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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

401 FOOD, LLC,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	**Case No. 24-0642-BC**
	)	
W 401 BROADWAY LLC,	)	
	)	
Defendant/Counter-Plaintiff.	)	

MEMORANDUM AND ORDER

This matter came before the Court on October 14, 2025, for a hearing on Plaintiff 401 Food, LLC's Motion for Judgment on the Pleadings pursuant to Tenn. R. Civ. P. 12.03. At Rule 16 Conference #1, Tenant argued this case was uniquely appropriate for an early ruling on the terms of the applicable lease, and it would be to the parties' benefit to obtain such a determination. The Court invited the filing of such a motion and built it into the case schedule. Both parties fully briefed the issues and argued their positions. The Court has reviewed those materials, and the applicable legal standard, and is ready to rule.

Rule 12.03 Motions

A motion for judgment on the pleadings may be filed "[a]fter the pleadings are closed but within such time as not to delay the trial." Tenn. R. Civ. P. 12.03. In reviewing a trial court's ruling on a motion for judgment on the pleadings, an appellate court must accept as true "all well-pleaded facts and all reasonable inferences drawn therefrom" alleged by the party opposing the motion. *McClenahan v. Cooley*, 806 S.W.2d 767, 769 (Tenn.1991). In addition, "[c]onclusions of law are not admitted nor should judgment on the pleadings be granted unless the moving party is clearly entitled to judgment." *Id. See also Cherokee Country Club, Inc. v. City of Knoxville*, 152 S.W.3d 466, 470 (Tenn. 2004); *Lawson v. Hawkins Cty.*, 661 S.W.3d 54, 58 (Tenn. 2023).

A motion for judgment on the pleadings is effectively a motion to dismiss for failure to state a claim upon which relief can be granted. *Timmins v. Lindsey,* 310 S.W.3d 834, 838 (Tenn. Ct. App. 2009) (citing *Waldron v. Delffs*, 988 S.W.2d 182, 184 (Tenn. Ct. App. 1998)). "Such a motion admits the truth of all relevant and material averments in the complaint but asserts that such facts cannot constitute a cause of action." *Id.*

The complaint does not need to contain detailed allegations of all facts giving rise to the claims, but it "must contain sufficient factual allegations to articulate a claim for relief." *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 427 (Tenn. 2011) (quoting *Abshure v. Methodist Healthcare-Memphis Hosps.*, 325 S.W.3d 98, 103-104 (Tenn. 2010)). "The facts pleaded, and the inferences reasonably drawn from these facts, must raise the pleader's right to relief beyond the speculative level." *Id.* (quoting *Abshure*, 325 S.W.3d at 103-104). Under Rule 12.03, the Court should "deny the motion unless it appears that the plaintiff can prove no set of facts in support of the claim that would entitle him to relief." *Waller v. Bryan*, 16 S.W.3d 770, 773 (Tenn. Ct. App. 1999).

Undisputed Facts in Pleadings and Attachments

The parties' relationship is one of landlord/defendant ("Landlord") and tenant/plaintiff ("Tenant") pursuant to a January 1, 2009 lease for a building with 17,713 rentable square feet at W 401 Broadway in Nashville, Tennessee (the "Premises" and the "Original Lease"). The Original Lease was amended five times, the last amendment being executed on December 18, 2018 (referred to individually by number or collectively as the "Lease"). The term of the Original Lease was for ten (10) years with option terms to extend it through the amendments. In the last extension, Tenant exercised the right to remain until December 31, 2028.

Tenant operated Merchant's Restaurant at the Premises until a January 21, 2023 fire that forced closure of the business until significant restoration could be performed. Tenant has done some work to prepare the Premises to be restored but it has not been restored for the restaurant to be reopened or for any business to operate.

There were communications between Landlord and Tenant throughout 2023 regarding insurance, restoration and other pertinent matters. Tenant's plan during that period was to reopen the same concept, Merchant's Restaurant, after restoration. Tenant provided Landlord some plans, at its request, in December of 2023 consistent with those conversations.

Tenant has changed its plans regarding the restoration and renovation to a concept different from Merchant's Restaurant. Landlord alleges this is inconsistent with Tenant's obligations under the Lease; Tenant disputes that reading of the Lease. Additionally, Landlord avers that Tenant's activities in restoring the Premises are in breach of its obligations. The exchange of positions is set out in the parties' correspondence, attached to the Verified Complaint as Exhibits B-F and dated April 24, 2024 through May 24, 2024. Tenant filed this lawsuit on May 24, 2024 after receiving a default notice and threat of eviction.

