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complaint were filed in this matter. Thereafter, the third-party

On August 24, 1987 the Third-party Complaint and Counter-

BACKGROUND

Watts. The amounts of damages are set forth below. as to the Third-party Defendants, 1080 Broadway, Inc. and Donald damages. The court hereby GRANTS the motion for Default judgment 55(p)(2). This order is issued as a result of the hearing on Court conducted a hearing on damages pursuant to Fed. R. Civ. P. and Donald Watts. On Friday, June 24, 1988, at 11:30 A.M. this judgment as to the Third-party Defendants, 1080 Broadway, Inc. This matter is before the court on a motion for Default

ORDER

90393078

Counter-Defendant

ASKCO, INC.

Third-party Defendants

DONALD WATTS  
1080 BROADWAY, INC. and

vs

Plaintiff  
Defendant and Third-party

THE COMBINED FUND, INC.  
f/k/a URBAN FUND OF ILLINOIS

vs

Plaintiff

ASKCO, INC.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

90393078

FILED

SEP 13 1988

RICHARD E. TIMMONS, CLERK  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA

CIVIL NO. 886-807

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA

I hereby certify that the foregoing is  
a true copy of the original on file in this  
court and exuso.

RICHARD E. TIMMONS, CLERK

By *Richard E. Timmons*  
Date *8/2/88*

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defendant, Donald Watts, was served with a Summons and Complaint on October 1, 1987 and the third-party defendant, 1080 Broadway, Inc., was also served on September 2, 1987. When both parties failed to appear or otherwise answer in the action, a Clerk's entry of default was entered on March 2, 1988. On March 28, 1988 an Affidavit for Default Judgment was filed. Pursuant to Fed. R. Civ. P. 55(b)(2) this matter was set down for hearing on damages. Notice was given to all parties and the third-party defendants failed to appear at the hearing. Evidence was heard and the following facts were established: Askco entered into a real estate lease agreement with the Combined Fund. The terms of the lease provided for a twenty (20) year lease with \$3500.00 a month payments for twenty (20) years. The Urban Fund presented Exhibit 3, a letter dated September 23, 1983 to Mr. E. Patrick Jones, President, regarding the transfer of control of the restaurant at 1080 Broadway, Gary, Indiana from the Urban Fund to Donald Watts. In addition to Donald Watts assuming the restaurant operation at 1080 Broadway, Gary, Indiana, the Urban Fund produced Exhibits 4, 5, 6, 7, and 8, evidencing Donald Watts' indebtedness to the Urban Fund, including an agreement to assume and purchase assets signed by Donald Watts on September 23, 1983, two (2) promissory notes, a guarantee agreement, and a security agreement signed by Donald Watts, President of 1080 Broadway, Inc.

In February of 1988 the tenant, 1080 Broadway, Gary, operating Popeye's Famous Fried Chicken Restaurant at that location, moved out of the premises. The amount of rentals due from

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the period of August, 1983 to February, 1988 was a total of \$192,500.00. The third-party defendants had made payments of \$156,000.00, thus leaving a deficiency of \$36,500.00, pursuant to the lease agreement. Additionally, the lessee agreed to pay taxes. For the period of August, 1983 through February, 1988, the amount of taxes due on the property according to the Lake County Treasurer's Office was \$56,183.16. Since the lease period was a twenty year term, for the time period remaining, March, 1988 through August, 2003, \$647,500.00 was due in rentals. However, since the lease in this case runs for an additional fifteen (15) years into the future, "an award of damages calculated by reference to the entire term of the lease would render a figure that would be so arbitrary and speculative as to be wholly inequitable." Rouche v. Circle Theatre, 374 N.E.2d 546, 552 (Ind. App. 1978). In light of this law and the fact that the landlord has a duty to mitigate damages in the event of a breach, the Court finds that damages calculated on the basis of a term extending three (3) years, instead of fifteen (15) would be reasonable under the circumstances. Therefore, unpaid and outstanding rentals for the period March, 1988 through August of 1991, include the sum of \$54,000.00. Further, the lease provision provided for reasonable attorney fees to pursue rentals in an amount of fifteen percent (15%) of the outstanding balance, which would amount to \$22,002.47.

As to the promissory notes signed by Donald Watts as President of 1080 Broadway, Inc., there were two (2) notes, one for a loan of \$170,000.00 and the second for a loan of

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\$16,900.00. Additionally, a guarantee agreement was signed by Donald Watts in addition to an agreement for a loan and a security agreement (Exhibits 4 through 8). The total amount due on the loans, including principal and interest to the date of the hearing was \$248,156.30. As to attorney fees, Attorney Reising testified that he expended 52.4 hours on the case and that a reasonable charge per hour is \$80.00, and that in his experience a default judgment takes twice as long to collect than to litigate, and therefore he will have to expend 104 hours to effect collection in this matter and estimates that his attorney fees amount to \$12,576.00.

The Court hereby GRANTS the Motion for Default Judgment against Donald Watts and 1080 Broadway, Inc. and finds that the third-party defendants are jointly and severally liable to the third-party plaintiff on the note and security agreement sued upon in the amount of \$248,156.30, plus \$12,576.00 in attorney fees; and, on the indemnity and guarantee of the lease in the sum of \$146,683.16, plus \$22,002.47 in attorney fees; together with interest at the rate of 12% from August 24, 1987.

ENTER: \_\_\_\_\_

9/13/88

  
RUDY LOZANO, Judge, 25th District Court

WORTH of HARVEY Store AT 15345 S. Woods  
29-18-220-021, 022-+-  
LOT 27, 28 BIK 132, HARVEY sub of E 1/2  
NE 1/4 18-36-14

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PAUL A. BRADY  
1115 S. PLYMOUTH CT #404  
CHICAGO, IL 60605

W. J. P.

CLERK

PAID BY DEBIT CARD TO ORDER  
NOV 21 2011



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The JS 44 civil cover sheet and the information contained herein are for reference only. Supplemental filing and service of pleadings or other papers is required by the rules of court. This form, approved by the Judicial Conference of the United States on November 18, 1984, is published by the Federal Judicial Center for the United States District Court. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Askco, INC. CAL 4

DEFENDANTS (3d PARTY PLAINTIFF) The Combined Fund, Inc (EKA) URBAN FUND OF ILLINOIS

U.S. DISTRICT COURT

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Lake

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Cook

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

JUDGE ROVNER

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

9004156

3d PARTY PLAINTIFF PAUL A. BRADY 1115 S. PLYMOUTH CT CHICAGO, IL 312-933-2575

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

- Citizen of This State PTF DEF
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business in This State
Incorporated and Principal Place of Business in Another State
Foreign Nation

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Breach of contract

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, PERSONAL PROPERTY, LABOR, PORTALS/PENALTY, FEDERAL TAX, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER FRCP 23 DEMAND \$ JURY DEMAND: YES/NO

VIII. REMARKS In response to is not a refiling of a previously dismissed action General Rule 2.21D(2) this case is a refiling of case number of Judge

DATE 7/23/90 SIGNATURE OF ATTORNEY OF RECORD Paul Brady

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*[Faint, mostly illegible text from a document, possibly a court order or legal notice, including phrases like "IN CAUSE OF PETITION" and "RETURNED TO SENDER"]*