STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

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FORSYTH COUNTY, C.S.C.
BY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
11 CVS 956

FOUR K BROTHERS, LLC,

Plaintiff,

v.

THE VOO DOO LOUNGE, INC., KRENAR ARI MEHMETI and GJERGJI LLANAJ,

Defendants.

JUDGMENT

THIS CAUSE was tried before the undersigned judge without a jury. Based on the evidence presented at trial, the Court makes the findings of facts and conclusions of law set forth in the attached "Bench Trial Findings of Facts/Conclusions of Law/Verdict," which is hereby incorporated into this Judgment.

IT IS THEREFORE ORDERED that judgment be entered in favor of plaintiff and against defendants The Voo Doo Lounge, Inc., Krenar Ari Mehmeti and Gjergji (a/k/a George) Llanaj, jointly and severally, in the principal amount of $448,376.85, plus interest at the legal rate from the date of judgment, and the following costs: $463.75 in mediator fees and $1,663.00 for stenographic assistance and deposition transcripts.

$448,376.85

This the 5 day of March, 2012.

Honorable Ronald E. Spivey
Superior Court Judge

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

IN THE GENERAL COURT OF JUSTICE
CIVIL SUPERIOR COURT DIVISION
11 CVS 956

FOUR K BROTHERS LLC)
)
vs.)
)
THE VOODOO LOUNGE, INC)
KRENAR ARI MEHMETI)
GJERGJI LLANAJ)

BENCH TRIAL
FINDINGS OF FACTS
CONCLUSIONS OF LAW

VERDICT

This matter was called for trial on Tuesday, February 21 and is being heard upon the parties wavier of a jury trial by oral stipulation in open court at the calendar call for the trial week of February 20th, 2012, pursuant to NC Rule Civil Procedure 39 (a). The undersigned Judge is thereby invested with the dual capacity of judge and juror. The undersigned after hearing the evidence and arguments of counsel declared this session of court as a carryover session, and immediately commenced deliberations, which have spanned some 3 ½ days. During that time, the undersigned determined the credibility of the witnesses and the weight of the testimony and inferences to be drawn therefrom. Further, the undersigned has weighed all competent evidence and has given it such probative value as it deserves. Any incompetent or irrelevant evidence that was admitted was disregarded and did not influence the findings made in this case.

Pursuant to NC Rule of Civil Procedure 52, the undersigned judge sitting as the jury must:

1. Find facts specially;
2. State separately conclusions of law thereon, and
3. Direct entry of Judgment.

The undersigned in this non jury trial must find the ultimate facts, but need not find the evidentiary and subsidiary facts. Plott v. Plott 313 NC 63 (1985). Ultimate facts are the final facts required to establish the plaintiff's cause of action or the defendant's defense. An ultimate fact is the final resulting effect which is reached by processes of logical reasoning from the evidentiary facts. Evidentiary facts are those subsidiary facts required to prove the ultimate facts. A proper finding is a written statement of an ultimate fact established by the evidence which are determinative of the questions involved in the action and essential to support the conclusions of law reached. It requires a specific statement of the facts on which the rights of the parties are to be determined.

The parties presented the following issues to be determined by this court, sitting as a jury:

ISSUES PRESENTED BY THE PARTIES

1. Did the Defendants breach the lease agreement by nonperformance or repudiation?

2. Was the Defendant's failure to perform or abide by a material term of the contract excused by an event which was not reasonably foreseeable?

3. What amount is the plaintiff entitled to recover from the Defendant for breach of contract?

1. Did the Defendant's convert the ten thousand dollars of the Plaintiff?

2. What amount is the Plaintiff entitled to recover for damages for the conversion of the ten thousand dollars of the Plaintiff?

1. Are the Defendant's liable to the Plaintiff for unjust enrichment for the ten thousand dollars?

2. If so, what are the Plaintiffs damages for the Defendant's unjust enrichment?

1. Should the Plaintiff be awarded attorney's fees, interest and costs, and if so, in what amount?

1. Is the Defendant entitled to a set off in the amt of seven thousand dollars?

To resolve the issues submitted, this court will find specially the following ultimate facts: (For purposes of these findings, when the court refers to "Plaintiff", it should be presumed the named Plaintiff or its designated agent. When the court refers to "Defendants", it refers to both the corporate Defendant and the individual Defendants.

