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Erik Ives
Fox Swibel
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Karen A. Yarbrough
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Date: 11/17/2016 10:02 AM Pg: 1 of 6

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

AMERICAN STORES COMPANY,)
LLC,)
)
Plaintiff,)
)
vs.)
)
GRAND PLAZA RETAIL)
INVESTORS, LLC,)
)
Defendant.)

No. 16 L 4287

Honorable Patrick J. Sherlock

ORDER

This order addresses Plaintiff's Motion for Summary Judgment:

1. This lawsuit involves a shopping center located at 10203-10217 West Grand Avenue, Franklin Park, Illinois. It consists of three parcels known as the Jewel Parcel, the Kmart Parcel and the Strip Center Parcel. Plaintiff is the current owner of the Jewel Parcel. Defendant is the current owner of the Strip Center Parcel. Through their predecessors, plaintiff and defendant became parties to a Common Area Maintenance Agreement ("Agreement") concerning the shopping center. The Agreement provided that plaintiff would maintain the common areas and improvements ("CAM") and pay the real estate taxes. The Agreement further provided that defendant would pay plaintiff 22.5% of the CAM costs, an administrative fee of 10% of those costs, and 22.5% of the real estate taxes.

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2. Plaintiff's verified complaint alleges that plaintiff has lived up to its obligations to maintain the common areas and pay the real estate taxes, but that defendant has failed to pay its share pursuant to the Agreement.

3. Plaintiff has now moved for summary judgment. In support of the motion, it has presented the affidavit of Deborah Wallace, an employee of Jewel Food Stores, Inc., which is an affiliate of the plaintiff. Wallace is responsible for oversight of shopping center common area maintenance agreements. Wallace's affidavit states that as of September 1, 2016 (the date of the affidavit), defendant owed plaintiff the following under the Agreement:

CAM costs and the administrative fee	\$ 14,052.31
2014 real estate taxes	60,403.84
2013 real estate taxes	<u>58,757.05</u>
	\$133,213.20

Plaintiff has supplied detailed documentation to support Wallace's calculation of these sums.

4. Defendant's answer admitted that the parties are bound by the Agreement. Defendant did not raise any affirmative defenses to the complaint.

5. Defendant did not file a response to the motion for summary judgment on the due date of September 27, 2016 or subsequently.

6. Summary judgment is proper when the pleadings, depositions, admissions on file and affidavits, if any, show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). The movant must meet its burden of proof by affirmatively showing that some element in the

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case must be resolved in its favor, or that there is an absence of evidence to support the non-movant's case. *Benson v. Stafford*, 407 Ill.App.3d 902, 912 (1st Dist. 2010). In either case, the non-movant must then come forward with evidence to support the element of the cause of action in issue. *Jewish Hospital of St. Louis Missouri v. Boatman's National Bank of Belville*, 261 Ill.App.3d 750, 755 (5th Dist. 1994).

7. The defendant has not come forward with any evidence to rebut plaintiff's evidence in support of the motion for summary judgment. The Court accordingly finds that there are no contested issues of material fact in this case and that the plaintiff is entitled to judgment in its favor as a matter of law.

8. Plaintiff's reply brief also seeks sanctions pursuant to Illinois Supreme Court Rule 137 for the costs and fees incurred in preparing its reply brief and court hearing (ruling date) of October 25, 2016. Illinois Supreme Court Rule 137, however, does not cover situations where a party fails to respond to a motion and the Court declines to impose sanctions by reason of defendant's failure to respond

* * *

WHEREFORE, by reason of the foregoing, it is hereby ordered:

- A. Plaintiff's Motion for Summary Judgment is granted.
- B. Plaintiff's request for sanctions pursuant to Illinois Supreme Court Rule 137 is denied.

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C. Judgment is hereby entered in favor of the plaintiff, American Stores Company, LLC, and against the defendant, Grand Plaza Retail Investors, LLC, in the sum of ~~\$133,213.20~~ together with post-judgment interest and costs of suit.

ENTER:

Judge Patrick J. Sherlock

OCT 25 2016

Honorable Patrick J. Sherlock
Judge Presiding

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EXHIBIT "A"
(Strip Center Parcel)

Lot 5 in Grand Park Shopping Center Subdivision, being part of the West 1/2 of Section 28, Township 40 North, Range 12, East of the Third Principal Meridian, according to the Plat thereof recorded May 9, 1974, as document 22712620, in Cook County, Illinois

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EXHIBIT "B"
(Jewel Parcel)

Lot 1 in Grand Park Shopping Center Subdivision, being part of the West 1/2 of Section 28, Township 40 North, Range 12, East of the Third Principal Meridian, according to the Plat thereof recorded May 9, 1974, as document 22712620, in Cook County, Illinois

12-28-132-038

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