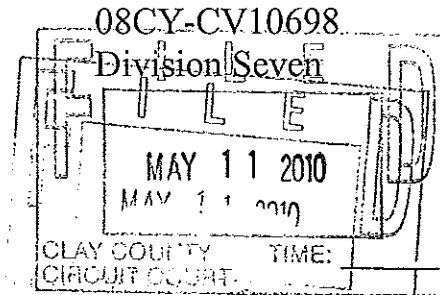


IN THE CIRCUIT COURT OF CLAY COUNTY
LIBERTY, MISSOURI

SOULMATES LLC)
JOHN PLUCHINO)
STACY PLUCHINO)
CHOUTEAU PARTNERS LLC)
)
Plaintiffs,)
)
Vs.)
)
EASTBORNE INVESTMENTS LTD)
)
)
Defendants.)



FINDINGS OF FACT AND CONCLUSIONS OF LAW AND
JUDGMENT

On the 26th day of April 2010 and concluding on April 30, 2010, this cause coming on for trial, plaintiffs appear in person and by counsel Larry Buccero and defendant by counsel James Kessinger. Case number 08CY-CV 11184 entitled Eastbourne Investments LTD vs. Soulmates LLC., John Pluchino and Stacie Pluchino was previously consolidated with the above captioned case and will be considered as a counterclaim in this action. Plaintiff presents evidence and rests. Defendant presents evidence and rests. Closing arguments are heard.

FINDINGS OF FACT

The Court finds the following facts as true:

The parties participated in several months of negotiation and a failed attempt by defendants John Pluchino and Stacie Pluchino individually to obtain financing before final agreements were entered by the parties. Five documents form the basis for the parties' final negotiated agreement. A Promissory note was entered into by Soulmates LLC., John Pluchino and Stacie Civella as borrowers and Eastborne Investments LTD. as lender on July 31, 2008 in the total amount of \$125,000. The first \$75,000 was given

in two drafts directly to borrowers to be paid back in monthly installments starting September 1, 2008. The last \$50,000 was paid by Lender to vendors on borrower's behalf, only to be repaid by borrowers if the lease agreement was not fulfilled. The \$50,000 was to be expended by Landlord for improvements to the roof and HVAC system. Anything above the \$50,000 that was expended for roof and HVAC systems was to be absorbed by the Landlord. The first draw of \$37,500 was paid to borrowers on July 31, 2008. The second draw of \$37,500 was paid to borrowers on September 9, 2008.

The second document dated July 30, 2008 was a Commercial Loan and Security Agreement entered into between borrowers Soulmates llc., Stacie Civella, and John Pluchino and lender Eastbourne Investment LTD. In return for the loan amounts already mentioned, collateral was put up by Chouteau Partners, LLC. and Vince Civella under a Deed of Trust to secure the loan.

The third document dated July 29, 2008 is the Deed of Trust executed by Chouteau Partners LLC. securing the promissory note and commercial loan.

The fourth document is a Personal Guaranty of the Lease executed July 30, 2008 by both John Pluchino and Stacie Civella.

The fifth document is the lease agreement executed July 30, 2008 between landlord Eastborne Investments LTD. and tenants Soulmates LLC. The lease gave immediate possession to Soulmates LLC. The lease payments were to start on October 1, 2008 in the monthly amount of \$9,000. As part of the lease agreement, Landlord was to make improvements to the roof and HVAC system as noted in Attachment A of the lease. Estimated date of completion was to be August 30, 2008.

As to the promissory note, the Court finds that Lender complied with the terms of the note and gave borrowers \$75,000 cash as agreed in the loan. No payments were made by Borrowers to Lender on this note. The Borrowers documented through receipts \$15,545 that was expended on the building that was leased to them. The labor costs were undocumented. The Court finds no other documentation for where the balance of the \$75,000 went to. After default on the loan, the Lender exercised their rights under the security agreement to collect the full loan amount.