Tenant asserts that the Court can apply the undisputed facts to the Lease to grant it the relief it seeks which, in sum, is a determination it is not in breach, that it has a right to restore the Premises for a use other than operation of Merchant's Restaurant, that Landlord is not entitled to evict it as such would be an unlawful forfeiture or, alternatively, that it can pay rent into the Court pending a determination of what abatement it is entitled to receive. The terms of the Lease relevant to this inquiry are:

> 7. USE OF PREMISES.
>
> 7.1 (a) Use Allowed. The Premises shall be occupied and used by Lessee for the construction and operation of a restaurant or for such other business which,

in Lessee's sole judgment, are compatible therewith, or for any other lawful purpose or purposes.

…

8. ALTERATIONS.

During the term hereof, Lessee shall have the right to make, at its sole cost and expense, such interior and nonstructural charges, alterations, improvements and additions to the Improvements and the Premises or any portion thereof as Lessee may desire (provided that exterior or structural alterations shall require Lessor's prior written consent, not to be unreasonably withheld), and shall also have the right to install therein and replace such trade fixtures and equipment as it may deem advisable for the conduct of its business, subject to the approval of all applicable governmental authorities, which approvals shall be obtained by Lessee at its sole cost and expense.

…

12. DESTRUCTION.

12.1 Partial (More than 50%) or Total Destruction Covered by Insurance. Except as otherwise provided in Section 12.2 below, in the event the Improvements are at least fifty (50%) percent damaged or destroyed by fire or other perils covered by the aforementioned fire and extended coverage insurance, Lessee at its option may promptly and diligently, to the extent of the insurance proceeds, restore the leased premises to the condition existing prior to the occurrence of the fire or other peril, or may release and tum over to Lessor insurance proceeds as a result thereof, if any, and Lessor shall promptly and diligently restore the leased premises to the condition existing prior to the occurrence of the fire or other peril (to the extent of insurance proceeds actually received by Lessor, and subject to the rights of Lessor's lender); provided, however, that if Lessor does not begin construction within thirty (30) days of receipt of such proceeds, or does not complete construction within one hundred twenty (120) days of receipt of the proceeds, Lessee may, at its option, and with no liability therefore, cancel and terminate this Lease.

12.2 Partial or Total Destruction From Any Cause Within the Last Five Years of the Term. In the event the Improvements are damaged or destroyed by any cause whatsoever during the last five (5) years of any extension of the primary term, and, if the time it would take to repair the Improvements and reopen the business conducted from the Premises would exceed six (6) months, as reasonably determined by Lessee, then Lessee, at its option, may promptly and diligently restore the leased premises to the condition existing prior to the occurrence of the fire or other casualty, or may release and tum over to Lessor insurance proceeds as a result thereof, if any, and cancel and terminate this Lease.[1]

[1] This language was amended from the Original Lease and is in the Fifth Amendment to Lease.

> 12.3 Partial Destruction (Less than 50%). Except as otherwise provided in Section 12.2 above, in the event the Improvements are less than fifty (50%) damaged or partially destroyed by fire or other perils covered by the aforementioned fire and extended coverage insurance, Lessee shall, to the extent of the insurance proceeds, restore the leased premises to the condition existing prior to the occurrence of the fire or other peril.
>
> 12.4 Standard of Reconstruction. Any obligation of Lessor or Lessee to repair and/or restore the Improvements on the Premises pursuant to this Article shall be to repair or restore the same according to the plans and specifications therefor mutually approved by both parties or pursuant to revised plans reflecting Lessee's then current building specifications, subject to such modifications as may then be required by any governmental agency or authority then having jurisdiction to approve said plans.
>
> 12.5 Abatement of Rent. In the event of repair, reconstruction or restoration as herein provided, Monthly Rental shall be abated. However, Lessee may, at its option, continue to operate its business on the Premises during any such period to the extent reasonably practical from the standpoint of prudent business management. In such event, rent shall be abated in proportion to the percentage of the improvements actually being utilized during the abatement period.

Court's Findings

It is disputed between the parties whether the destruction of the Premises is under or over 50%, which would impact whether paragraph 12.1 or 12.3 of the Lease is applicable. Paragraph 12.2, if applicable, would make that a non-issue because it would essentially allow a default to the terms in 12.1 giving Tenant the option to restore or turning the insurance proceeds over to the Landlord who has a limited period to complete the work or Tenant is released from the Lease. The fire occurred on January 21, 2023, outside of the last five years of the operable extension. Thus, it is disputed which provision applies and the parties' obligations thereunder, depending upon the percentage of damage.