That the Plaintiff owns a building and surrounding parking lot with improvements (hereafter "the facility") at 4881 Country Club Road in Winston-Salem. The facility was being leased to another entity, Yacht House, Incorporated, which used the leased facility to operate a seafood restaurant for many years prior to the events that resulted in the present action. That entity, Yacht House, Incorporated, did not have a formal lease agreement with the Plaintiff, but paid monthly rent and existed as a month to month tenant at that location.

The Defendant's Krenar Mehmeti and Gjergji Llanaj, were childhood friends in Albania and moved the United States when they were small children. Llanaj presently owns Cagney's Restaurant in Winston-Salem and has an interest in other Cagney's Restaurants. They are partners in the Midway location of Cagney's. Mehmeti was a nightclub owner in St. Louis. His establishments were called the Monkey Bar and Broadway. He also operated Ari's Restaurant, Bar and Grill in St. Louis, and presently operates Alex Grill and Ice Cream in Lewisville. The two individual Defendants formed the corporate entity, The Voo Doo Lounge, Inc. as 50/50 owners, which is the corporate Defendant in the present case.

The Plaintiffs became interested in selling the facility and negotiations commenced with Defendants on 9-11-10. The Plaintiffs offered to sell the facility for 1.5 million dollars. After further consideration, the Defendants indicated they did not want to purchase the facility outright at that time, but would be interested in a lease with an option to purchase, with the intent to renovate the facility and operate a high end night club. It was at or about this time that the Plaintiffs notified Yacht House, Inc. that their lease was being terminated because of another business proposition. The non-fixtures located in the facility were to be removed by that lessee (Yacht House) within 30 days of closing, or 11-17-10.

That on 9-21-10, a representative of the Plaintiffs and the Defendant Mehmeti met to discuss potential terms for the lease. Mehmeti offered that he'd operated night clubs in St. Louis, MO and that he estimated that a substantial amount of money would be expended by the Defendants to renovate the facility, and that the facility would be worth 2 million dollars thereafter. The amount of the lease was to be $8500 per month, however the lessee would get the benefit of a $2000 per month rental contract for the use of the parking lot area by an adjacent restaurant, Dukes, during the daytime hours. The first lease term was for two years, with an option to buy at the end of that term. There was also a provision for a second two year lease, with the option to purchase at a slightly higher selling price. The general parameters of a lease with option to purchase were discussed and Mehmeti took the proposed document to his attorney, Mr. Craig, for review.

That on 9-22-10 representatives of the Plaintiffs, the Defendants, and the Defendant's design group met at the facility with city inspectors to confirm that the nightclub concept at this location would be feasible. Pl. Ex. 5, that evaluation, indicates that the concept would be feasible, and further notes some required renovations, additions and considerations that would have to be incorporated into the plan. Page 5 states "purposed (sp) owner says the complete kitchen will be removed." Further, "advised purposed (sp) owner to contact utilities about removal of grease trap."

On 9-29-10, a representative of the Plaintiff and Mehmeti met at Mehmeti's restaurant and in this meeting the Defendant indicated that he would require the addition of what would eventually become Section 1 of the Commercial Lease Agreement, Lease Contingency. Mehmeti indicated that he had experienced difficulties with an ABC permit at a St. Louis establishment, and wanted the ability to get out of the agreement if he were unable to obtain such a permit. The inability to obtain the ABC permit would

effectively kill the concept of a high end night club. At this meeting, the Defendant told the representative of the Plaintiff that the City had told him that he would need a new roof on the facility. The representative of the Plaintiff agreed that the roof would be replaced in order to facilitate the completion of the lease and the operation of the night club. Pl.Ex. 7 is the estimate of 10-5-10, invoice of 11-19-10 and payment for the new roof in the amount of $31,730 on 11-26-10.

That on 9-30-10, the Defendant's attorney emailed the Plaintiffs with a proposed revised lease agreement. Pl. Ex. 52.

That on 10-1-10, the Defendants retained Cole Design Associates, Inc. to lead the Defendant through the approval of a building permit for the facility as a nightclub, help select finishes, and production of construction drawings. Cole utilized the services of Palma Engineering, with Licensed Engineer Joel Palma to prepare plans for plumbing, mechanical and electrical systems. Lisa Thompson of Cole Design was assigned to this project.

That on 10-6-10, the Articles of Incorporation were filed for The Voo Doo Lounge, Inc., the corporate Defendant in this case.

