STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: December 2, 2013)

RENAISSANCE DEVELOPMENT CORPORATION	:	
vs.	:	**C.A. No. KD 2011-1208**
AIRPORT VALET, INC.	:	

DECISION

K. RODGERS, J. This dispute between the landlord-Plaintiff, Renaissance Development Corporation (Plaintiff or Renaissance), and tenant-Defendant, Airport Valet, Inc. (Defendant or Airport Valet), arises from the Defendant's alleged breach of a lease agreement between the parties. Following a non-jury trial, this Court requested the parties to submit post-trial briefs. Having reviewed said briefs, this Court will now render a decision.

Jurisdiction is pursuant to G.L. § 8-2-13. For the reasons set forth herein, judgment shall enter for Plaintiff only to the extent of unpaid rent and real estate taxes for the period January 1, 2010 to January 28, 2010, as calculated based on the amounts payable in November 2009.

I

Findings of Fact

Upon assessing the credibility of the witnesses, weighing all the evidence presented, and considering the undisputed facts as submitted by the parties, the Court makes the following findings of fact.

Renaissance owns commercial property located at 1880 Post Road, Warwick, Rhode Island (the Rental Property). Airport Valet operates a business that provides parking and shuttle service for travelers frequenting Theodore Francis Green Airport in Warwick, Rhode Island. On or about November 19, 1999, Renaissance leased the Rental Property to Airport Valet pursuant to a written lease agreement entitled "SECOND AMENDMENT TO AND RESTATEMENT OF AGREEMENT OF LEASE" (the Lease). Joint Ex. 1. The Lease contemplated a ten-year term, running from December 1, 1999 to November 30, 2009. Notably, § 7.1.8 of the Lease provides in part:

> "If Tenant shall holdover possession after the termination of the initial term, Tenant agrees that the Base Rent for any such period shall be two (2) times the rent paid by Tenant at the expiration of the initial term, prorated for the time of such holdover. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the Lease." Joint Ex. 1 (emphasis added).

At the end of the lease term, the base rent was $25,951.55, payable on the first day of each month. In addition to the base rent, § 3.2 of the Lease required Defendant to pay the real estate taxes monthly, which amounted to an additional $4,723.70 each month. Thus, the November 2009 payments due from Defendant were $30,675.25.

Although the Lease was set to expire on November 30, 2009, Plaintiff delivered to Defendant an invoice for December 2009's rent and taxes, generated on November 29, 2009, in the amount of $30,675.25. In response, Defendant delivered a check, dated November 29, 2009, to Plaintiff for the amount invoiced. Joint Ex. 3. Plaintiff thereafter deposited Defendant's check on December 1, 2009. It is undisputed that, at the time Plaintiff cashed Defendant's check, it did so without condition or reservation.

Several days later, on December 3, 2009, Plaintiff's counsel informed Defendant, via letter, that Defendant was being treated as a holdover tenant subject to the penalty provision in § 7.1.8 of the Lease Agreement, namely, owing double monthly base rent. The letter further noted, "Be advised that our acceptance of the rent and holdover rent for December, 2009 in no way extends the November 30, 2009 expiration of your Lease Agreement." Pl.'s Ex. 3.

Shortly thereafter, Airport Valet responded through counsel that it would vacate at the end of December 2009. When Defendant did not vacate by the end of December, Plaintiff filed the instant action on January 13, 2010, seeking possession and damages of $25,951.55 for the alleged amount still owed under § 7.1.8 for December's rent. Defendant vacated the property two days later on January 15, 2010, but failed to remove an office trailer it had kept on the Rental Property until January 28, 2010. On January 23, 2012, Plaintiff amended its Complaint and limited it to a claim for damages during the holdover period. This case came on for trial before this Court on May 15, 2012.

As possession is not in dispute, the issues before this Court are (1) what impact Plaintiff's invoice to Defendant and unconditional acceptance of the December 2009 rent and tax payments had on its rights under the Lease; and (2) what, if any, damages Plaintiff is entitled to for the period in which Airport Valet continued possession of the Rental Property after November 30, 2009.

II

Presentation of Witnesses

At trial, Plaintiff presented the testimony of its Vice President, Janice Matthews (Matthews), who has served in that capacity for nineteen years. She testified to her duties and responsibilities as vice president, including, for instance, her role in lease negotiations and creating procedures and protocols within the office. She testified that she was involved in the lease negotiations on behalf of Renaissance with Airport Valet back in 1999, which resulted in the subject Lease. At the time the Lease was terminated on November 30, 2009, the monthly rent was $25,951.55. According to Matthews, Airport Valet did not vacate the property until January 28, 2010. She confirmed that following the termination of the Lease, the Lease provides for an amount equal to two times the monthly rent due at the time the Lease was terminated for any holdover tenancy. Joint Ex. 1, § 7.1.8.

