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(For Rec)



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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
MUNICIPAL DEPARTMENT, FOURTH DISTRICT**

AFFILIATED REALTY AND MANAGEMENT  
COMPANY,

Plaintiff,

vs.

LALJI CORPORATION, et al.,

Defendants.

No. 2006 M4 1818

**MEMORANDUM OF JUDGMENT**

On October 27, 2010, judgment was entered in this court in favor of the plaintiff AFFILIATED REALTY AND MANAGEMENT COMPANY, and against Defendant's PARESH D. JANI and SUREKHA JANI, whose last known address is 2416 Indian Ridge Drive, Glenview, Illinois 60026, in the amount of \$46,401.25 plus costs. PIN: 04-20-305-044-0000 (See copy of Certified Order, attached.)

Brian M. Dougherty  
Attorney for Plaintiff

Dated: January 17, 2011  
Name: Brian M. Dougherty  
Attorney for Plaintiff  
Goldstine, Skrodzki, Russian,  
Nemec and Hoff, Ltd.  
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## LEGAL DESCRIPTION FOR THE PROPERTY COMMONLY KNOWN AS

**2416 Indian Ridge Drive  
Glenview, Illinois 60026**

Parcel 1:

Lot 154 in Indian Ridge, being a Subdivision in the West  $\frac{1}{2}$  of Section 20, Township 42 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois

Parcel 2:

An undivided 0.0025 percent interest in the common areas appurtenant to parcel 1m as set forth in the Declaration of Easements, Covenants, and Restrictions of Indian Ridge, recorded as Doc Number 250840000, all in Cook County, Illinois

**UNOFFICIAL COPY****IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
MUNICIPAL DEPARTMENT, FOURTH DISTRICT****AFFILIATED REALTY AND MANAGEMENT)****COMPANY, etc., )****Plaintiff, )****vs. )****LALJI CORPORATION, etc. et. al., )****Defendants. )****No. 06 M4-1818****MEMORANDUM OPINION AND ORDER**

This matter is before the court at the conclusion of a bench trial. The Court has considered the testimony of the witnesses, the exhibits admitted into evidence, the parties' trial stipulation, the Plaintiff's Trial Brief and the arguments of counsel.

The Court makes the following findings of fact:

On January 30, 1997, Affiliated, as agent for Code 50, LLC, leased the premises at 1039-47 So. 25<sup>th</sup> Avenue, Bellwood, Illinois to Anish Corporation. The term of the lease was 10 years, commencing 2/1/97 and terminating 1/31/07. The premises were to be used for the operation of a currency exchange.

On August 1, 2002, Anish Corporation, with the consent of the landlord, assigned the subject lease to defendant, Lalji. As part of that lease assignment, the defendants, Paresh Jani, Surekha Jani, Haresh Shah and Renuka Shal executed a Guaranty agreement, whereunder these defendants guaranteed the performance by Lalji of each and every obligation of tenant under the lease.

Lalji was substantially current in its lease obligations through March of 2006. Beginning in April 2006, Lalji defaulted in its rent and other

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financial obligations under the lease. Lalji paid no rent and made no other lease payments after March of 2006.

Through the last day of the lease term (Jan. 31, 2007) the total unpaid rent, common area maintenance, real estate taxes, insurance and late fees equaled the sum of \$24,806.12.

Affiliated incurred an HVAC inspection fee of 117.00 and is entitled to \$23.40 as an administrative fee on said cost and Affiliated incurred 129.36 in advertising costs in an effort to re-let the premises after Lalji vacated. These additional expenses total 269.76.

As of the last day of the lease term the total unpaid rent, CAM, taxes, insurance, late fees, HVAC inspection (plus 20% administrative fee), and advertising is \$25,075.88.

Sometime in April 2006, Lalji's assignee (Ronald Kaine) did substantial damage to the premises. Kaine removed a bullet proof plastic shell from the interior of the premises which did extensive damage to the walls, ceiling, light fixtures, electrical wiring and other components of the inside of the premises. The rear door of the premises was also substantially damaged when a steel plate which was welded onto the rear door was torn off.

The reasonable cost incurred by Affiliated to restore the premises to a vanilla or white shell condition as required of tenant under the lease was \$17,771.14. The 20% administrative fee provided for in the lease on the repair costs was \$3554.23.

Defendants presented no evidence disputing the amount of unpaid rent, CAM, taxes, insurance, late fees, HVAC inspection fee, or advertising fees.

Instead, Defendants have pled as an affirmative defense a claim that the landlord unreasonably withheld its consent to the assignment of the lease by Lalji to two separate prospective buyers. Defendants ultimate position is that a wrongful withholding of consent to assignment would relieve Lalji of its obligation to pay any subsequent financial obligations which accrued

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under the lease.

