

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

LEONARDO COMEDY LANES, LLC,
a Michigan limited liability company,

Plaintiff,

vs.

Case No. 2015-208-CK

DEVEREAUX VENTURES, INC., a
Michigan corporation, DUANE DEVEREAUX,
and KELLY DEVEREAUX,

Defendants.

OPINION AND ORDER

Plaintiff has filed a verified motion for possession pending final judgment. Defendants have filed a response and request that the motion be denied.

I. Factual and Procedural History

On February 12, 2014, the parties entered into a Lease Agreement ("Lease") with Plaintiff as the landlord and Defendant Devereaux Ventures, Inc. ("Defendant Ventures") as the tenant as to real property commonly known as 34244 Groesbeck, Clinton Twp, MI ("Subject Property"). The term of the Lease was five (5) years.

As security for the obligations due under the Lease, Defendants granted Plaintiff a continuing first priority security interest in the following motor vehicles: (1) a 2009 Mercedes Benz GL450, VIN #4JGBF71E69A452774, (2) a 2010 Chevrolet Corvette, VIN # 1G1YE2DW7A5101547, and (3) a 2012 Ford SRW Super Duty Pickup Truck, VIN#1FTBF2B63CEA43307 (collectively, the "Collateral").

On January 27, 2015, Plaintiff filed its complaint in this matter. In its complaint, Plaintiff purports to state two claims against Defendants: Count I- Breach of Lease, and Count II-Coverison. On the same day, Plaintiff filed its instant verified motion for possession of the Collateral pending final judgment pursuant to MCR 3.105(E). Defendant has filed a response and requests that the motion be denied.

On April 29, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

MCR 3.105(E) governs motions for possession pending final judgment. MCR 3.105(E) provides:

- (1) Motion for Possession Pending Final Judgment. After the complaint is filed, the plaintiff may file a verified motion requesting possession pending final judgment. The motion must
 - a. Describe the property to be seized, and
 - b. State sufficient facts to show that the property will be damaged, destroyed, concealed, disposed of, or used as to substantially impair its value, before final judgment unless the property is taken into custody by court order.

- (3)(b) At the hearing [on the motion], each party may present proofs. To obtain possession before judgment, the plaintiff must establish
 - (i) That the plaintiff's right to possession is probably valid; and
 - (ii) That the property will be damaged, destroyed, concealed, disposed of, or used so as to substantially impair its value, before trial.

III. Arguments and Analysis

In its motion, Plaintiff asserts that Defendant Ventures has breached the terms of the Lease, and that as a result of Defendant Ventures' breach it is entitled to possession

of the Collateral. Further, Plaintiff maintains that the Collateral is in danger of being damaged and/or diminished. However, Plaintiff has failed to provide any evidence establishing that the Collateral will be damaged, destroyed, concealed, disposed of, or used so as to substantially impair its value, as is required to satisfy the burden under MCR 3.105(E)(1)(b). While Plaintiff has asserted that any use of the Collateral may put it in danger of being destroyed, damaged, stolen, concealed, transferred or used, the mere possibility of one or more of those things happening is insufficient to satisfy the burden that must be met in order to prevail on a motion brought under MCR 3.105(E)(1)(b). Consequently, the Court is convinced that Plaintiff's motion must be denied.

IV. Conclusion

For the reasons set forth above, Plaintiff's motion for possession pending final judgment is DENIED. Pursuant to MCR 2.602(A)(3), this Opinion and Order neither resolves the last pending claim nor closes the case.

IT IS SO ORDERED.

Date: JUN 10 2015

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge

cc: Ralph Colasuonno – Attorney for Plaintiff
John Mitchell – Attorney for Defendant