Matthews also testified that she was aware six (6) months prior to the termination of the Lease that Airport Valet would not be renewing the Lease because it wanted to pay less in monthly rental payments. According to Matthews, Airport Valet was consistently delinquent in paying monthly rental amounts and consistently occupied more area of the Rental Property than was provided for under the Lease.

With regard to the invoice generated by Renaissance and sent to Airport Valet dated November 29, 2009, Matthews testified that invoices are generated for those tenants that are delinquent in paying on time, and the "system" is set to generate an invoice and send it out before its due date. She also testified that the invoices would not be generated once the end of a lease is reached; but, further testimony revealed that

someone would have had to make a change in the computer system to discontinue the invoicing. She testified that she was "surprised" that the invoice in question was spit out because it was at the end of the Lease, but later acknowledged that she could have done something to stop the November 29, 2009 invoice from being generated, which she failed to do.

With regard to the acceptance of checks, Matthews explained that Renaissance's system is set up so mail is opened, all checks are deposited and "they" (the accounting department) "find a home" for the transaction, i.e., determine which account/tenant receives the credit for the deposit.

Matthews received notice from the accounting department on December 2, 2009, the day after Airport Valet's check was cashed, that the check had been remitted in the amount of $30,675.25. This accounts for the $25,951.55 monthly rent plus $4,723.70 monthly real estate taxes due under the Lease. She acknowledged that nowhere on the cashed check did Renaissance indicate that it was being cashed conditionally or with any reservation.

Matthews further testified that she is the only person within Renaissance who has the authority to create a new tenancy, that she never expressly granted a new tenancy to Airport Valet, and that she had not had any direct communications with Airport Valet after the Lease was terminated.

Sanford J. Resnick, Esq., (Resnick) longtime counsel for Renaissance, also testified on behalf of Plaintiff. With respect to this matter, Resnick was tasked with notifying Airport Valet in writing what the terminated date of the Lease was and the conditions with which Airport Valet must comply upon relinquishing possession. This

was done on November 9, 2009. Pl.'s Ex. 1. On November 10, 2009, he had reason again to write to Airport Valet, this time to provide notice that the November rent was delinquent. Pl.'s Ex. 2. On December 3, 2009, a day after Matthews learned that Renaissance had cashed Airport Valet's check for $30,675.25, Resnick sent a letter to Airport Valet advising that the Lease had terminated and what was owed to Renaissance as a holdover tenant, i.e., additional money due for December rent. Pl.'s Ex. 3. The letter also noted that by accepting the check, Renaissance did not extend the Lease. In that letter, Resnick stated that "the monthly base rent is $29,951.55 and you owe said additional rent for the month of December, 2009 [,]" id., but Resnick admitted at trial that he was unaware what his $29,951.55 figure was based upon.

Stephen Olobri, a fifteen-year employee of Renaissance, also testified for the Plaintiff. At the direction of Matthews, Mr. Olobri went to the Rental Property and took photographs of the premises at different dates, starting on or about January 18, 2010. See Pl.'s Exs. 5(a)-(m). While Mr. Olobri described the series of photographs as "[p]ictures of a vacant piece of land [,]" the photographs do depict a trailer used by the Defendant that remained on the property until January 28, 2010, several weeks after Defendant claimed to have quit the premises. Id.

With regard to the trailer, Robert Horlbogen, the general manager for Airport Valet, testified that Defendant was unable to immediately remove the temporary office trailer from the edge of the Rental Property because Defendant did not own the trailer and did not have the authority to move it. While Defendant made arrangements with a leasing company to remove the trailer, the company did not remove said trailer until on or about January 28, 2010.

III

Standard of Review

Rule 52(a) of the Superior Court Rules of Civil Procedure provides that, "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon." Super. R. Civ. P. 52(a). In a non-jury trial, "'the trial justice sits as a trier of fact as well as law.'" Parella v. Montalbano, 899 A.2d 1226, 1239 (R.I. 2006) (quoting Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984)). "'Consequently, he [or she] weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences.'" Id. (quoting Hood, 478 A.2d at 184). It is well established that "assigning credibility to witnesses presented at trial is the function of the trial justice, who has the advantage of seeing and hearing the witnesses testify in court." McBurney v. Roszkowski, 875 A.2d 428, 436 (R.I. 2005) (citations omitted). The trial justice may also "'draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations.'" DeSimone Elec., Inc. v. CMG, Inc., 901 A.2d 613, 621 (R.I. 2006) (quoting Walton v. Baird, 433 A.2d 963, 964 (R.I. 1981)).

