

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Church Street, LLC,

Plaintiff,

v.

Kwi Hwang,

Defendant.

IN THE COURT OF COMMON PLEAS
IN THE 13TH JUDICIAL CIRCUIT

Case No. 2020-CP-23-04505

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT AS TO PAST DAMAGES**

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SC Court of Appeals

This matter came before the Court for hearing on November 30, 2021 on Plaintiff's Motion for Partial Summary Judgment as to Past Damages ("Motion"). Church Street, LLC filed this action against Defendant, Kwi Hwang seeking damages it incurred as a result of Defendant's breach of a ten-year commercial lease agreement. Prior to the instant Motion, Plaintiff previously filed a Motion for Summary Judgment as to liability, which was granted by order of this Court on June 4, 2021. Thereafter, Plaintiff filed the instant Motion for Partial Summary Judgment, reserving the issue of future damages for trial.

After considering the pleadings, the affidavits and exhibits attached to Plaintiff's Memorandum, Defendant's affidavits and exhibits, and the arguments presented at the hearing, this Court finds that Plaintiff is entitled to recover its damages up to and including the date of this hearing, as set forth in Plaintiff's affidavits and supporting exhibits. Accordingly, there are no genuine issues of material facts, and Church Street, LLC is entitled to judgment as a matter of law.

FINDINGS OF FACT

On December 30, 2015, the parties executed a lease agreement wherein Defendant agreed to lease commercial premises located at 2-K-Mart Plaza, Greenville, South Carolina for a term of

ten (10) years, commencing on March 1, 2016 and ending on February 28, 2026 (the “Lease”). The Lease is attached as Exhibit A to Plaintiff’s Complaint. Defendant also signed a personal guaranty in connection with the Lease (the “Lease Guaranty”) (the Lease and the Lease Guaranty collectively referred to as the “Agreements”).

Defendant took possession of the premises on or about March 1, 2016 and occupied the premises until September 2020. On or about September 2020, Defendant defaulted on her obligations under the Agreements. After attempting to collect outstanding rent, Plaintiff elected to retake the premises through an ejectment action without terminating the Lease according to Plaintiff’s remedies under Section 18.2 of the Lease. As of the date of the hearing, Defendant has failed to pay rent and other amounts owed under the Lease for a period of fifteen (15) months.

Plaintiff’s alleged damages as of the date of the hearing—as supported by affidavits and exhibits which Plaintiff filed with its Motion—total \$219,189.80. This total includes fifteen (15) months of unpaid rent, insurance, property taxes, common area maintenance, and electricity; move-out and HVAC maintenance expenses; unamortized leasing commission; and attorney’s fees and costs.¹

CONCLUSIONS OF LAW

Summary Judgment is appropriate only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. S.C.R.C.P. 56. All evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences

¹ Following the hearing, Plaintiff filed a supplementary Affidavit with attorney’s fees up to and including the date of the hearing, which included an additional \$9,492.50 in legal fees for the month of November for which Plaintiff had not been billed at the time of the hearing. These additional legal costs are incorporated in the Court’s final computation of damages.

resolved in the same manner. *Standard Fire Ins. Co. v. Marine Contracting & Towing Co.*, 301 S.C. 418, 392 S.E.2d 460 (1990). Nevertheless, a court "cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." *Hopson v. Clary*, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct. App. 1996). Furthermore, when a motion for summary judgment is supported by affidavits, the nonmoving party cannot rest on the general denials of its answer, but must show that there is a genuine issue of material fact, through its own affidavits. S.C.R.C.P. 56(e). If the nonmoving party fails to do this, "summary judgment, if appropriate, shall be entered against [it]." *Id.*

For the reasons set forth below, summary judgment in favor of the Plaintiff is appropriate as to the issue of past damages.

Plaintiff submitted affidavits in support of its Motion, which, along with Plaintiff's supporting exhibits, clearly set forth the amount of its damages. Plaintiff has incurred, and continues to incur damages in the form of lost rent and other categories of damages, all of which are expressly provided for in Section 18 of the Lease and which flow as the natural consequence and proximate result of Defendant's breach. The validity and enforceability of the Lease is inherent in this Court's prior decision on liability. The Lease clearly and unambiguously provides that Plaintiff is entitled to recover damages in all of the aforementioned categories in the event of a breach, and Plaintiff has put forth undisputed evidence of the amount of its damages.

Further, this Court finds that an award of reasonable attorney's fees is appropriate under Section 18.4 of the Lease and South Carolina law. "In determining a reasonable attorney's fee, the court should consider the following six factors: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the legal fee customarily

charged in the locality for similar services.” *Taylor v. Medenica*, 331 S.C. 575, 580, 503 S.E. 2d 458 (1998). Further, consideration should be given to all six factors and none of the factors is controlling. *Id.* at 580. Here, the Court finds that the nature, extent, and difficulty of the present case supports the requested fee award. Further, the hourly fee, professional standing of counsel, time devoted to this case, which include the filing of motions and supporting memoranda, support the requested fee award. Finally, the requested attorney’s fees are reasonable in view of the amount recovered and the fees customarily charged for similar services in Greenville County.

Although Defendant filed opposing affidavits, Defendant’s affidavits do not dispute the accuracy of the amounts alleged by Plaintiff and do not contradict the material facts asserted in Plaintiff’s Complaint, Motion, and affidavits and exhibits filed with the Motion. Furthermore, the Court considered all of Defendant’s arguments made at the Motion hearing and subsequently, including in her opposition affidavits, and is not persuaded that Defendant has raised a genuine issue of material fact as to past damages due and owing to Plaintiff under the plain language of the Agreements.

THEREFORE IT IS ORDERED that the Plaintiff’s Motion for Partial Summary Judgment as to Past Damages is granted as to Defendant, Kwi Hwang. Plaintiff is entitled to judgment in its favor in the amount of \$228,682.30.

The Honorable G.D. Morgan Jr.
Thirteenth Judicial Circuit

December _____, 2021



Greenville Common Pleas

Case Caption: Church Street LLC vs. Kwi Hwang

Case Number: 2020CP2304505

Type: Order/Summary Judgment

So Ordered

G.D. Morgan Jr.

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