That Yacht House, Inc. owner Jimmy Kontos was on a month to month lease with no written agreement. He was paying $6000 per month plus property taxes, but was not receiving any money from the Dukes parking lot rental agreement with Duke's Restaurant. He was told in mid-September that he would be moving because something else was coming up. He and his father, Gus Kontos, and Nick Kontos, saw the new tenants at the facility the day after he closed on 10-17-10 to begin their demolition work. The Defendant's contractors or workers told Gus Kontos at a later time that he needed to get everything out, so he sold the ventilation hoods in the kitchen area over the dishwasher and the cooking areas, which were fixtures, and allowed that purchaser to take them out. The two HVAC units for the facility were replaced with new 12 ton units in 2009. The restaurant did have a security system and a video monitoring device that was for visual observation only, and no fire sprinkler system.

That ultimately the Commercial Lease Agreement (Pl. Ex. 6, D. Ex 1) was executed on 10-11-10. This court will note for its findings of fact each and every term and provision contained in said lease, the only document executed by both parties in this case. In particular, this court will note in Section 30 the individual Defendants personally guaranteed the obligations under the agreement. On 10-17-10, the restaurant operated as the Yacht House at the facility formally closed. On 10-18-10 the Defendants through their agents commenced work on the renovation by removal and demolition of portions of the facility, even though restaurant equipment was still in the facility.

That the Defendant provided the first and last month's lease payment to the Plaintiff in the amount of $17,000 ($8500 + $8500) as provided in Section 3 of the commercial lease agreement.

That during the demolition process conducted by the General Contractor hired by the Defendants, many interior features were removed or demolished, including ceiling tiles, floor tiles, walls, sheet rock, HVAC duct work and registers, toilets and sinks, doors, a mural in the entranceway, trim and others like features, leaving the interior in a condition that has been described as a "shell".

That over the next few weeks, conversations took place regarding an additional HVAC unit that may be needed and a fire sprinkler system that would be needed. The fire sprinkler system was noted in the City's evaluation on 9-22-10, Pl. Ex. 5 page 4. Ultimately, on 11-17-10, Defendant's attorney sent a letter to Plaintiffs (Pl.Ex. 10), in which he demands that the Plaintiff's pay for the water line from the street to the building for the sprinkler system, and if they do not, he will advise his clients to "abandon the entire project." The Plaintiffs agreed to pay for the water line from the street to the building, and the parties and the attorney for the Defendant had a meeting to discuss the Defendant's promise that they'd seek no further money from the Plaintiff if the Plaintiff would pay for this. This meeting resulted in a written agreement (Pl. Ex. 12) that was never executed.

That from the date of that unexecuted agreement (11-23-10) until 11-30-10, there was no communication between the parties. On 11-30-10 Mehmeti contacted the representative of the Plaintiff and indicated that he needed the $10,000 immediately to break ground for the water line for the sprinkler system. The Plaintiff did provide a check (Pl.Ex. 14) for $10,000 for the water line. Defendants admit that they received the $10,000 for the water line that was never started, but that their attorney told them not to give the money back.

That Cole Design and its subcontractors continued with their work on the building renovation plans and met with the Defendants on 12-7-10 to talk about a potential HVAC issue. It was made clear that the mechanical engineering of the HVAC was the only portion of the plan that had not been approved in principal by the City, and the City indicated that with the new proposed solution, a building permit was likely to be approved.

That Joel Palma of Palma Engineering submitted his initial plans to the City in which he used the 2006 Building Code, which was more stringent in regards to HVAC issues than the 2009 Code. It was suggested to him by City Inspector Darren Young that he use the new regulations (2009), and that, coupled with the introduction of a CO and CO2 sensor in the system that would adjust the system based upon then existing conditions, would meet the Code requirements for 2011. In Palma's opinion, a permit for this project was never in question and the new design was going to be approved upon presentation of the hard copies of the plan to the city. (See Pl. Ex. 41) Palma has a 100% approval history for plans submitted to the city for approval.

However, the final plans could not be "finally" approved (and thereafter a building permit for a nightclub issued) until the City received the final hard copy of the building plan.

The hard copies of the plans were complete and ready to be released, but the Defendants refused to pay their outstanding balance of $10,000 to Cole Design, therefore Cole Design would not release the actual hard copies. At the time of this meeting, it was the opinion of the Defendant's General Contractor, Alex Rhoades, that with the hard copies, the Defendants "absolutely" would have obtained a building permit.