Furthermore, "[w]hen rendering a decision in a non-jury trial, a trial justice 'need not engage in extensive analysis and discussion of all evidence. Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case.'" Parella, 899 A.2d at 1239 (quoting Donnelly v. Cowsill, 716 A.2d 742, 747 (R.I. 1998) (citation omitted)). The trial justice need not "'categorically accept or reject each piece of evidence in his [or her] decision for [the Supreme] Court to uphold it because implicit in the trial justices [sic] decision are sufficient findings of fact to

support his [or her] rulings.'" Notarantonio v. Notarantonio, 941 A.2d 138, 147 (R.I. 2008) (quoting Narragansett Elec. Co. v. Carbone, 898 A.2d 87, 102 (R.I. 2006)).

IV

Analysis

Plaintiff alleges Defendant breached the Lease because it failed to pay Plaintiff the amount due for the period that it held over possession from December 1, 2009 to January 15, 2010. As such, Plaintiff believes it is entitled to two times the amount of base rent Defendant paid at the time of the expiration of the initial term. Thus, the dispositive issue before this Court is whether Plaintiff, by invoicing the Defendant for $30,675.25 on November 29, 2009, and unconditionally depositing Defendant's check in that amount on December 1, 2009, waived the penalty provision in § 7.1.8. In any event, this Court must then determine what amount Defendant owes to Plaintiff for the period of time in which it held over into January of 2010.

A

Waiver

The Rhode Island Supreme Court has long held that "'[w]aiver is the voluntary, intentional relinquishment of a known right. It results from action or nonaction . . . .'" Sturbridge Home Builders, Inc. v. Downing Seaport, Inc., 890 A.2d 58, 65 (R.I. 2005) (quoting Lajayi v. Fafiyebi, 860 A.2d 680, 687 (R.I. 2004)). "'The party claiming that there has been a waiver of a contractual provision has the burden of proof on that issue.'" Id. (quoting 1800 Smith Street Assocs., LP v. Gencarelli, 888 A.2d 46, 55 n.4 (R.I. 2005)). "'A waiver may be proved indirectly by facts and circumstances from which intention to waive may be *clearly inferred* [.]'" Id. (quoting 28 Am. Jur. 2d at § 225)

(emphasis in original). '"An implied waiver may arise where a person against whom the waiver is asserted has pursued such a course of conduct as to sufficiently evidence an intention to waive a right or where his conduct is inconsistent with any other intention than to waive it." Id. (quoting Ryder v. Bank of Hickory Hills, 146 Ill. 2d 98, 165 Ill. Dec. 650, 585 N.E.2d 46, 49 (1991)). Such implied waiver must be proven '"by a clear, unequivocal, and decisive act of the party who is alleged to have committed waiver."' Id. (quoting Ryder, 146 Ill. 2d 98, 165 Ill. Dec. 650, 585 N.E.2d at 49).

While our Supreme Court has not specifically addressed the issue presented here, i.e., waiver of a penalty provision that imposes increased rents on holdover tenants, it has discussed other situations, which are instructive here, in which a landlord allegedly waived an important legal right.

In Cardi v. Amoriggi Sea Foods, Inc., 468 A.2d 1223 (R.I. 1983), the Rhode Island Supreme Court "recognized the proposition that an acceptance of rent after a default has occurred constitutes a waiver of the default." Cardi, 468 A.2d at 1226 (citing Lenzini v. Gianetti, 49 R.I. 174, 180, 142 A. 139, 141 (1928); citing also Cavanaugh v. Cook, 38 R.I. 25, 29, 94 A. 663, 664 (1915)). Cardi involved an action for possession of premises brought by Domenico Cardi against defendant Amoriggi Sea Foods, Inc. Id. at 1224. In August 1977, Amoriggi entered into a twenty-five (25) year commercial leasing agreement with plaintiff for the premises. Id. Under the lease, failure of Amoriggi to pay rent within ten (10) days of the first of the month would constitute default. Id. The lease also contained a non-assignment and non-sublease clause. Id.

