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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

KNOXVILLE AUTO TRUCK PLAZA, INC.
Plaintiff

Case No: CV-17-882653

Judge: BRENDAN J SHEEHAN

TA OPERATING LLC, ET AL
Defendant

JOURNAL ENTRY

OPINION AND JUDGMENT ENTRY. O.S.J.

Judge Signature

Date

2018 MAY 23 A 10:35
CLERK OF COURTS
CUYAHOGA COUNTY

FILED

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CUYAHOGA COUNTY, OHIO

KNOXVILLE AUTO TRUCK PLAZA, INC.,)	CASE NO. CV 17 882653
)	
Plaintiff,)	JUDGE BRENDAN J. SHEEHAN
)	
v.)	
)	OPINION AND JUDGMENT
TA OPERATING LLC, , <i>et al.</i> ,)	ENTRY
)	
Defendants.)	

I. ISSUES PRESENTED

This matter is before the Court on Plaintiff's Motion for Preliminary Injunction and Defendants' Motion to Dismiss. The issues have been fully briefed to the Court. The parties declined the opportunity for an evidentiary hearing and chose to submit their arguments and evidence on the briefs.

Stated simply and to protect the parties confidential data at this juncture of the proceedings, Plaintiff Knoxville Auto Truck Plaza, Inc. is the franchisee and lessee of a truck stop business and facility with Defendants. The Lease Agreement ("Lease") granted Plaintiff the right to possess a truck stop at 615 Watt Road, Knoxville, Tennessee 37922 for an initial term of ten years with the potential of two additional five-year terms. Rent adjustments are contemplated by the parties and the parties' agreements required that both proceeded in good faith to effect reasonable economic gains for the parties.

A commercially reasonable rent increase of approximately thirteen percent was negotiated in good faith by the parties at the conclusion of the initial ten-year term of the Lease.

At the conclusion of the initial additional five-year term of the Lease, Defendants requested a rent increase of approximately 54%. It does not appear that the parties engaged in any meaningful negotiations related to the 54% increase in rent prior to the filing of this lawsuit. Plaintiff contends that the increase is not made in good faith and has requested relief from this Court.

Defendants filed a Motion to Dismiss pursuant to Civ.R. 12(B)(6) on the grounds that the terms of the agreements grant Defendants the power to terminate if Plaintiff refuses to accept a proposed rent increase so Plaintiff's claims fail as a matter of law.

II. LAW AND ANALYSIS

A. Standard of Review for Injunctive Relief.

A plaintiff requesting a preliminary injunction must show that: (1) there is a substantial likelihood that the plaintiff will prevail on the merits, (2) the plaintiff will suffer irreparable injury if the injunctive relief is not granted, (3) no third parties will be unjustifiably harmed if the injunction is granted, and (4) the public interest will be served by the injunction. *Cleveland v. Cleveland Elec. Illum. Co.*, 115 Ohio App.3d 1, 12, 684 N.E.2d 343 (8th Dist. 1996). When granting a preliminary injunction, Courts have accepted that the factors "must be balanced" and that "no one factor is dispositive." *Escape Ents., Ltd. v. Gosh Ents., Inc.*, 10th Dist. Franklin Nos. 04AP-834, 04AP-857, 2005-Ohio-2637, ¶ 48, citing *Cleveland Elec. Illum. Co.* at 14. The party seeking injunctive relief must establish its right to relief by clear and convincing evidence. *Kyrkos v. Superior Bev. Group, Ltd.*, 8th Dist. No. 99444, 2013-Ohio-4597, ¶12, citing *Zavakos v. Zavakos Ents., Inc.*, 63 Ohio App.3d 100, 103, 577 N.E.2d 1170 (2d Dist. 1989).

B. Likelihood Of Success On The Merits.

Section 17(b)(i) of the Lease at issue provides for termination if Plaintiff and Defendants “fail to agree to changes or additions to [the] Lease made . . . in good faith and in the normal course of business, and [Defendant] does not insist on such changes or additions being made for the purpose of preventing renewal of this Lease.” Section 17(b)(iv) provides that Defendant “may decline to renew the lease ... if [it] makes a good faith determination in the normal course of business not to renew the lease because such renewal would be uneconomical to [Defendant]... provided however, that such nonrenewal is not made for the purpose of converting the Leased Premises to operation by employees or agents of [Defendant’s] own account.”

The Court acknowledges that the evidence before it at this stage in the proceedings is incomplete and preliminary. Further, the parties chose to present their arguments without an evidentiary hearing so the testimony of witnesses is limited to written transcripts only. Subject to those limitations, Plaintiff’s arguments that a rent increase of 54% is commercially unreasonable and not made in good faith appear to have sufficient merit to support its current motion.

Plaintiff has raised substantial questions concerning the basis for the rental increase, citing to discrepancies in underlying data that were not sufficiently dispelled by Defendants. While Defendants presented various expert opinions, those opinions primarily focused on the methodology used to determine the applicable rent without analysis and comparison of the raw data used in the methodology.