As to the lease agreement, the Court finds that Landlord complied with the terms of the lease. The Landlord gave possession of the premises as promised. The Landlord expended a total of \$72,217.37 in improvements to the property's roof and HVAC system. Specifically, the Landlord executed a contract with Temp Con to replace the HVAC system on July 31, 2008 and

paid \$27,247.37 for the work that was completed. The Landlord executed a contract with Western Roofing Company on July 30, 2008 to complete the roofing improvements as specifically noted in Attachment A to the lease. This included replacement of the north section of roof and repairs to the barrel and south sections of the roof. This was completed by August 30, 2008. Landlord paid \$29,110 for this work. After complaints by Tenant of continued water in the building, the Landlord executed a second contract with Western Roofing Company on September 12, 2008 for replacement of the south section of the roof for an additional payment of \$15,860. This work was completed by September 22, 2008. A subsequent complaint was made by tenant of water in the building on October 22, 2008, a full month after the last work was completed by Landlord. No leaks were found by Landlord or roofer. Each time a complaint was made by tenant, the landlord sent someone for repairs within a 48 hour period. The Court finds this was in compliance with their responsibilities under the lease. The tenants never made a payment under the lease and abandoned the property around the end of October 2008. A watchman hired by Tenant may have remained in the property. Possession was not specifically returned to Landlord until an interlocutory judgment for possession was entered by this Court on January 9, 2009.

CONCLUSIONS OF LAW

The Court will first address the Plaintiff's request for rescission of the promissory note, deed of trust, lease, lease guaranty, and security agreement. Rescission is not available as a remedy when there has been partial performance by either party. The Court finds that Defendant Eastbourne performed completely their side of the promissory note agreement. The Court also finds that Defendant Eastbourne complied substantially with all terms of the lease agreement. Plaintiff is the party who defaulted on all agreements and payments. Rescission therefore is not available and will not be granted.

The Plaintiff then asks the Court to find that Soulmates performance under the lease was impossible. Under this theory, the Court must find that under the facts as presented, it was impossible for Plaintiff to perform their contractual obligations. As of September 22, 2008, the roof was fully

repaired and replaced. No leaks have been found upon inspection since that time. Plaintiff had the ability to continue improvements to the property and comply with the terms of all agreements. They chose not to do so.

The Plaintiff then claims failure of consideration as a basis for rescission. The Court finds that Defendants did furnish consideration in the form of \$75,000 paid to Plaintiffs, \$72,217 paid to contractors for the new roof and HVAC system and possession of the premises given to Plaintiff.

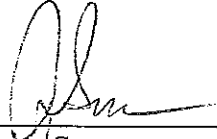
Plaintiffs' claims of unjust enrichment and request for return of the \$133,00 paid by Chouteau Partners under the security agreement will be addressed next. The Court finds that Defendant Eastbourne put \$72,217 into the building in the form of a new roof and HVAC system. Eastbourne clearly would not have invested this money if it had not been for the lease with the Plaintiff and the expectation of the fulfillment of that lease. They are now left without income from the property and the possibility of tearing down the building that they just invested money in solely because of the contracts with Plaintiff. Eastbourne gave \$75,000 to the Plaintiff in the form of a loan. The only possible benefit Eastbourne may have received from this would be improvement of a building that they owned. Only \$15,545 of the money was put into the building if the receipts of Plaintiff are accepted. As left by the Plaintiffs, the building is partially painted, no working bathroom is available, and again the improvements, if any, are of no benefit to Eastbourne unless the Plaintiff complied with their portion of the agreements. Eastbourne was clearly out the \$125,000 secured by the deed of trust when Plaintiffs Soulmates LLC and John and Stacie Pluchino defaulted by making no payments under the promissory note or the lease agreement.

On Defendant's counterclaim under the lease agreement, the Court finds that Plaintiff did default on the lease. The Court finds that rent for the months of October, November, and December 2008, and January of 2009 are owed to Defendant totaling \$36,000. The only keys to the building were never returned to Defendant. Legal possession was granted by the Court in January 2009.

JUDGMENT

On the claim of plaintiff for rescission of the promissory note, deed of trust, lease, lease guaranty, and security agreement, the Court finds in favor of the defendant. The Court finds in favor of Defendant on Plaintiffs claims of impossibility, failure of consideration, and unjust enrichment. The Court finds in favor of Defendant on Plaintiff Chouteau Partners monetary request.

On the claim of Defendant for back rent, the Court finds in favor of Defendant and against Plaintiffs Soulmates LLC, John Pluchino, and Stacie Pluchino in the amount of \$36,000. Attorney fees are awarded to Defendant pursuant to the lease and promissory note in the amount of \$9,537.93. Court costs assessed against Plaintiff.



5/11/10

Judge Janet Sutton
Associate Circuit Judge, Division Seven