In late 1979, the owners of Amoriggi informed Cardi that they were contemplating the sale of the business and sought permission to assign the lease to

potential purchasers. Id. Cardi refused, stating that he would want a new lease in the event of the sale of the business. Id. In January of 1980, Cardi met with the third-party potential purchasers of the Amoriggi business to negotiate the terms of the new lease. Id. The parties orally agreed that the third-party would rent the existing premises at an increased rate. Id.

Financing problems prevented the parties from finalizing the sale and lease; however, the third-party did assume operation of Amoriggi and paid the rent for the month of March 1980. Id. The rent for April 1980, however, was not paid on time, and Cardi entered possession of the premises and declared default on April 12, 1980. Id. The parties subsequently resolved the dispute by agreeing that the third-party would pay April's rent and also enter into a new lease with Cardi by May 1, 1980. Id. The agreement, signed by Cardi as lessor, Amoriggi, and the third-party stated, in relevant part:

> "On April 12, 1980, [Cardi] entered the premises occupied by [Amoriggi] . . . [Cardi] exercising his right under a lease between [Cardi] and [Amoriggi] to take possession upon default of the term of payment contained in said lease. The parties thereafter cured said default by payment of the required rent by [Amoriggi]. [Cardi] accepted said payment and waived his right to take possession based on this default only. [Cardi's] acceptance of payment in no way shall be construed as a waiver of any right [Cardi] may have to take such action in the future for any and all other acts of default by [Amoriggi].
>
> The sole reason for allowing [Amoriggi] to effectuated said cure of default is that [Cardi] and [Amoriggi] and a Third Party . . . are presently in the process of negotiating a new lease to be signed by [Cardi] and [the Third-Party]." Id. at 1224-25.

Thereafter, Cardi cashed the May rent payment by endorsing it "conditionally." Id. at 1225. Importantly, no such conditional endorsement was made when he cashed the June rent check. Id.

When ongoing financing problems prevented the third-party from signing a new lease by the date called for in the agreement, Cardi commenced suit for possession of the premises on July 21, 1980, claiming that there was a default by late payment of April's rent according to the lease. Id. On appeal, the Supreme Court found that there was a conditional waiver of the April default—conditioned on the signing of a new lease with the third-party—but that waiver became a final, unconditional waiver when Cardi accepted rent checks after May. Id. at 1226. Accordingly, as a result of that waiver, the Cardi-Amoriggi lease remained in full force and effect. Id.

More recently, in Dyer v. Ryder Student Transp. Servs., Inc., 765 A.2d 858 (R.I. 2001), our Supreme Court held that a lessor's acceptance of rent after expiration of the lease did not constitute a waiver of the lease's requirements for timely notice of renewal. Dyer, 765 A.2d at 861. There, the 19 Blue Beverage Realty Trust, through its trustee, Richard Dyer, entered into an agreement with Ryder, whereby the trust would lease certain property to Ryder. Id. at 858-59. The lease term ran from September 1, 1997 through June 30, 1998, and it also contained a renewal provision that gave Ryder the option to renew the lease upon ninety (90) days written notice, or by March 30, 1998. Id. at 859. Due to some unsettled issues in its contract negotiations with the City of Pawtucket for the 1998-1999 school year, Ryder made a written request to the trust to allow it up to April 30, 1998 to provide written notice of renewal. Id. The trust agreed to the extension. Id.

On April 30, 1998, Ryder submitted another written request to extend the renewal provision for an additional forty-five (45) days to provide written notice of renewal. Id. The trust did not respond to this request, and, on May 5, 1998, notified Ryder by telephone that the lease would not be renewed. Id. Ryder considered the trust's notification insufficient and indicated that it would not vacate the premises on June 30, 1998. Id. On July 20, 1998, the trust filed a trespass and eviction action in the District Court. Id. During the pendency of the District Court action, the trust accepted rent checks from Ryder for the month of July under G.L. 1956 §§ 34-18.1-16 and 34-18.1-18[1], but did not deposit said check until early August 1998. Id. at 859-60.

The Court considered whether the trust's acceptance of rent after the expiration of the lease constituted a waiver of the lease's requirements for timely notice of renewal. The Court held that Ryder's failure to renew by April 30, 1998, "created a holdover tenancy by operation of law after June 30, 1998, and any subsequent rent accepted by the trust was accepted pursuant to the new tenancy, not the original expired lease." Id. at 861. Further, the Court noted, "once Ryder refused to vacate the premises on June 30, 1998, the trust was within its rights to consider Ryder a holdover tenant and accept rent on that basis . . . the lease terminated by its own terms on June 30, 1998, and Ryder became a holdover tenant from that date forward." Id.