Lalji alleged in its Affirmative Defense #2 that Affiliated wrongfully refused to consent to the assignment of the lease to Ronald Kaine.

Kaine testified that he did agree to purchase the assets of Lalji in November of 2005 and closed on the purchase in April of 2006. However, he stated that he never applied to Affiliated for a lease assignment because he had no intention of taking over Lalji's lease. Rather, Kaine testified that his intention was always to purchase the assets of Lalji and close the Tbusiness. In this way, Kaine would eliminate his closest competitor. Kaine owned 23 currency exchanges in 2005.

Kaine paid \$125,000 to Lalji for its assets. Kaine also paid an individual named Irving Barr the sum of \$87,500.00 to acquire the rights which Barr had in November of 2005 to purchase Lalji's currency exchange.

No evidence was presented that Affiliated was ever requested to approve a lease assignment from Lalji to Ronald Kaine. Hence, no evidence whatsoever was presented in support of this affirmative defense (Affirmative Defense #2)

In Affirmative Defense #1, Lalji claims that Affiliated wrongfully withheld its consent to a proposed lease assignment to Barry Shack and Ira Felner. Plaintiff's exhibit 16 is an asset purchase agreement between 25<sup>th</sup> & Eisenhower Currency Exchange, which is the name under which Lalji operated the currency exchange, Shah and Jani as "owners" and Shack and Felner as buyers. This Agreement is dated 5/31/05.

The lease required a fee of \$1800.00 for Affiliated to consider and process a proposed lease assignment.

Defense exhibit 1 is a \$900.00 check from Lalji to Affiliated to cover one-half of the assignment fee. The check is dated 5/25/10. It is not clear from the evidence whether this check was presented at a face to face meeting or mailed before the meeting.

There was one face to face meeting at the end of May or early June,

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2005 between Affiliated (Mr. Lawrence Cohen, its president) Barry Shack, Ira Felner, Mr. Shah, Mr. Jani, and PK Patel at Affiliated's offices. The purpose of the meeting was to discuss a possible assignment of the Lalji lease to Shack and Felner. Other than a brief telephone conversation between Mr. Shah and Mr. Cohen to set up the meeting, this face to face meeting was the only discussion anyone had with Affiliated about a lease assignment to Shack and Felner.

{The court notes that Mr. Jani testified that he never talked to Mr. Cohen or anyone at affiliated after the meeting at Affiliated's office. Mr. Ira Felner testified that he never talked to anyone at Affiliated about a lease assignment after the face to face meeting. Mr. Shack did not testify and neither did Mr. Patel. Mr. Cohen said there were no follow up discussions, no letters, no calls about an assignment to Shack or Felner after the meeting. Mr. Shah at first testified that after the meeting he tried unsuccessfully to reach Mr. Cohen to speak to him further about the potential lease assignment. Cohen did not call back. Shah called his attorney, Sherwin Winer, and told him what had happened at the meeting. In response to several leading questions, Shah ultimately testified that he did speak to Cohen in June of 2005 and told Cohen that Affiliated was unreasonably withholding its consent to the lease assignment to Shack and Felner. The court rejects this testimony by Shah as not believable.}

Mr. Cohen testified that he had a face to face meeting with Shah, Jani, Shack and Felner. He does not believe that he saw an asset purchase agreement. He has no recollection of demanding a 5 year extension on the lease as a precondition to approval of the assignment to Shack and Felner. He has never made such a demand. He would not reject a proposed assignment without first talking to his principals, in this case Mr. Bresler from Code 50 LLC. That is his fiduciary obligation. He did not get a lease application nor any financial information from Mr. Felner or Mr. Shack. Cohen had not previously met Mr. Shack or Mr. Felner and had no specific information about their backgrounds.

Mr. Felner testified that he signed an asset purchase agreement for the purchase of the subject currency exchange. He wanted to assume Lalji's lease. He operated a Pay Day Loan terminal inside Lalji's currency exchange.

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He was in the Pay Day Loan business until it ceased business in 2006. Irving Barr bought the Pay Day Loan business. Felner bought a business called InstaCash.

Felner remembers that at the meeting Mr. Cohen wanted the lease extended. Felner does not recall the specific term of the extension. Felner does not recall anything else specific about the meeting. It lasted about one-half hour. He does not recall submitting any financial information.

Felner and Shack intended to form a corporation to buy Lalji's assets. The yet to be formed corporation would be Affiliated's new tenant if the assignment was approved. Shak and Felner had not discussed what type of corporation they would form or how it would be capitalized. Shack would own 51% and Felner 49%.

Felner testified that he did not try to contact Affiliated after the meeting. On October 3, 2005, Felner assigned his rights under the Asset Purchase Agreement to Irving Barr.

