IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
ASSOCIATE CIRCUIT DIVISION
AT KANSAS CITY

FLEET TRAILER LEASING, INC.	)	
	)	
Plaintiff,	)	
vs.,	)	
	)	**Case No. 1016-CV18882**
INVESTMENT MANAGEMENT	)	
TRANSPROTATION, INC.	)	
D/B/A/	)	**DIVISION 26**
KELLIE TRANSPORT	)	
	)	
	)	
Defendant.	)	

JUDGMENT

On November 2, 2010, this matter was called for trial. Plaintiff appeared through Luke Demaree and by representative Dan Muckerhide. The Defendant appeared by Counsel Tim Flook. During the trial of this matter, testimony, evidence and exhibits were submitted. The Court heard, reviewed and duly considered the testimony and evidence submitted at trial, viewed the witnesses and carefully evaluated and weighed the credible evidence and testimony presented at trial. The Court took the matter under advisement. After reviewing all of the evidence presented during the course of the trial, the Court finds as follows:

Findings of Fact

1. Dan Muckerhide is the owner and president for Fleet Trailer Leasing, Inc. ("Plaintiff");
2. Plaintiff leased two trailers to Investment Management Transportation, Inc., which was doing business as Kellie Transport. ("Defendant");
3. Trailer 780292 and 725230 each had separate written lease agreements with identical terms and in an identical format;

4. Both lease agreements were standardized contracts that were filled in by Plaintiff and consisted of a front page with printed terms and blank spaces to be filled out by hand to state terms such as price, inspection of trailer and mileage. The front pages also contained the parties' signature lines. The reverse page of each lease agreement contained fine print terms designated as "Terms and Conditions" for the agreement that did not contain a signature or an initial line for the parties to specifically sign or acknowledge the reverse page;
5. The two lease agreements were entered into on August 11, 2009;
6. On August 11, 2009, the lease agreements were presented to two different truck driver employees of Defendant who were sent to pick up the leased trailers from Plaintiff. At that time, Plaintiff called Neal Brownell, his primary contact with Defendant and advised him that the drivers were picking up the trailers and Brownell stated that the drivers could sign the lease agreements for Defendant;
7. Defendant's drivers signed the face page of the lease agreements;
8. Defendant received possession of the trailers on or about August 11, 2009;
9. Defendant was to pay Plaintiff a monthly rental sum of $300 per month for each trailer and was to pay Plaintiff the sum of $.035 per mile, as calculated by an hubodometer attached to each trailer at the time of delivery, which said hubodometer reading was recorded on the lease agreements;
10. Defendant made monthly rental payments for the months of August through October, 2009;
11. Defendant defaulted on the leases agreements after making the October 2009 monthly payment;
12. In the "Terms and Conditions" portion of the lease agreement, Plaintiff was authorized to adjust the rental sum(s), upon ten days notice to Defendant;

13. On or about December 14, 2009, Plaintiff sent written demand to Defendant, demanding that Defendant return the trailers or assent to an increase in rents from $10 per day to $100 per day;
14. On the 725230 lease, Defendant remained in default from the October 2009 payment until the date of Defendant's purchase of that trailer on or about December 19, 2010;
15. Defendant also remained in default on the 780292 lease from the date of Defendant's last payment on October 2009, until February 8, 2010, when Plaintiff repossessed the trailer;
16. After trailer 780292 was repossessed, Plaintiff made various repairs to the trailer and sent the invoice to the Defendant;
17. In the "Terms and Conditions" portion of the lease agreement, the Defendant is responsible for any damage to the trailer and reasonable attorney's fees upon default of this agreement;
18. Plaintiff filed a cause of action for breach of contract and unjust enrichment.

Conclusions of Law

Breach of Contract

To make a submissible case for breach of contract, a party must establish: (1) mutual agreement between parties capable of contracting; (2) mutual obligations arising out of the agreement; (3) valid consideration; (4) part performance by one party; and (5) damages resulting from the breach of contract. *Leo Journagan Constr. Co., Inc. v. City Utilities of Springfield, Mo.,* 116 S.W.3d 711, 717 (Mo.App. S.D. 2003).

Here, the parties' entered into a lease agreement for the lease of two trailers on August 11, 2009. At the time of the formation of the lease agreements, there was mutual assent as to the terms of the leases and both parties signed and agreed to the terms of the leases as set out in the

written leases. The Plaintiff had an obligation to provide the two trailers to the Defendant and the Defendant had an obligation to pay for the use of the trailers. Since the Defendant took possession of both of the Plaintiff's trailers, there was adequate consideration to support the enforcement of the lease agreements. Moreover, since the Defendant did not make any payments after October 2009 on the lease agreements the Defendant defaulted on the agreements and because of that default the Plaintiff suffered damages.

Defendant argues that Plaintiff and Defendant reached a meeting of the minds and thus, the parties entered into an enforceable agreement to the lease terms contained within the face pages of the lease agreement. Defendant further argues that the face pages were the only parts of the lease agreement that were discussed, agreed to and signed by representatives of the parties. Defendant also argues that the reverse side of the lease agreements contained a large amount of very small fine print which was not discussed with Defendant's main representative Neal Brownell and were never signed, endorsed or acknowledged by the employee drivers of Defendant who picked up the trailers, nor were the fine print terms signed by any other of Defendant's representatives.

Face of Lease Agreement

Under the 725230 lease, the Defendant does not dispute that he was in default under the terms of that lease for the month of November and December of 2009. Since the Defendant and Plaintiff reached a meeting of the minds as to the lease terms contained within the face page of the agreement, the Defendant owes $600.00 for unpaid rent under the 725230 lease.

Additionally, in relation to the 780292 lease, the Defendant does not dispute that he was in default from November, 2009 through February, 2010. However, Defendant contends that since there was no meeting of the minds in regard to the "Terms and Conditions," provision on the reverse side of the lease agreement, the Defendant only owes $300 for each month in default for a total of $1,200 for the unpaid rents. This contention must fail.

Reverse side of Lease Agreement

Again, the Defendant contends that the only binding lease terms and agreements are those terms set forth on the face page of each lease agreement which was discussed, negotiated and signed by the parties. Accordingly, Plaintiff's claims for attorneys fees, 18% annual interest, right to recover maintenance or ordinary repairs to the trailer returned to them, and right to accelerate the rent to $100.00 per day are unenforceable as no contract existed.

Generally, customers who adhere to standardized contractual terms ordinarily understand that they are assenting to the terms not read, subject to such limitations as the law may impose. Here, the parties were not manifestly unequal in bargaining positions and the lease agreement was only two pages long. Additionally, the lease was front to back and the print on the "Terms and Conditions" provisions is readable. These provisions are not hidden nor are they unusual or particularly harsh. *See* ***World Enterprises, Inc. v. Midcoast Aviation Services, Inc.***, 713 S.W.2d 606 (Mo.App. 1986).

Moreover, the Defendant admits that it is bound by the provisions set out on the face of both lease agreements. The lease agreements state on their face that "Fleet Trailer Leasing does hereby rent to the ("Lessee") designated below, the "Trailer" described below with the terms and conditions set forth below and on the reverse side hereof." Moreover, these terms and conditions are referenced near the signature line on the face of the lease agreement. Therefore, the Defendant is bound by the "Terms and Conditions" provisions on the reverse side of the lease agreements.

Accelerated Rent of $100.00 a Day

Defendant also argues that notwithstanding the failure of the parties to have a binding agreement with regard to the fine print "Terms and Conditions," provisions, Plaintiff would not be entitled to receive the $100.00 a day penalty requested because there was insufficient evidence to show that a prior written notice was issued to Defendant and received by Defendant.

Here, Plaintiff presented two witnesses who testified as to Plaintiff's letter to Defendant concerning the acceleration in rents. The Court need not have the actual letter in evidence to find that Plaintiff provided Defendant with written notice on December 14, 2009. Therefore, the Court is bound by the parties' agreement and will enforce the accelerated rents provision.

Hubodometer Mileage

Defendant argues that that Court should not assess the mileage charges as presented by Plaintiff because there was no evidence supporting the credibility or reliability of the hubodometer, that it was in proper working condition, or that Plaintiff's employee knew how to properly read the hubodometer to ensure correctness.

Here, the parties' lease in paragraph two of the "Terms and Conditions," provision states: "Mileage shall be determined using hubodometers and shall be reported by Lessee on a monthly basis. Lessee shall notify Fleet Trailer Leasing, Inc. immediately about any failure of a hubodometer to function properly…." There was no evidence concerning failure of the hubodometer or that the hubodometer was malfunctioning and therefore, the Court is bound by the parties' agreement and will enforce this provision.

Unjust Enrichment

Having found in favor of Plaintiff and against Defendant in all of Plaintiff's contract claims, the Court need not address Plaintiff's claims for unjust enrichment.

WHEREFORE IT IS ORDERED ADJUDGED AND DECREED AS FOLLOWS:

I. Judgment in favor of Plaintiff and against Defendant for the following:

A. $600.00, for the outstanding rental sums for the 725230 lease;

B. $700.27, for the outstanding rental sums for the 780292 trailer which were calculated from October 2009 until December 24, 2009;

C. $4,600.00 for the outstanding rental sums after the 10 days notice of the increase from $10 per day to $100 per day was given to Plaintiff, from December 24, 2009 until the Plaintiff repossessed the trailer on February 8, 2010;

D. $2,110.78, for the mileage calculated from the hubodometer for the 780292 trailer;

E. $1,004.38, for the repairs of the 780292 trailer;

F. $2,632.89, for attorney fees.

II. Interest is to accrue at the contract rate of 18% per annum, simple interest EXCEPT for the attorney's fees;

III. All motions and every other issue before the Court not specifically identified herein were found and resolved consistent with this Judgment.

IT IS THEREFORE ORDERED that judgment is entered in favor of the Plaintiff and against the Defendant in the amount of $9,015.43, plus interest at the contract rate of 18% per annum, plus the costs of this action. Judgment is also entered in favor of the Plaintiff and against the Defendant in the amount of $2,632.89 for attorney's fees.

IT IS SO ORDERED.

_____ _____

DATE **JUDGE KENNETH R. GARRETT III**

Copies mailed on December 1, 2010 to:

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