In this case, the undisputed evidence shows that Renaissance implicitly waived the penalty provision in § 7.1.8 when it invoiced Airport Valet for rent and taxes due for December 2009 in the same amounts owed under the initial terms of the Lease. Here, Renaissance and Airport Valet negotiated a ten (10) year lease, which term ran from

[1] G.L. 1956 §§ 34-18.1-16 and 34-18.1-18 provide for the "Payment of rent on stay of execution" and "Payment of rent during pendency of appeal," respectively.

December 1, 1999 to November 30, 2009. The Lease contained an option to renew the Lease for up to two three-year periods upon not less than ninety (90) days written notice. There is no evidence that Airport Valet attempted to exercise this renewal option. On October 9, 2009, counsel for Renaissance sent Airport Valet a letter acknowledging that the Lease would terminate on November 30, 2009. See Pl.'s Ex. 1. Renaissance reiterated this sentiment again via letter on November 10, 2009. See Pl.'s Ex. 2. However, on November 29, 2009, Renaissance invoiced Airport Valet for December 2009 rent and taxes. Plaintiff then unconditionally deposited a check from Airport Valet on December 1, 2009, for the amount invoiced, $30,675.25, just as the plaintiff in Cardi had done. See Cardi, 468 A.2d at 1226. These actions by Renaissance were entirely inconsistent with any other intention than Renaissance waiving its right to assert the holdover provision in § 7.1.8. Sturbridge Home Builders, 890 A.2d at 65.

Additionally, Renaissance's actions surpass those of the plaintiff in Dyer, wherein the plaintiff did not invoice Ryder for the July rent, but merely accepted the rent, as it was entitled to do under §§ 34-18.1-16 and 34-18.1-18. See Dyer, 765 A.2d at 859-60. Here, Renaissance did not purport to act under any statutory authority when it invoiced Defendant and then unconditionally cashed its check. The actions on the part of Renaissance, to invoice and then unconditionally accept an amount less than it would be entitled to under § 7.1.8, evidence a sufficient course of conduct from which Airport Valet could clearly infer that Renaissance intended to waive its rights under that section. Sturbridge Home Builders, 890 A.2d at 65. Importantly, while Renaissance had the opportunity to discover and remedy the confusion, it was only after Plaintiff unconditionally deposited the check that it sent a letter to Airport Valet seeking to

enforce its rights to the increased payments under § 7.1.8. See Pl.'s Ex. 3. At that point, however, it was too little, too late.

Accordingly, this Court is satisfied that Plaintiff waived its rights under § 7.1.8 of the Lease, and, therefore, Plaintiff is not entitled to twice the base rent as a penalty for holding over pursuant to § 7.1.8.

B

Damages for December 1, 2009 to January 28, 2010

Having determined that Plaintiff waived its rights under § 7.1.8, all that remains for this Court is to determine what, if any, rent is owed to Plaintiff for the period of time in which Defendant held over.

It has been held that where a commercial landlord invoices rent payments due and accepts the rent that was invoiced without condition at the time of acceptance, the tenancy is reinstated and subject to the same terms and conditions. See Bove v. Kates Props., Inc., 444 A.2d 193, 195 (R.I. 1982); see also Turks Head Props., Inc. v. Egloff, No. 85-4116, 1986 WL 714212 (R.I. Super. Ct. June 17, 1986). Additionally, our Supreme Court has recognized that "[t]he landlord has the power to determine the status of holdover tenants by treating them as trespassers or by waiving the wrong of holding over and treating them like tenants." Bibby's Refrigeration, Heating & Air Conditioning, Inc. v. Salisbury, 603 A.2d 726, 728 (R.I. 1992) (citing Rose v. Congdon, 72 R.I. 21, 25, 47 A.2d 857, 860 (1946); Providence County Sav. Bank v. Hall, 16 R.I. 154, 156-57, 13 A. 122, 124 (1888)). When the landlord elects to treat the tenancy as continuing, as Renaissance did here by invoicing Defendant and unconditionally cashing its check, "the tenant 'is a tenant from year to year, in case the prior term was for a year or longer; and if

the prior term was shorter than a year, then from term to term.'" Id. (quoting Providence County Sav. Bank, 16 R.I. at 158, 13 A. at 124). The relation, however, of landlord and tenant "can be terminated by the surrender of the premises by the tenant and the acceptance of such surrender by the landlord." Bove v. Transcom Elec., Inc., 116 R.I. 210, 214, 353 A.2d 613, 615 (1976).