Regardless, Tenant argues, the operable language regarding its rights is the same and does not impact its motion. Tenant's position is, reading the language in paragraphs 7 and 8 of the Lease, as well as 12.4, it has significant flexibility in how it uses the Premises. Therefore, Landlord cannot declare default because Tenant has revised its concept plans, and thus its restoration plans,

from Merchant's Restaurant to a honkytonk. Paragraph 12.4 obligates Tenant to adhere to building specification "according to the plans and specifications therefor mutually approved by both parties or pursuant to revised plans reflecting Lessee's then current building specifications" and, it argues, that gives it the ability to revise its plans as it desires, as long as it adheres to the obligations in paragraphs 7 and 8 to have a lawful purpose and not make structural or exterior alterations.

Landlord relies on the language in paragraphs 12.1 and 12.3 (and 12.2 if it were applicable) that says the restoration is to be "to the condition existing prior to the occurrence of the fire or other peril" to require Tenant to restore to the same concept and does not allow the flexibility to change the business. At the very least, per Landlord, this perceived inconsistency should prevent the Court from granting the requested relief.

The parties agree that the Court's interpretation of the Lease should follow principles of contract interpretation, which is a question of law and not a question of fact. *Mark VII Transp. Co. v. Responsive Trucking, Inc.*, 339 S.W.3d 643, 647–48 (Tenn. Ct. App. 2009); *see also Pitt v. Tyree Org., Ltd.*, 90 S.W.3d 244, 252 (Tenn. Ct. App. 2002). Courts must interpret contracts to ascertain and give effect to the intent of the contracting parties consistent with legal principles. *Individual Healthcare Specialists, Inc. v. BlueCross BlueShield of Tennessee, Inc*., 566 S.W.3d 671, 688 (Tenn. 2019); *Wallis v. Brainerd Baptist Church*, 509 S.W.3d 886, 899 (Tenn. 2016); *Dick Broad. Co., Inc. of Tenn. v. Oak Ridge FM, Inc.*, 395 S.W.3d 653, 659 (Tenn. 2013); *Clark v. Sputniks, LLC*, 368 S.W.3d 431, 441 (Tenn. 2012); *Allmand v. Pavletic*, 292 S.W.3d 618, 630 (Tenn. 2009); *Allstate Ins. Co. v. Watson*, 195 S.W.3d 609, 611 (Tenn. 2006); *Frizzell Constr. Co. v. Gatlinburg, L.L.C.*, 9 S.W.3d 79, 85 (Tenn. 1999) (quoting *Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth, Inc.*, 521 S.W.2d 578, 580 (Tenn. 1975)). Each provision must be construed in light of the entire agreement, and the language in each provision must be given its natural and ordinary meaning. *Mark VII Transp. Co.*, 339 S.W.3d at 647–48; *see also Buettner v. Buettner*, 183 S.W.3d

354, 359 (Tenn. Ct. App. 2005)). Moreover, Tennessee courts "give primacy to the contract terms, because the words are the most reliable indicator—and the best evidence—of the parties' agreement when relations were harmonious, and where the parties were not jockeying for advantage in a contract dispute." *Individual Healthcare Specialists, Inc*., 566 S.W.3d at 694 (quoting Feldman, 21 Tenn. Practice § 8:14).

If the written instrument is unambiguous, the Court must interpret it as written rather than according to the unexpressed intention of one of the parties. *Sutton v. First Nat'l Bank*, 620 S.W.2d 526 (Tenn. Ct. App. 1981). A contract is not ambiguous merely because the parties have different interpretations of the contract's various provisions, *Cookeville Gynecology & Obstetrics, P.C. v. Southeastern Data Sys., Inc*., 884 S.W.2d 458, 462 (Tenn. Ct. App. 1994) *(*citing *Oman Constr. Co. v. Tennessee Valley Authority*, 486 F.Supp. 375, 382 (M.D. Tenn. 1979)), nor can this Court create an ambiguity where none exists in the contract. *Strategic Acquisitions Grp., LLC v. Premier Parking of Tennessee, LLC,* No. E2019-01631-COA-R3-CV, 2020 WL 2595869, at *4 (Tenn. Ct. App. May 22, 2020) *(*citing *Cookeville P.C*., 884 S.W.2d at 462) (citing *Edwards v. Travelers Indem. Co.*, 300 S.W.2d 615, 617–18 (Tenn. 1957).

