

**STATE OF VERMONT
WINDSOR COUNTY**

PATTI CARTER)	
)	
v.)	Windsor Superior Court
)	Docket No. 349-5-09 Wrev
)	
RICHARD CORSETTI)	
)	
v.)	
)	
TOWN OF LUDLOW)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, and ORDER

This case arises out of a series of disagreements between the owner of an inn located in Ludlow, Vermont, and her commercial tenant, who was seeking to operate the inn and its accompanying restaurant and bar. Plaintiff Patti Carter seeks to evict defendant Richard Corsetti from the inn and recover for damages he allegedly caused to the property. Mr. Corsetti seeks compensation for the landlord's alleged interference with his attempts to operate his business and enjoy the property, and further seeks damages from third-party defendant Town of Ludlow for actions allegedly taken by its police chief in connection with the aforementioned disputes.

The matter came on for court trial on October 5, 2009 and November 9, 2009. Ms. Carter was present and represented by her attorney, Melvin Fink, Esq. Mr. Corsetti was present and represented by his attorney, Steven Ankuda, Esq. The Town of Ludlow was represented by attorney James Carroll, Esq. The following findings of fact, conclusions of law, and order are based on the credible evidence presented at trial.

Findings of Fact

Ms. Carter owns several commercial properties in Ludlow, Vermont, including the Jewel Brook Inn and two restaurants known as Trappers' Restaurant and The Burger Joint. The inn is located on Andover Street, and the two restaurants are located in a building in downtown Ludlow.

The inn consists of six or seven bedrooms and a restaurant/bar area.¹ Between 2004 and 2008, Ms. Carter rented the bedrooms on a seasonal basis for use by employees of Okemo Mountain. She also leased the inn building to guests for short-term, weekend rentals. She did not operate the restaurant or bar facilities during this time.¹

¹ There are additional motel rooms on either side of the inn which are connected to the inn building, but which were not part of any rental agreement between Ms. Carter and Mr. Corsetti, and are not part of this dispute.

In January 2009, Ms. Carter decided that she wanted to lease the inn to someone who would operate the restaurant and bar while using the rooms for something other than seasonal rentals. She placed an advertisement on the internet seeking someone with extensive experience in restaurant and bar operations. (P. Ex. 2.) The advertisement was answered by Mr. Corsetti, who was living in Stowe at the time.

The two met and discussed the possibilities. Things appeared to be going swimmingly at first, and Mr. Corsetti expressed interest in perhaps leasing both the inn and The Burger Joint. He agreed to spend two weekends in March working at The Burger Joint. This occurred sometime between March 12th and March 21st.

On March 19th, Ms. Carter and Mr. Corsetti signed a lease agreement for the Jewel Brook Inn only. The lease was for a period of one year, and was to commence on June 1, 2009. (P. Ex. 3.) Mr. Corsetti made an upfront payment of \$4,000, which represented \$2,000 for a damage deposit and \$2,000 for the first month's rent, which was to be June 2009.

In addition, the parties discussed the use of the inn between March 19th and June 1st. Both agreed verbally that Mr. Corsetti could occupy the inn rent-free, make improvements to it, and work on his permits for the restaurant and bar until the lease took effect on June 1st. The parties also exchanged a number of emails that included various other proposals. (See, e.g., D. Ex. A-3, 4, 7, 8, 9). The proposals were never finalized or reduced to an agreement of any kind.

It would have been better for the parties to reduce the verbal agreement to writing. The absence of any written agreement clearly spelling out the rights and obligations of the parties between March 19th and June 1st is responsible for many of the disagreements and difficulties in this case.

Mr. Corsetti worked at The Burger Joint on two weekends in the middle of March, at about the same time as the parties were finalizing the written lease agreement. The parties now dispute whether he worked four nights or six, and how much he was to be paid. Mr. Corsetti contends that he worked six nights, and that he was to be paid \$7.50 per hour. Ms. Carter contends that he worked four nights, and that he was to be paid \$50 per shift. There are no documents supporting either contention as to the terms of employment.

Complicating matters is that Mr. Corsetti apparently kept cash receipts totaling \$555.37 from the nights he worked at The Burger Joint. Ms. Carter accordingly seeks recovery here in the amount of \$355.37, which represents the amount of the cash receipts minus the amount he earned by her calculation—four shifts at \$50 per shift.

It is interesting to note that, whatever the arrangements were, the parties did not have any disagreements about the cash receipts or the amount of pay for more than a month. (The subsequent dispute is mentioned below.) In any event, based upon the credible evidence presented, the court finds it more credible that Mr. Corsetti worked

four shifts, and that he was to be paid \$50 per shift. This is the amount that the waitresses were paid.