That during the second week of December, representatives of each side met. The first meeting of the parties was at a Starbucks in Salisbury, and then on a later date a second meeting at a Starbucks in Winston-Salem. At these meetings the Defendant expressed concern about the increasing potential costs of the renovations. After the second meeting in Winston-Salem, which was approximately 12-11-10, there was no communication between the parties, and the Plaintiff did not know what the Defendants were doing or going to do. The Defendant indicated at the end of the second meeting that if they did back away from the project, they'd put the property back in the condition they found it.

That during the time frame between the two Starbucks encounters, the Defendants had contacted their General Contractor, Alex Rhoades to ask him to put together an estimate of the cost of putting the facility back together. They indicated that they were going to back out of the contract and sue Cole Design. Plaintiff's representative contacted the Rhoades directly, who indicated at that time the Defendant's had asked him to put together an estimate on the cost of replacing the demolished interior at the facility. (D. Ex. 3 dated 12-13-10) The Plaintiffs asked for an received a copy of this estimate. The lack of information or communication after the 12-11-10 Starbucks meeting resulted in Pl. Ex. 18, in which the Plaintiff's asked the Defendant's attorney on 12-20-10, what the Defendant's intentions were regarding this night club project.

That on 12-21-10, the Defendant's attorney dispatched a letter to Cole Design indicating "my clients are not only willing to go forward with their lounge, but are eager to do so." Said letter then hints at the possibility of a lawsuit against Cole Design unless they execute a guarantee and acceptance of liability for any events that occur during the future operation of the club that could be in any way related to any HVAC issue. Even though the Defendant's were assured both in writing and orally that the final building plan would be approved by the City once the hard copies were paid for an presented, the Defendants never paid the outstanding balance to Cole Design and therefore never retrieved the hard copy of the final plans.

That the Defendant obtained two estimates of the cost to rebuild the facility, one by Alex Rhoades and one by Triad Home Improvements (Tony Hartman). As to the estimate of Alex Rhoades, D. Ex. 3, the witness testified that even after adding in his contractor's fee which is not in the exhibit, he would not stand by this estimate today. He testified that if he just tried to build it back to a shell, it might be close. As to the estimate of Triad Home Improvements, (Tony Hartman), less than 5% of his business is commercial in nature, and in the final summation, he stated that his estimate was just a starting point, a preliminary number.

That after receiving no response to their letter of inquiry (Pl.Ex. 18), the Plaintiff dispatched Pl. Ex 19. Pl. Ex 19 is a notice of default on which was sent on 1-18-11. Plaintiff cited three provisions of the commercial lease agreement which it contended were in default:

1. Insurance and proof of payment. (The Defendants [Llanaj] testified that there was an oral agreement that the $2000 per month from the Dukes lease would be kept by the Plaintiffs to pay all expenses, including insurance, taxes, utilities, and other maintenance until April, 2011, however this is denied by the Plaintiffs, and in any event, the lease provides that any modification of the Lease Agreement "shall be in writing, signed, duly executed by the parties hereto, and kept on file with the original agreement." (Section 31)

2. Plans for alterations and improvements.

3. Property tax payments. (Defendant Mehmeti concedes they didn't pay any taxes. Also see #1 directly above regarding an ineffectual oral modification.)

There is no evidence that at any time the Defendant's acquired or paid for any insurance, made any property tax payments, or formally presented the Plaintiffs with any specific plans, drawings or documents regarding alterations or improvements they were doing or planned for the facility. At this point, the facility's interior had been demolished by the Defendant's general contractor, who had removed numerous walls, ceiling tiles, flooring, HVAC duct work and registers, lighting fixtures, bathroom fixtures and other such interior contents in anticipation of a renovation and rebuild of the interior of the facility into a nightclub.

That on 1-19-11, the Defendant's attorney dispatched Pl.Ex. 20, which indicates his client's decision to formally abandon the project. The letter states "They have met today with the Inspector's Office on the matter of restoring the building and the inspector will come to the premises along with them to assure that your Uncle's building is back in the same condition, as nearly as possible, as it was prior to this entire transaction."

That the commercial lease agreement was breached by repudiation and non-performance as of 1-19-11.

That the actual commencement of the lease term (the commencement of business or 4-1-11, whichever is earlier) was never reached.

That given their concerns about the actions of the Defendants, and the Defendant's statement that it would only cost $50,000 to restore the interior, which the Plaintiff thought was remarkably low, the Plaintiff changed the locks on 2-2-11, and later allowed the Defendants and their contractors on 2-15-11 to come to the facility and retrieve certain items therein. A second time for retrieval of items was scheduled on 2-17-11 to complete that process with contractors.

