

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
DIV. 3
CASE NO. 14-XX-17

ENTERED ATTEST, VINCENT RIGGS, CLERK AUG 20 2014 FAYETTE CIRCUIT CLERK BY _____ DEPUTY
--

THE SPEAQUESS GROUP, LLC
d/b/a JAMBA JUICE

TENANT/APPELLANT

vs.

ON APPEAL FROM THE
FAYETTE DISTRICT COURT
CASE NO. 14-C-04015
THE HONORABLE JULIE M. GOODMAN, JUDGE

FAYETTE MALL SPE, LLC

LANDLORD/APPELLEE

OPINION AND ORDER

This matter is before the Court on appeal from the Fayette District Court, Case No. 14-C-04015. Having reviewed the record and the briefs of the parties, having heard the arguments of counsel at a hearing on August 7, 2014, and the Court being sufficiently advised, this Court HEREBY AFFIRMS the District Court's ruling granting Fayette Mall SPE, LLC's ("Fayette Mall") petition for forcible detainer against The Speaquest Group, LLC d/b/a Jamba Juice ("Jamba Juice"). Pursuant to KRS 383.255, the rent deposited with the Circuit Court Clerk shall be distributed to Fayette Mall.

As set forth in further detail during the hearing, this Court reviewed the district court's findings of fact to determine if such were clearly erroneous and its conclusions of law *de novo*. It is undisputed that Jamba Juice failed to pay its rent in January, February, March, April or May of 2014 in a timely fashion, which constitutes a default under the lease agreement. Specifically, the lease agreement contains a provision that provides the tenant shall be in default if it fails to pay monthly rent when and as due three or more times during the course of twelve consecutive months. The issues before the Court are (1) whether the District Court had sufficient evidence before it at the May 2014 Forcible Detainer hearing and therefore could utilize the January,

February or March late payments in finding Jamba Juice's default; (2) whether there was sufficient evidence before the District Court during its May 2014 Forcible Detainer hearing to find that Jamba Juice failed to pay its rent timely three or more times during the course of twelve consecutive months; and (3) whether Jamba Juice was denied due process during the May 28, 2014 hearing.

At the March 19, 2014 hearing, the District Court adjudicated the issue of whether Jamba Juice defaulted under a provision of the lease agreement for nonpayment of rent, not whether Jamba Juice was timely in paying its rent. Jamba Juice argues that Fayette Mall should be precluded from using at the May 2014 Forcible Detainer hearing the fact that it was untimely in paying January, February and March's rent in this action, which proof was elicited at the March Forcible Detainer hearing (that was dismissed). This Court finds that the District Court may make use of "facts" from the March Forcible Detainer hearing in its May 2014 Forcible Detainer hearing. Thus, this Court finds that the District Court did not err when it permitted Fayette Mall to utilize January, February and March's late payment of rent when determining whether Jamba Juice defaulted under the lease agreement and that it had substantial evidence of same before it at the May 2014 Forcible Detainer hearing.

The District Court heard evidence during the March 19, 2014 hearing that Jamba Juice had not paid rent on January, February or March. And at the May hearing, Jamba Juice failed to pay its rent on time in April and May. Thus, this Court concludes that at the May 28, 2014 hearing, the District Court had sufficient evidence to find that the tenant was not timely in paying rent for the months of January, February, March April and May.

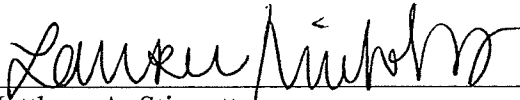
Finally, this Court does not agree that Jamba Juice was denied due process at the May 28, 2014 hearing. Jamba Juice was afforded its full day in court.

Based on the review of the record and the arguments presented during this appeal, this Court finds that the District Court had a sufficient factual and legal basis to grant Fayette Mall's petition for forcible detainer.

/s/ JAMES D. ISHMAEL, JR.
A TRUE COPY
ATTEST: VINCENT RIGGS, CLERK
FAYETTE CIRCUIT COURT
BY J. Guemere DEPUTY

JAMES D. ISHMAEL, JR.
JUDGE, FAYETTE CIRCUIT COURT

HAVE SEEN AND CONSISTENT WITH
THE COURT'S RULING FROM THE
BENCH ON AUGUST 7, 2014:



Matthew A. Stinnett
Lauren R. Nichols
BINGHAM GREENEBAUM DOLL LLP
Lexington, Kentucky 40507
COUNSEL FOR LANDLORD/APPELLEE

Trip Redford (with permission by UKN)

Carroll M. Redford, III
Susan Y.W. Chun
Elliott C. Miller
Miller, Griffin & Marks, PSC
271 West Short Street, Suite 600
Lexington, KY 40507
COUNSEL FOR TENANT/APPELLANT

CERTIFICATE OF SERVICE

I certify that the foregoing document was sent via U.S. 1st Class Mail on this the 20th day of August, 2014 to the following:

Matthew A. Stinnett
Lauren R. Nichols
BINGHAM GREENEBAUM DOLL LLP
300 West Vine Street, Suite 1100
Lexington, Kentucky 40507
COUNSEL FOR LANDLORD/APPELLEE

Carroll M. Redford, III
Susan Y.W. Chun
Elliott C. Miller
Miller, Griffin & Marks, PSC
271 West Short Street, Suite 600
Lexington, KY 40507
COUNSEL FOR TENANT/APPELLANT

Fayette District Court
Civil Division and Forcible Detainers
150 N. Limestone Room D101
Lexington, Kentucky 40507



By: S. Guernero

Clerk, Fayette Circuit Court