The landlord-tenant relationship started unraveling quickly a month later—around April 28th. On or about that day, Ms. Carter stopped by the inn to pick up some items that she believed were here personal property, not to be included in the lease. She also sought to pick up items that had been rented from a store in Rutland, including a flat-screen television and a large table. This visit deteriorated into a screaming match between Ms. Carter and Mr. Corsetti.

Ms. Carter thereafter went to see Chief Jeffrey Billings from the Ludlow Police Department. She showed him a copy of the lease and asked for his assistance. Chief Billings accompanied her to the property, entered the dining room area, and told Mr. Corsetti that Ms. Carter could get the items she was seeking.

Mr. Corsetti claims that the police chief was threatening and intimidating in his demeanor, and that the chief told him that he would arrest him if he ever had to come back to the property. Chief Billings denies the allegations, and Ms. Carter testified that she heard no such comments. Here, the court finds Chief Billings and Ms. Carter to be more credible in their testimony. There was no reason why the police chief would have taken such an interest in a civil matter so as to become threatening or intimidating. Furthermore, Mr. Corsetti never made any complaints to Ludlow officials concerning the police chief's actions.

In any event, at the conclusion of the April 28th encounter, Mr. Corsetti agreed to let Ms. Carter take the disputed items. Despite this acquiescence, she did not take them.

One or two days later, Ms. Carter returned to the inn with her business partner, George Kovacs. Mr. Corsetti apologized and gave them each a bottle of wine. It was agreed that Mr. Corsetti would take over the lease payments on the items that had been borrowed from the rental store, in the amount of \$300 per month. The parties left the meeting on good terms.

The following evening, Mr. Corsetti and a couple of his helpers went to a local bar known as Christopher's. Ms. Carter was there. Mr. Corsetti approached her and asked about some charges for paint that he was either already using or going to use in painting the inn. Ms. Carter responded by bringing up the issue of the cash receipts from the days Mr. Corsetti had worked at The Burger Joint in March. An argument ensued over money. It does not matter who was intoxicated or not. Nothing was resolved.

Ms. Carter came back to the inn a couple of days later with a friend, Larry Barcello. She felt that leasing the inn to Mr. Corsetti was not going to work out, and she wanted to end the landlord-tenant relationship. She testified that Mr. Corsetti also wanted to end the lease, and they both accordingly signed a written termination agreement. (P. Ex. 5.) Ms. Carter and Mr. Barcello both felt that the meeting had been

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amicable, and that a sense of relief existed that the parties had come to an understanding in terminating the rental agreement.

Mr. Corsetti testified that he signed the termination agreement under duress. He says that he "begged" for about thirty minutes not to sign the agreement, and contends that Ms. Carter was going to call Chief Billings. He thought he would be arrested if he did not sign the termination agreement. This was denied by both Ms. Carter and Mr. Barcello.

The court does not find the claims of threats and intimidation to be credible. The written termination agreement clearly demonstrates negotiation over its terms—some provisions are crossed out and other handwritten agreements were added. Among the provisions that were clearly discussed and negotiated were the date by which Mr. Corsetti would leave the premises, and the amount of money he would receive upon departure. It was added that he would receive the first month's rent back as well if he left by May 19th. This hardly suggests an agreement made under duress. On the contrary, the court finds that the lease termination agreement dated May 2, 2009, was the result of bargaining by both parties. It was an enforceable meeting of the minds.

The termination agreement provides straightforwardly that the parties intended to terminate the written lease. Mr. Corsetti agreed to vacate the property by May 19, 2009, and Ms. Carter agreed to return the security plus the June rent "once tenant has vacated property and it has been checked out for loss or damages."

As explained in more detail below, the termination agreement did not result in Mr. Corsetti leaving the premises by May 19th. The reasons are unexplained, but as of the date of final hearing, he remains in possession of the inn.

On May, 7, 2009, about five days after the termination agreement was signed, workers from the Rutland rental company came to the inn to pick up the flat-screen television and table. Another argument ensued between Ms. Carter and Mr. Corsetti. Chief Billings was again called to the inn, where he found Mr. Corsetti in a highly-agitated state. Mr. Corsetti claims that the police chief pushed him. The court does not find this to be credible. Instead, the credible evidence established that upon arrival, the police chief consulted briefly by telephone with the State's Attorney's Office, and then told the parties that their disputes were primarily a civil matter. He then left. The court notes that he did not arrest Mr. Corsetti, as Mr. Corsetti claims he had threatened to do.

The parties then reached an agreement that Mr. Corsetti would take over the rental payments on the disputed items. The workers accordingly left the premises and went back to Rutland. The items are still at the inn.

