

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

MICHAEL DEMIL,

Plaintiff,

vs.

Case No. 2013-3468-CK

RMD PROPERTIES, LTD,

Defendant.

OPINION AND ORDER

Plaintiff has filed a motion to order payment of rent or in the alternative enter a judgment for possession. Defendant has filed a response and requests that the motion be denied.

Factual and Procedural History

On August 28, 2013, Plaintiff filed his complaint in the instant matter seeking to dissolve Defendant and requested that the Court (1) enter a judgment ordering Defendant to liquidate its assets, pay its creditors, effect an equitable distribution to the shareholders and dissolve the entity and (2) appoint a receiver for the purposes of selling and/or auctioning off Defendant's assets, collecting rent from Defendant's tenants, pursuing any and all claims Defendant has, and liquidating and dissolving Defendant's assets.

In September 2013, Defendant filed its answer to the complaint and filed its own motion for dissolution in which it requested that it be dissolved under the Court's supervision. After conducting a hearing in connection with Defendant's motion the Court requested that the parties each formulate a proposal for dissolving Defendant.

After receiving the parties' proposals the Court entered its June 5, 2014 Amended Order (the "Order") in which it ordered:

- (A) "RMD Properties, Ltd. is hereby dissolved pursuant to MCL 450.1823 as its two directors/shareholders, Plaintiff Michael Demil and Robert Demil, have agreed that they are unable to agree by the requisite vote on material matters respecting the management of RMD Properties, Ltd.'s affairs, which has rendered the company unable to function effectively.
- (B) Gilbert Zook, SRPA, SRA, located at 43231 Shoenherr, Sterling Heights, MI 48313 is hereby appointed as appraiser for the purpose of appraising four of RMD Properties, Ltd.'s parcels of real estate: three parcels commonly known as 53861, 53801 and a fourth parcel, commonly known as 53721, tax parcel 09-08-426-014 (collectively, the "Subject Properties."").
 - a. Mr. Zook, as soon as practicable, shall appraise the cumulative fair market sale value and cumulative fair market rental value of the Subject Properties.
 - b. After conducting the appraisals, Mr. Zook shall notify the parties, as well as the Court, as to the values.
 - i. Plaintiff shall then have the option to purchase the Subject Properties for the fair market sale value.
 - 1. Plaintiff's right to purchase the Subject Properties is subject to the following restriction: Plaintiff must agree to continue to lease the space currently occupied by RMD Holdings, Ltd. to that entity for one year at the appraised fair market rental rate, and to grant RMD

Holdings, Ltd. two one-year renewal options at the same rental rate.

ii. If Plaintiff declines to purchase the Subject Properties, the Subject Properties will then be sold to Robert Demil for the fair market sale value, subject to the lease restrictions set forth above.

c. The cost of the appraisal shall be assessed to RMD Properties, Ltd., with both of its members sharing equally in the expense.”

On February 11, 2015, Plaintiff purchased the Subject Properties pursuant to the Order. Subsequently, RMD Holdings, Ltd. (“RMD Holdings”) exercised its option to lease the Subject Properties as provided by section (B)(b)(i)(1) of the Order. The rent amount for that lease (“Lease”) was to be determined by Mr. Zook.

The parties now request that the Court enter an order determining what rental rate RMD Holdings must tender under the Lease.

Arguments and Analysis

As a preliminary matter, Defendant contends that the Court does not have jurisdiction to decide the instant motion. Specifically, Defendant contends that summary proceedings to recover possession of premises rest exclusively with the district court pursuant to MCL 600.5704. However, for the reasons discussed below, the Court need not address Plaintiff’s request for possession of the premises. Consequently, Defendant’s position also need not be addressed.

The majority of the parties’ pleadings relate to the issue as to what rental rate RMD Holdings must pay under the Lease. The rental rate was to be determined by Mr. Zook. On page 113 of his July 31, 2014 appraisal, Mr. Zook determined that the triple-net fair market rental rate

for property at issue is \$59,000.00 per year. In addition, Mr. Zook allegedly confirmed the \$59,000.00 figure at a September 10, 2014 meeting he had with the parties.

On February 11, 2015, the Plaintiff and RMD Holdings closed the Lease. At that time, RMD Holdings tendered a check for the pro-rated February rent based on the annual rental figure provided by Mr. Zook in his appraisal, as well as during the September 2014 meeting. Further, on February 25, 2015, RMD Holdings tendered a check for March rent based on the \$59,000.00 annual rental rate.

On or about March 6, 2015, Plaintiff contacted Mr. Zook in connection with its contention that the \$59,000.00 rental rate was incorrect. Mr. Zook subsequently responded via two emails in which he stated that the rental rate should have been higher. Based on Mr. Zook's March 2015 emails, Plaintiff requests that the Court require RMD Holdings to pay the higher rental rate. In response, Defendant contends that it relied on Mr. Zook's July and September 2015 representations, that it would be inequitable to require it to pay the higher rent at this late date, and requests that the Court confirm the \$59,000.00 rental rate for this year in the interests of justice.

After reviewing the record, the Court is convinced that RMD Holdings is only liable to pay the \$59,000.00 rental rate set forth in Mr. Zook's original appraisal. The parties received Mr. Zook's original appraisal in July 2014, but the lease was not closed until February 2015. Accordingly, Plaintiff had about 6 months to inspect the appraisal and contest any of Mr. Zook's conclusions. However, rather than seeking clarification prior to closing, Plaintiff and RMD Holdings elected to close the lease on February 11, 2015 without any indication that the rental rate of \$59,000.00 was improper. While Plaintiff ultimately contacted Mr. Zook about a month after closing to attempt to get his appraisal figure changed, the Court is convinced that Plaintiff's

tardy, but successful, attempt should not impact the rent RMD Holdings is charged for this year. Were the Court to hold otherwise, RMD Holdings, rather than Plaintiff, would be prejudiced by Plaintiff electing to wait 6 months prior to seeking clarification from Mr. Zook. The Court is satisfied that such a result would be inequitable. Consequently, the Court holds that RMD Holdings is only responsible for rent of \$59,000.00 for the remainder of this year's lease. However, should RMD Holdings elect to re-new the lease it will be responsible for Mr. Zook's revised rent appraisal of \$80,915.00 per year.

Conclusion

For the reasons discussed above, Plaintiff's motion to order payment of rent, or in the alternative enter a judgment for possession, is DENIED. RMD Holdings is only responsible for rent of \$59,000.00 for the remainder of this year's lease. However, should RMD Holdings elect to re-new the lease it will be responsible for Mr. Zook's revised rent appraisal of \$80,915.00 per year.

Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order resolves the last claim and CLOSES the case.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: April 7, 2015

JCF/sr

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