On November 5, 2005 Irving Barr assigned his rights under the Asset Purchase Agreement to Ronald Kaine. Kaine paid Barr \$87,500.00 for the assignment. There is no evidence that Barr paid Felner anything for Felner's assignment to Barr.

Both Mr. Shah and Mr. Jani testified that at the face to face meeting with Affiliated about the assignment to Shack and Felner, Cohen wanted a 5 year lease extension. Jani does not recall if he responded at all to Cohen's demand for a lease extension. Shah said he told Cohen that Shack and Felner did not want a lease extension, just an assignment of the existing term.

Shah testified that he does not recall any discussion as to what Affiliated's objection was to a straight assignment.

After the meeting Shah suggested to Felner and Shack that Shah would talk to attorney Winer and let him talk to Cohen. Shah called Winer and told him what happened at the meeting.



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Attorney Winer handled many matters for Lalji. Shah is the landlord for 20 properties. Shah was in contact with attorney Winer on a regular basis. Winer drafted the asset purchase agreement

While Shah is sure that Winer must have written something to Cohen about the lease assignment, he does not know what it was and never saw a copy. Cohen never heard from anyone about the proposed assignment to Shak and Felner after the face to face meeting.

Mr. Cohen went to the premises in April, 2006 and saw that the currency exchange business was shuttered. There was a banner on the building telling customers to go to another currency exchange. There was a phone number on the banner. Through the phone number, Mr. Cohen reached Michael Fryzel, attorney for Ronald Kaine.

Fryzel told Cohen that his client would pay the balance of the rent and clean out the premises. Cohen told Fryzel that lease required tenant to restore premises to vanilla shell condition. Fryzel asked Cohen to make a specific settlement proposal. Fryzel wanted to solve the matter without litigation. Cohen learned from Fryzel that Irwin Winer represented Lalji.

On July 12, 2006 Cohen sent a letter to Irwin Winer as attorney for Lalji. Cohen's letter stated that Lalji was in default under the lease. The letter included a statement of account which set forth all rent due thru the term of the lease and a specific dollar estimate of the costs to complete the tenant's obligation to restore the premises to vanilla shell condition. The letter requested a cashier's check for the amount set forth in the statement of account.

Cohen spoke with Winer before the July 12, 2006 letter was written. He also attempted to reach Winer on at least 3 occasions after the July 12. No resolution was reached.

Affiliated filed suit on 8/25/06 seeking possession of the premises and damages. On 9/18/06 a judgment for possession was entered in favor of Affiliated and against Lalji.

Lalji has filed for Bankruptcy. This case proceeds only as to Paresh



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Jani, Surekha Jani, Haresh Shah and Renuka Shah.

After Affiliated gained legal possession of the premises in September of 2006 it restored the premises to vanilla shell condition. It introduced evidence at trial establishing that the cost of said restoration was \$17,771.14.

## CONCLUSIONS OF LAW

Plaintiff has proven by a preponderance of the evidence that Lalji breached the lease in April of 2006 and thereafter by failing to pay its monthly rent and other payment obligations due under the lease. Plaintiff has also proven by a preponderance of the evidence that its damages for plaintiff's breach of its payment obligations under the lease is \$25,075.88.

Plaintiff has also proven by a preponderance of the evidence that Lalji breached its obligation under the lease to restore the premises to vanilla shell condition. The court finds that the reasonable cost of said restoration is \$17,771.14. Because Affiliated was required to perform this lease obligation of the tenant, Affiliated is entitled to also recover from Lalji 20% restoration cost as an administrative fee, namely \$3554.23.

Lalji argues that it should not be liable for the restoration costs because it was not afforded with notice of default in its obligation to restore the premises to vanilla shell condition and an opportunity to cure. The court finds that Affiliated's July 12, 2006 letter to Lalji's attorney and its telephone conversation with the attorney constituted substantial compliance with the notice of default and opportunity to cure provision of the lease. Substantial compliance is sufficient. (Chicago Housing Authority v. Stewart, 43 Ill. 2d 96 (1969))

Also, the court finds that Lalji breached the lease in April, 2006 and again in May 2006 by failing to pay rent. Affiliated (Cohen and Boveri) accessed the property in June of 2006 and learned of its damaged condition, and of Lalji's breach of its obligation to restore the premises to vanilla shell condition. Based on the two prior breaches in rental payment obligations, Lalji's failure to restore the premises as required by the lease constituted a "Deliberate Event of Default" under par. 16 (c) of the lease, for which no notice or opportunity to cure is required.

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With regard to the Affirmative Defenses, the law is clear that the burden of proof is always on the party having the affirmative of a proposition and it abides with him until a final determination of the proposition. Where a party asks a court to believe a proposition and to base a finding thereon in his favor, the law casts the burden on him of furnishing the evidence upon which such finding can legally rest. (Bell v. School Dist. No. 84, 407 Ill 406 (1950))

The burden of proving that a landlord unreasonably withheld consent to a lease assignment is on the party asserting the claim. (Reget v. Dempsey-Tegler & Co., 70 Ill. App. 2d 32, 37 (1966)).