Ms. Carter came back to the inn on June 1st and got into an argument with Mr. Corsetti over some shutters that he was painting. It has not been explained to the court why Mr. Corsetti was continuing to paint the inn almost two weeks after the date by which he was supposed to vacate the premises. Nor has it been explained to the court

why Mr. Corsetti did not vacate on May 19th, as he had agreed to do. Despite extensive testimony spanning two days of trial, there was no evidence presented about any discussions between the parties anytime after May 2nd as to when Mr. Corsetti was planning on vacating the premises, or why he had not vacated on time.

During the course of the June 1st argument, Ms. Carter pushed and kicked Mr. Corsetti. Ms. Carter denies any kicking, but the incident was witnessed by Diane Johnson, who had been renting one of the motel rooms. The court finds it to be credible that Ms. Johnson saw Ms. Carter push Mr. Corsetti, and kick him twice.

Although Mr. Corsetti did not seek medical attention for the kicks, they caused him pain and resulted in bruises on his legs. The bruises were shown on photographs. (D. Ex. M4-5). The court finds it credible that the photographs show the bruises that Ms. Carter caused, and her contrary suggestions about some other source of bruising were unconvincing. Despite the difficult history between the two parties, the kicks were improper and assaultive.

Ms. Carter called 911 as these events unfolded. Chief Billings responded to the scene. Again, he did not arrest Mr. Corsetti, but rather conducted an investigation that included taking a statement from Mr. Corsetti and talking with the eyewitness, Ms. Johnson. He later cited both Ms. Carter and Mr. Corsetti for unspecified criminal charges.

Despite all of this, Mr. Corsetti remains at the inn. He has apparently been making monthly payments to Ms. Carter despite the absence of a valid lease agreement.

Conclusions of Law

There are a number of claims involved in this case. Ms. Carter seeks to evict Mr. Corsetti from the inn based upon the written termination agreement and other alleged breaches of the earlier written lease agreement. She also seeks compensation for damages he allegedly caused to the property. Mr. Corsetti has counterclaimed for assault, illegal eviction, interference with his business, and unpaid wages. He has further filed a third-party claim against the Town of Ludlow for alleged civil-rights violations committed by Chief Billings.

The court examines first whether Ms. Carter is entitled to a judgment for possession of the inn. Here, the evidence showed that there were three successive agreements regarding the tenancy. The first agreement was a verbal agreement that allowed Mr. Corsetti to have possession of the inn, rent-free, between the period of March 19th and June 1st. The second agreement was the written lease agreement that gave Mr. Corsetti the right to have possession of the inn for one year, starting June 1st, at the rate of \$2,000 per month.

There has been some argument that evidence of the verbal agreement should have been excluded under the parol evidence rule, which precludes enforcement of prior or

contemporaneous oral agreements that vary from or contradict the terms of written agreements. *Housing Vermont v. Goldsmith & Morris*, 165 Vt. 428, 431 (1996). That rule does not apply here because the written lease and the verbal agreement were independent contracts that covered two separate periods of time. "It is well settled . . . that there may be two separate contracts in connection with a particular transaction as long as the contracts are not inconsistent or in conflict with each other." *Chappell v. Northern Realty, Inc.*, 128 Vt. 476, 479 (1970). The parol evidence rule "does not exclude parol proof of a prior or contemporaneous oral contract that is independent of, collateral to, and not inconsistent with, the written contract, though it relates to the same general subject-matter and grows out of the same transaction." *Id.* (quotation omitted). Hence, the evidence in this case established that there were two independent agreements covering two separate periods of time.

In any event, both the written and verbal leases were canceled by the written termination agreement. Under that mutual agreement, Mr. Corsetti was supposed to leave the property by May 19th, and Ms. Carter was supposed to return the security deposit and the June rent. Since the court has found that the written termination agreement is enforceable,² the court must conclude that Mr. Corsetti no longer has any right to possession of the inn, and that Ms. Carter is entitled to a judgment for possession under 12 V.S.A. § 4851.

This makes it unnecessary to examine whether Ms. Carter is entitled to an eviction for cause based upon alleged breaches of the written lease agreement, such as unauthorized work. The court is not granting eviction based on a violation of the lease agreement, but rather is enforcing the parties' mutual agreement that the right to possession ended on May 19th.

The next issue involves Ms. Carter's claims of property damage, including allegations of unauthorized work on the property, damage to the siding, and damage to the flower beds. On the issue of unauthorized work, the relevant agreement is the verbal agreement covering the period between March 19th and June 1st, since all of the disputed work occurred during that time.³ As discussed above, the verbal agreement was that Mr. Corsetti could have possession of the inn and make improvements. There was no express agreement as to the scope of the improvements.