"Whether or not there has been such surrender and acceptance of the surrender is determined by the intention of the parties." Id. "This intention is to be gathered from their acts and deeds." Id. (citing Ciambelli v. Porter, 55 R.I. 14, 17, 177 A. 145, 146 (1935)). Furthermore, whether a tenant has maintained possession, such that it would not be considered to have surrendered the premises, must be determined in light of all the surrounding circumstances of the case. See Gooding Realty Corp. v. Bristol Bay CVS, Inc., No. 99-4987, 2001 WL 1255504, *3 (R.I. Super. Ct. Oct. 5, 2001).

In Gooding Realty Corp., the court found that a tenant who had vacated the leased premises had surrendered possession of the premises, notwithstanding the fact that it retained the keys and failed to remove certain items, such as a satellite dish, storage bins, and wall-mounted devices. Id. In coming to this conclusion, the court reasoned that the items "were not an integral part of [the tenant's] business and were not items that evinced an intent of [the tenant] to return or that would materially interfere with [the landlord] in possessing the property." Id.

Here, the Lease between Renaissance and Airport Valet was for a term of ten years and called for the payment of rent by the first of each month. Airport Valet fully paid the base rent and real estate taxes due for the month of December 2009. On January 13, 2010, Renaissance instituted the instant action seeking possession and damages for

the Defendant's alleged breach of the Lease. Two days later, Airport Valet vacated the premises. However, they maintained a trailer on the premises until January 28, 2010.

In accordance with the facts, this Court finds that, after invoicing the December 2009 payment due and unconditionally cashing the December rent check, Renaissance created a new year-to-year tenancy with Airport Valet. See Bove v. Kates, 444 A.2d at 195. This tenancy existed pursuant to the same terms and conditions as had existed under the original Lease. See Providence County Sav. Bank, 16 R.I. at 158, 13 A. at 124. Furthermore, the new tenancy terminated when Airport Valet surrendered possession of the premises on January 28, 2010, and Renaissance accepted the surrender.[2] While Airport Valet claims to have quit the premises as of January 15, 2010, the indisputable evidence, as presented through the pictures taken by Plaintiff's employee, Olobori, see Pl.'s Exs. 5(a)-(m), and confirmed by Defendant's general manager, demonstrates that Airport Valet still maintained a trailer on the premises until January 28, 2010. Unlike the situation in Gooding Realty Corp., the office trailer was an integral part of Airport Valet's business. See 2001 WL 1255504 at *3. Moreover, this Court finds that the existence of the trailer interfered with Renaissance's right to possess the property. See id.

Therefore, because Airport Valet did not surrender the property until January 28, 2010, Renaissance is entitled to the base rent and real estate taxes owed under the Lease Agreement for the prorated period in January. Under the initial terms of the Lease, Airport Valet's base rent was $25,951.55, and the monthly tax payment was $4,723.70. Airport Valet did indeed pay those amounts for December 2009, but owes the prorated

[2] Renaissance does not contest the issue of acceptance of Defendant's surrender. They seek only damages for the prorated period in January in which Defendant remained on the Rental Property.

amounts due in base rent and real estate taxes for the period January 1, 2010 to January 28, 2010. Thus calculated, Airport Valet owes Renaissance $23,440.11 in base rent and $4,266.567 in monthly tax payments for a total of $27,706.68.

V

Conclusion

For all these reasons, this Court finds that Plaintiff waived its rights under § 7.1.8 of the Lease, that Airport Valet did not breach the Lease Agreement by refusing to pay twice the monthly base rent as called for in the penalty provision contained in § 7.1.8, and that Plaintiff's conduct created a new year-to-year tenancy under the same terms as the initial Lease that expired on November 30, 2009. However, because Airport Valet continued to occupy the Rental Property from January 1, 2010 to January 28, 2010, it owes $27,706.68 in prorated base rent and real estate taxes as set forth in the initial Lease.

Counsel for Plaintiff shall prepare a judgment consistent with this Decision.

RHODE ISLAND SUPERIOR COURT
Decision Cover Sheet

TITLE OF CASE:	**Renaissance Development Corp. v. Airport Valet, Inc.**
CASE NO:	**C.A. No. KD 2011-1208**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**December 2, 2013**
JUSTICE/MAGISTRATE:	**Kristin E. Rodgers**
ATTORNEYS:	
For Plaintiff:	**James Moretti, Esq.**
For Defendant:	**Bruce W. Gladstone, Esq.** **Sally P. McDonald, Esq.**