Lalji has failed to prove by a preponderance of the evidence that Affiliated unreasonably withheld its consent to a lease assignment.

In a verified pleading (Answer, Affirmative Defenses and Counterclaim) Lalji contended that it had presented Ronald Kaine as a suitable tenant and requested that Affiliated approve a lease assignment to Kaine. Lalji further alleged that Lawrence Cohen refused to consent to the proposed assignment unless Kaine agreed to a five year extension of the lease.

The evidence adduced at trial established clearly that the foregoing allegations were not true. Kaine was never presented to Affiliated as a proposed assignee. Kaine (as Lalji's witness) testified that his intention from the moment he accepted the assignment of the asset purchase agreement was to close the currency exchange. He contrary evidence was presented. There is not a scintilla of evidence to support the second affirmative defense.

Regarding the first affirmative defense, Mr. Felner testified that at the face to face meeting at Affiliated's office, Mr. Cohen stated that he wanted a lease extension. However, Cohen does not recall what term Cohen wanted and he remembers little else about the meeting. Cohen basically did nothing about the Asset Purchase Agreement after the meeting. No letters, no consultation with his lawyer, no calls to Cohen. Instead, Mr. Cohen, according to his testimony did nothing for 4 months and then assigned his

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rights to his business colleague, Irving Barr. Barr, after negotiating lease terms with Affiliated and receiving a terms letter from Cohen, assigned his rights to Kaine, for which Barr received \$87,500.00. There are significant factual pieces of this puzzle missing.

Both Jani and Shah testified that Cohen demanded a 5 year lease extension before he would approve an assignment to Shack and Felner. However, even though Harry Shah testified that he was in constant contact with his attorney, Sherwin Winer, no letters were written by Winer demanding acceptance of the assignment. Winer, after all, drafted the asset purchase agreement. Winer was allegedly told by Shah that Affiliated wanted a lease extension before it would accept Shack and Felner. Yet, not one letter is written, not one telephone conversation occurs demanding that Affiliated accept Felner and Shack.

These facts are in stark contrast to those presented in Vranas & Associates, Inc. v. Family Pride Finer Foods, Inc., 147 Ill. App. 3d 995 (1986). In Vranas, the proposed assignee's attorney and the tenant's attorney had numerous telephone conversations and sent several letters to the landlord attempting to work out their lease assignment difficulties and stating in writing their position that the landlord was not being reasonable.

Here, there is no evidence that Mr. Cohen ever refused to accept Shack and Jani. There is some evidence, although it is not clear and is disputed by Affiliated, that Cohen wanted a lease extension. However, there is no evidence that Affiliated ever rejected a proposed assignment. Lalji may take the position that they assumed there was a rejection, but such assumption does not establish the affirmative defense of unreasonably withholding consent to assignment.

Lalji has failed to prove by a preponderance of the evidence that Affiliated refused to approve an assignment to Shack and Felner.

Lalji's affirmative defense fails for a second reason. In order to establish that a landlord unreasonably rejected a lease assignment, tenant must prove that the proposed assignee met reasonable commercial standards. (Jack Frost Sales, Inc. v. Jarris Trust and Savings Bank, 104 Ill. App. 3d 933, 946 (1982)).

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Lalji's evidence fails to prove this element of its defense. Felner testified that he had never been rejected as an applicant for a currency exchange license by the State. The inference that Lalji would like the court to draw from this testimony is that Felner, therefore, was a financially sound tenant. However, no evidence as to Felner's (or Shack's) financial standing in May of 2005 was presented to Affiliated.

Furthermore, Felner testified that the proposed tenant would not be Felner or Shack, but instead would be some "yet to be formed" corporation. No information was provided to Affiliated about this corporation and none was presented to the Court. In fact, Felner testified that he and Shack had not gotten that far in their planning, as no capitalization plan was in place.

Defendants have failed to prove by a preponderance of the evidence that Shack and Felner and their "yet to be formed corporation" met commercially reasonable financial standards as a proposed tenant.

Defendants has failed to prove affirmative defense #2.

Defendants presented no evidence in support of their Counterclaim. The Court finds in favor of Affiliated on Lalji's Counterclaim.

## ORDER

IT IS HEREBY ORDERED that judgment is entered in favor of Plaintiff and against defendants Paresh D. Jani, Surekha Jani, Haresh K. Shah and Renuka H. Shah in the sum of \$46,401.25 plus costs

The issue of Plaintiff's claim for attorneys fees is entered and continued for hearing to a date to be set by the court.

ENTER:


