegel

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(Plaintiff's Exhibit 12), \$2,100.00 for lighting for Dr. Spiegel's new offices, \$7,320.00 for countertops and \$3,000.00 for plumbing fixtures. Under plaintiff's agreement with its subsequent purchaser (See Joint Exhibit 8), plaintiff was under an obligation to diligently and continuously use all commercially reasonable efforts to obtain a lease termination agreement...with Dr. Michael G. Spiegel..." The court finds that the costs incurred and the payments made, as indicated above, were commercially reasonable and reasonably necessary to enable plaintiff to comply with its obligations to its subsequent purchaser, and that such were reasonably foreseeable damages at the time of contracting with defendant.

THEREFORE, the court finds and judgment is hereby entered in favor of plaintiff Cyrus Homes, Inc. and against defendant Jose Venzor in the amount of One Hundred Seventy Thousand Six Hundred Seventeen and 80/100 Dollars (\$170,617.80).

ENTERED: JUDGE LEE PRESTON

MAR 19 2004

~~Circuit Court - 1652~~
 Judge Lee Preston

I hereby certify that the foregoing is a true and correct copy of the original as filed in the Court of Cook County, Illinois.

JUN 09 2005

 Clerk of Cook County
 of Cook County, Illinois