

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 2129

8000 GREENWELL SPRINGS ROAD, L.L.C

VERSUS

DIXIE WAREHOUSING, INC.

consolidated with

2005 CA 2130

IN RE: DIXIE WAREHOUSING, INC.

Judgment Rendered: FEB 09 2007

On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 479,015 c/w 484,780

Honorable Curtis A. Calloway, Judge Presiding

Charles A. Schutte, Jr.
Baton Rouge, LA

Attorney for Appellants,
Dixie Warehousing, Inc.,
Celima M. Guillory, Gary D. Guillory

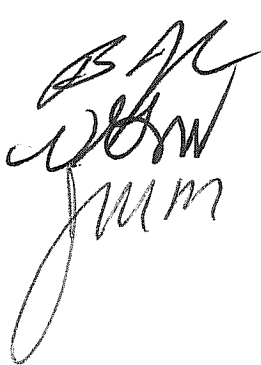
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BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.



CARTER, C. J.

8000 Greenwell Springs Road, L.L.C (GSR) leased certain property to Dixie Warehousing, Inc. (Dixie). Prior to the lease term's expiration, Dixie vacated the property and discontinued lease payments. GSR brought suit to collect rental payments and attorney's fees as provided in the lease. Dixie reconvened, asserting that GSR breached the lease and owed it damages and attorney's fees.

After the suit to enforce the lease was filed, Dixie's majority shareholder, Celima Guillory, dissolved the corporation by affidavit. Shortly thereafter, Celima Guillory and Gary Guillory filed a petition for reinstatement of the corporation. GSR intervened, asserting that the shareholders are personally liable to it in the breach of lease litigation, as a result of the dissolution by affidavit. GSR also amended its petition in the lease litigation to name Celima Guillory and Gary Guillory as defendants. The two suits were thereafter consolidated.

Additionally, after suit was filed, GSR executed an Act of Conveyance and Exchange, whereby it conveyed to its members the property that Dixie had leased. GSR further assigned to its members certain rights and benefits as landlord. On that same date, GSR's members sold the property to a third party and also assigned to that party certain rights and benefits as landlord. As a result, Dixie urged a peremptory exception raising the objection of no right of action, claiming that GSR is no longer the proper party plaintiff. Thereafter, GSR and its members executed an Act of Clarification attempting to clarify that no rights related to GSR's cause of action against Dixie were assigned in the transfer and assignment from GSR to its members.

A bench trial was held. Considering the evidence presented, the trial court overruled the peremptory exception raising the objection of no right of action filed by Dixie. The trial court further denied the petition to reinstate Dixie's corporate status, and held that Celima Guillory and Gary Guillory are personally liable to GSR. The trial court awarded GSR \$102,900.00 for past due rentals and \$75,421.50 in attorney's fees.¹ Dixie now appeals.

After review of the record before us, we find no error in the trial court's judgment overruling the peremptory exception raising the objection of no right of action. The documentary evidence relative to the assignments is not so comprehensive as to have included those rights that GSR asserted in the instant suit. We further find no manifest error in the trial court's finding of fault. We disagree with Dixie's contentions that the record establishes that GSR breached the lease, failed to perform certain lease obligations, breached the lease warranty, was in default of the lease, or that Dixie was constructively evicted from the property and is owed damages. Moreover, we find no error in the trial court's denial of the petition to reinstate Dixie's corporate status.

Both parties agree, however, that the trial court erred in its calculation of the past due rent owed by Dixie. The parties agree that the correct amount owed is \$69,100.00. We amend the trial court's judgment accordingly.

Last, Dixie complains of the amount of attorney's fees (\$75,421.50) awarded to GSR. The lease contract provides that, "in case an attorney is employed to protect any rights of Landlord hereunder, Tenant shall pay reasonable attorney's fees, which shall not be less than twenty-five (25%)

¹ The other portions of the trial court's judgment are not at issue in this appeal.

percent of any sums which may be due by Tenant to Landlord.” Dixie argues that this language does not allow GSR to recover attorney’s fees related to Dixie’s suit to reinstate corporate status. We disagree. The contract provides for attorney’s fees related to the protection of any of GSR’s rights.

Dixie also complains that the amount awarded is unreasonable and an abuse of discretion. One factor to consider in determining the reasonableness of attorney’s fees is the ultimate result obtained. **Theriot v. Bourg**, 96-0466 (La. App. 1 Cir. 2/14/97), 691 So.2d 213, 226, writ denied, 97-1151 (La. 6/30/97), 696 So.2d 1008. In setting the amount of attorney’s fees, the trial court considered an incorrect amount of past due rent owed by Dixie. Under these circumstances, we feel it appropriate to reduce the amount of attorney’s fees. After hearing all of the testimony presented and reviewing the entirety of the record in this litigation, which began in December of 2000, the trial court awarded as attorney’s fees approximately 73% of the amount it determined was owed as past due rent. We find no abuse of discretion in the use of this formulary. Accordingly, we amend the trial court’s judgment to award approximately the same percentage of the correct amount of past due rent as attorney’s fees, which is \$50,000.00.

Considering the foregoing, the trial court’s judgment is amended, and, as amended, is affirmed. Costs of this appeal are assessed to Dixie Warehousing, Inc., Celima M. Guillory, and Gary D. Guillory. This memorandum opinion is issued in compliance with URCA Rule 2-16.1B.

AMENDED AND AFFIRMED.