

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

105 S MAIN STREET, LLC,

Plaintiff,

Case No. 14-139289-CH

Hon. Wendy Potts

v

NEAM'S INC d/b/a BEIRUT PALACE, et al,

Defendants.

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OPINION AND ORDER RE: DEFENDANT NEAM'S INC'S MOTION FOR SUMMARY  
DISPOSITION

At a session of Court  
Held in Pontiac, Michigan

MAY<sup>On</sup> 1 2015

Plaintiff 105 S. Main Street owns a building in downtown Royal Oak that it leased to Defendant Neam's, Inc. who operated the Beirut Palace restaurant there for approximately 20 years. In August 2013, Plaintiff served Neam's with a notice terminating its tenancy, however, Neam's did not voluntarily leave. Plaintiff then filed an eviction action in the 44<sup>th</sup> District Court seeking possession of the premises and obtained a judgment for possession effective on January 22, 2014. Although Neam's promptly vacated, Plaintiff claims that after regaining possession it found extensive damage due to Neam's removal of commercial kitchen equipment. Plaintiff filed this action seeking compensation for the alleged damage to the building, lost rent from Plaintiff's new tenant's inability to assume possession during Neam's hold-over tenancy, and reimbursement for payment of a water bill.

Neam's now moves for partial summary disposition under MCR 2.116(C)(10), which tests the factual support for Plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In deciding a motion under (C)(10), the Court considers the admissible evidence to determine if there is a genuine issue of fact for trial. *Maiden, supra*.

Although Neam's arguments are less than clear, it appears to be asserting that Plaintiff cannot meet its burden of proving its damages. Although Plaintiff has the burden of demonstrating its damages with reasonable certainty, *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003), that is an issue for trial. The issue for this motion is not whether Plaintiff can prove its damages, but whether Plaintiff can present evidence showing a genuine issue of fact. *Maiden, supra*. Because Plaintiff presented evidence showing a question of fact whether the building was damaged by Neam's fixture removal, Neam's is not entitled to summary disposition. The fact that Neam's has contrary evidence showing no damage simply reinforces the fact that there is a genuine dispute and summary disposition is not warranted.

Regarding Plaintiff's claim for lost rent from its new tenant during Neam's holdover from August 2013 through January 2014, Neam's asserts that Plaintiff cannot prevail on this claim because Neam's paid its rent during the holdover period. However, this argument overlooks Plaintiff's evidence that the new tenant would be paying greater rent than Neam's. Thus, even if Neam's is able to prove at trial that it fully paid its rent obligations during the holdover period, Plaintiff may be able to prove that it lost additional compensation because its new tenant was unable to obtain possession. Likewise, Neam's claim that the new tenant should have paid its rent regardless of its ability to possess the premises could constitute a defense to Plaintiff's claim, but it does not eliminate Plaintiff's claim that it was unable to collect rent from its new tenant during the holdover period. Further, Plaintiff also presents evidence showing a

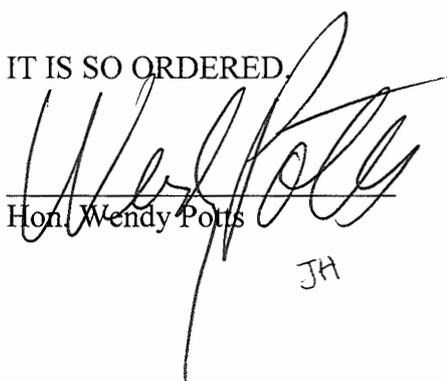
question of fact whether it lost additional rent payments from its new tenant due to the condition of the premises after Neam's vacated.

As for the claim regarding the water bill, Plaintiff likewise presented evidence showing a genuine question of fact on the claim. To the extent that Neam's has contrary evidence showing that the water bills were paid in full, it can present this evidence at trial. However, Neam's evidence does not entitle it to summary disposition.

Because the evidence shows genuine issues of fact on all of Plaintiff's damages claims, Neam's motion for summary disposition is denied.

Dated: **MAY 01 2015**

IT IS SO ORDERED.

  
Hon. Wendy Potts

JH