That on 2-2-11, the Plaintiff's asked the city inspector to evaluate the property. The report (Pl. Ex. 27) indicates "Space has had interior demo work done and contact is

That the procurement of the initial permit, that being the building permit, was within the Defendant's control, yet the Defendant did not make reasonable or good faith efforts to procure that permit.

That the Defendant's failure to perform certain material terms of the commercial lease agreement was not excused by an unforeseeable event or the inability to meet the requirements of a governmental authority.

That the commercial lease agreement is in writing and free from any ambiguity which would require the resort to extrinsic evidence.

That it is implied in the commercial lease agreement that both parties will use good faith and best efforts to comply with the terms and conditions set out therein.

That the Defendant breached the lease (nonperformance) by their failure to procure insurance, provide for the payment of taxes, and provide plans for the demolition/renovation as called for in the contract.

That Defendants breached the lease (by repudiation) as of 1-19-11 when the attorney for the Defendants both orally and in writing confirmed that that were not going to go forward with the project and would attempt to restore the facility to the condition as it was prior to the transaction.

That the Defendant's breach amounted to a default as defined in Section 15(a) of the commercial lease agreement.

That upon breach by non performance and repudiation of the commercial lease agreement, the Plaintiff exercised its rights under section 16 (b) and repossessed the facility and expelled the lessee and its agents (contractors) but did allow them to reclaim personal property after the facility was once again in their possession.

That pursuant to Section 9 of the commercial lease agreement, upon surrender of the premises, the Defendants agreed "to surrender in as good a condition and repair as when received."

That when the Defendants received the facility, it was no longer a functioning restaurant because the restaurant previously operated in the facility had closed on 10-17-10. The Defendants received a retail business building with certain walls, flooring, bathroom facilities and other improvements that were thereafter removed by the Defendants during demolition, and must now be replaced by the Defendant pursuant to the commercial lease agreement. The Defendants, under the terms of the commercial rental agreement,

must return the facility "in as good a condition and repair as when received." This means that the physical, aesthetic and mechanical properties of the facility must be returned to a condition similar to that of 10-18-10.

That the cost estimates to return the building to "the condition in which they received it" supplied by the Defendant's contractors were speculative at best, and the cost estimates of the Plaintiff's contractors included line items that should not be the responsibility of the Defendants pursuant to their breach.

That pursuant to the commercial lease agreement, the facility should be returned to the condition in which it was on the date the Defendant first entered the premises.

That in order to place Plaintiff as nearly as possible in the condition it would have occupied had the contract not been breached, Plaintiff is entitled to recover from Defendants the costs to repair and return the premises to its pre-demolition state, when the Defendant's first entered the facility.

PURSUANT TO THESE FINDINGS, THE COURT SITTING AS A JURY WILL ANSWER THE ISSUES PRESENTED:

ISSUES PRESENTED BY THE PARTIES

1. Did the Defendant's breach the lease agreement by nonperformance or repudiation?

ANSWER - YES

2. Was the Defendant's failure to perform or abide by a material term of the contract excused by an event which was not reasonably foreseeable?

ANSWER - NO

3. What amount is the plaintiff entitled to recover from the Defendant for breach of contract?

$448,376.85

1. Did the Defendant's convert the ten thousand dollars of the Plaintiff?

ANSWER -NO

2. What amount is the Plaintiff entitled to recover for damages for the conversion of the ten thousand dollars of the Plaintiff?

_____

IN THE ALTERNATIVE TO CONVERSION:

1. Are the Defendant's liable to the Plaintiff for unjust enrichment for the ten thousand dollars?

ANSWER - YES

2. If so, what are the Plaintiffs damages for the Defendant's unjust enrichment?

ANSWER - $10,000

1. Should the Plaintiff be awarded attorney's fees, interest and costs, and if so, in what amount?

ATTORNEY'S FEES : NO
INTEREST: YES, at the statutory rate from the date of the judgment.
COSTS: YES, but only the following which may or may not apply:

1. Witness fees
2. Expense of service of process
3. Fees for personal service
4. Fees of mediators
5. The reasonable and necessary expenses for stenographic and videographic assistance directly related to the taking of depositions and the cost for deposition transcripts.

1. Is the Defendant entitled to a set off in the amount of seven thousand dollars?

ANSWER – YES The actual credit is 17,000, however subtracting the unjust enrichment verdict in favor of the Plaintiff of 10,000, that leaves a 7000 credit in favor of the Defendant. (17000 paid for two month's rent minus 10000 paid by Plaintiff for sprinkler)