Additionally, Defendants' business model appears to have a distinct trend toward reducing the number of company owned, franchisee operated facilities. Although there may be myriad benign reasons for this trend, the trend is troublesome for purposes of the current motion.

C. Irreparable Injury Or Harm In The Absence Of An Injunction.

Irreparable harm is "harm for which there is no plain, adequate, and complete remedy at law, and for which money damages would be impossible, difficult, or incomplete." *Kyrkos v. Superior Bev. Group, Ltd.*, 8th Dist. Cuyahoga No. 99444, 2013-Ohio-4597, ¶ 14 citing *Cleveland Elec. Illum. Co.*, 115 Ohio App.3d at 14. Furthermore, "[a] risk of loss or damage to a business entity qualifies as irreparable harm." *Franks v. Rankin*, 10th Dist. Franklin No. 11AP-962, 2012-Ohio-1920, ¶ 36. The Defendant holds both the lease and the franchise agreement. The threat of termination or immediate termination of the lease and franchise agreement would result in the permanent loss of Plaintiff's business, business reputation and established good will. The 6th Circuit "has recognized that a loss of business goodwill may constitute irreparable harm because of the difficulty in calculating damages." *Tri-County Wholesale Distribs. v. Wine Group, Inc.*, 565 F.App'x 477, 483 (6th Cir.2012). The Plaintiff has been operating its business since 1991, has multiple other contractual obligations with other entities, and employees relying on its existence. Were the Plaintiff to suddenly cease operations entirely, there would be a loss of goodwill and business reputation, and accordingly, there would be irreparable harm.

D. Impact of Injunction on Third Parties

Beyond the continuation of an ongoing business and its effect on employees and customers, the Court finds no impact on third parties as a result of injunctive relief in this matter.

E. Effect of Injunction on The Public Interest.

The purpose of a preliminary injunction is to preserve the status quo until the parties have had a chance to litigate the underlying disputes. *Cleveland Indus. Square v. City of Cleveland*, 8th Dist. Cuyahoga No. 67068, 1995 Ohio App. LEXIS 830, at 10 (Mar. 9, 1995).

It is in the public interest for parties to work together to resolve differences and to conduct business dealings in good faith. The evidence presented to the Court thus far strongly indicates that an amicable resolution allowing both parties to profitably fulfill both agreements at issue was possible with cool heads, open communication, skilled neutral financial experts for both parties, and sufficient time. It appears that the combination of these factors was not applied prior to suit and, to date, the parties still dispute which data was used to perform which calculation. An injunction provides at least one factor, sufficient time, so that the parties may attempt to negotiation in good faith prior to a trial in this matter.

F. Defendant's Motion to Dismiss

A motion to dismiss brought pursuant to Civ.R. 12(B)(6) should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *O'Brien v. University Community Tenants Union, Inc.*, 42 Ohio St. 2d 242, 327 N.E.2d 753 (1975), quoting *Conley v. Gibson*, 355 U.S. 41, 45, 78 S. Ct. 99, 2 L.Ed.2d 80 (1957). All factual allegations of the complaint must be taken as true and all reasonable inferences must be drawn in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). Further, the court is confined to the allegations of the complaint. *York v. Ohio State Highway Patrol*, 60 Ohio St.3d 143, 144, 573

N.E.2d 1063 (1991); *AAA American Const., Inc. v. Alpha Graphic*, 8th Dist. Case No. 84320, 2005 Ohio 2822.

“While a complaint attacked by a * * * motion to dismiss does not need detailed factual allegations, the [plaintiffs'] obligation to provide the grounds for their entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level.” *Parsons v. Greater Cleveland Reg'l Transit Auth.*, 8th Dist. Case No. 93523, 2010 Ohio 266 at ¶ 11, citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). Conclusory statements in a complaint not supported by facts are not afforded the presumption of veracity and are insufficient to withstand a motion to dismiss. *Id.*; *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 193, 532 N.E.2d 753 (1988). See also *State ex rel. Hickman v. Capots*, 45 Ohio St.3d 324, 544 N.E.2d 639 (1989).

As is detailed above, Plaintiff has raised substantial issues of fact concerning the good faith, or lack thereof, between the parties. These issues are sufficient to state a claim for relief.

III. CONCLUSION

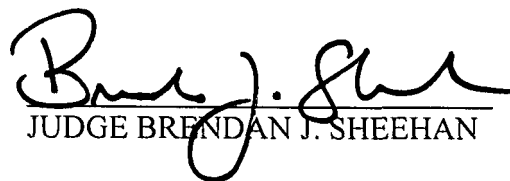
Based on the foregoing, Plaintiff's Motion for Preliminary Injunction is **GRANTED**. The parties are required to maintain the status quo per Court Order dated November 14, 2017.

Additionally, for the foregoing reasons, Defendants' Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.

Dated:

5/23/18


JUDGE BRENDAN J. SHEEHAN