In contrast, if the words in a contract are susceptible to more than one reasonable interpretation, the parties' intent cannot be determined by a literal interpretation of the language and the court must apply established rules of construction to determine the intent of the parties.. *Allstate Ins. Co.,* 195 S.W.3d at 611 (citing *Planters Gin Co. v. Fed. Compress & Warehouse Co.*, 78 S.W.3d 885, 890 (Tenn.2002)). Contract language "is ambiguous only when it is of uncertain meaning and may fairly be understood in more ways than one." *Id.* (quoting *Farmers–Peoples Bank v. Clemmer,* 519 S.W.2d 801, 805 (Tenn. 1975)). When a contractual provision is ambiguous, a court has the ability to use parol evidence, including the contracting

parties' conduct and statements regarding the disputed provision, to guide the court in construing and enforcing the contract. *Memphis Housing Auth. v. Thompson,* 38 S.W.3d 504, 512 (Tenn. 2001) (citations omitted).

Given this legal backdrop, the Court cannot grant the relief Tenant requests. The Court does not find the Lease unambiguously gives it the right to restore the Premises to a condition inconsistent with that in existence prior to the fire. There are some inconsistencies in the Lease, but the language in paragraph 12 is specific, no matter the percentage of destruction, that the Premises is to be restored "to the condition existing prior to the occurrence of the fire or other peril." Whether in this case that means to Merchant's Restaurant, or some other comparable concept, it is too early for the Court to determine. The Court cannot find, however, that paragraphs 7 and 8, when read with paragraph 12, give Tenant the right to restore to operate any lawful business in the Premises.

The Court is also not prepared to find that Landlord's declaration of default and expressed intention of ouster is inconsistent with the Lease. It remains to be seen whether Tenant has complied with its obligations in the Lease to restore the Premises "promptly and diligently."[2] The Court is ***not*** making a finding that Tenant is in default of the Lease, but rather that it cannot make any finding as to default at this time pursuant to Rule 12.03 based upon the pleadings. Likewise, the issue of unlawful forfeiture remains for determination upon a more fully developed record. Because Landlord has not initiated an action to oust Tenant, the Court does not think it appropriate to grant any expedited extraordinary relief at this time to preserve the status quo and has not been asked specifically to do so. That remains an option for Tenant if circumstances change during the pendency of this litigation.

Finally, regarding the request to allow rent to be paid into the Court, that request is also denied. Again, the Court makes no finding about whether Tenant could have previously exercised what is a

[2] The Court does agree with Tenant that Landlord's position failure to provide a budget is a breach of the Lease is inconsistent with the Lease terms. Indeed, in footnote 1 of Landlord counsel's May 14, 2024 letter (Verified Complaint, Exh. D), it is acknowledged that this expectation is implied and not spelled out in the Lease.

clear right to abatement in paragraph 12.5, or if Tenant has reserved that right and could exercise it going forward. If circumstances change in this regard and either party needs relief from the Court, a proper application for such should be made so the Court can consider the changed circumstances.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Plaintiff 401 Food, LLC's Motion for Judgment on the Pleadings is DENIED.

Case Management

The outcome of this motion results in an imperfect situation with the parties operating under the current status quo. Tenant is paying rent for space it cannot use, and wants to repurpose the Premises for another business, which puts restoration on hold. Landlord is receiving rent payments for now, but that may change if Tenant exercises rights of abatement. Landlord has declared non-monetary default, which it has not acted upon but has set in motion the Lease provisions that allow it to oust the Tenant if the circumstances justify. It cannot otherwise put in another operator or take over the restoration. The case schedule sets the summary judgment hearing for September 12, 2025, ensuring this case will not be tried until late 2025 or early 2026. The Court believes it is in the best interests of the parties to come to a resolution prior to that time, although cannot make that happen other than to push the litigation as quickly as possible and rule on the motions it receives. The Court is interested in putting in place practical solutions and mechanisms to assist the parties but must operate within the bounds of its role.

With those considerations in mind, the Court sets the next case management conference for either the week of October 28 or November 4, 2024. Counsel is to contact the Calendar Clerk, Megan Carter, at megancarter@jisnashville.gov, with their availability those two weeks (except Fridays), so

that a conference can be set. The Court is willing to have the conference via Zoom or hybrid if that is the parties' preference. They can address those logistics with Ms. Carter.

IT IS SO ORDERED.

s/Anne C. Martin

ANNE C. MARTIN
CHANCELLOR
BUSINESS COURT DOCKET
PILOT PROJECT

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