² The findings of fact addressed Mr. Corsetti's argument that the termination agreement was unenforceable because he signed it under duress. In short, while the negotiations may very well have been stressful, the credible evidence did not establish threats or intimidation, or otherwise show that "the normal boundaries of negotiation and compromise [were] exceeded." *Putnam v. Putnam*, 166 Vt. 108, 115 (1996). Instead, the credible evidence was that both parties actively negotiated the terms of the termination agreement, and that there was an enforceable meeting of the minds.

³ Ms. Carter has argued that the written lease agreement covered the period between March 19th and June 1st, and that the improvements that Mr. Corsetti undertook were beyond the scope of that agreement. As explained above, the plain terms of the written lease agreement were that it came into effect on June 1st, and not before. As such, it was not enforceable prior to June 1st. The rights and obligations of the parties before that time were subject to the verbal understanding rather than the written agreement.

Here, the court makes a few additional findings. The written lease agreement addendum clearly contemplated that internal and external renovations would occur, and the verbal agreement further contemplated that some work would occur. Mr. Corsetti undertook a number of improvements or repairs to the property between March 19th and May 2nd, and all of the repairs and improvements were obvious and readily observable. Ms. Carter testified that she visited the inn nearly every day while the renovations were occurring, but she has not produced any documentation showing that she objected to the improvements while they were occurring.

Then, in the termination agreement, Ms. Carter did not propose to withhold any of the security deposit based upon improvements or repairs that had already occurred. Instead, she agreed to return the "security deposit of \$2,000" so long as everything was "back in order on the 19th" and there was "no damage."

From this, the court concludes that even if some of the repairs and improvements were beyond the scope of the verbal agreement (a conclusion as to which there is considerable doubt), Ms. Carter waived any claim for damages as to those repairs by negotiating the termination of the verbal leasehold and agreeing to return the security deposit. At that point, she was well aware that there had been improvements, repairs, and painting going on at the property, and if she had any concerns based on those activities, they should have been brought up then. Furthermore, and in the alternative, the evidence showed that any damages that may have been caused by Mr. Corsetti prior to May 2nd were more than offset by the value of the improvements he made to the property in the form of painting, cleaning, etc.

Ms. Carter also claims that Mr. Corsetti ripped off the siding and damaged the flower beds. Since it is unclear whether these problems occurred before or after May 2nd, the court makes a few additional findings on these points as well. The credible evidence established that the siding was damaged by high winds, rather than by any acts attributable to Mr. Corsetti. In addition, neither the existence of damage to the flower beds nor the value of any such damage was established by a preponderance of the evidence. Accordingly, the court concludes that Ms. Carter is not entitled to withhold any amount from the security deposit based on these claims.

The termination agreement provided that Ms. Carter would return the security deposit of \$2,000 once Mr. Corsetti vacated the property and it was ascertained that there was no damage to the property. Since she has not proven any damages, she must now return the security deposit, subject to the offsets described herein, within the time and in the manner prescribed by law once Mr. Corsetti vacates the property in accordance with the writ of possession.

Ms. Carter also claims that she is entitled to compensation for the rental fees that she paid for the items leased from the Rutland store, including the flat-screen television and the large table, for the months of May and June 2009. Here, the credible evidence established that Mr. Corsetti twice promised to take over the rental payments, beginning in May. He did not take over the payments until July. In order to honor the agreement

made by the parties on this issue, Ms. Carter is entitled to a total of \$600 for the two months of missed rental payments.

Ms. Carter is also entitled to \$355.57 for the missing cash receipts from The Burger Joint. The credible evidence was that Mr. Corsetti took \$555.57, and that he earned \$200 for working the four shifts.

Ms. Carter's complaint included a claim for nonpayment of rent. However, she did not pursue this claim at the hearing. It appears that Mr. Corsetti has made monthly payments that have fairly compensated Ms. Carter for the time that he has remained in essentially holdover possession of the property.

The court now turns to Mr. Corsetti's claims. His first is that Ms. Carter breached the lease agreement by interfering with his quiet enjoyment of the property, interfering with his repairs, berating him, and acting belligerently. Here, the credible evidence showed that while Mr. Corsetti was entitled to make repairs to the property under the verbal agreement, there was no unfettered right for him to make repairs to the property without any involvement on the part of Ms. Carter. She had a right to offer input, and any berating or belittling between the two parties was entirely mutual.

His second claim is that Ms. Carter illegally entered the property under the Residential Rental Agreements Act, and that her actions constituted an illegal eviction under the same. This argument turns upon his characterization of the lease as a residential lease rather than a commercial lease, which the court does not find to be persuasive. Although it may have been true that Mr. Corsetti slept and ate at the inn, this fact alone does not turn a commercial lease into a residential one. The leases were clearly commercial in nature. Moreover, the evidence was that any altercations happened in primarily public spaces, such as the restaurant/bar area. In short, the credible evidence did not establish violations of the RRAA.

His third argument is that he is entitled to lost income due to his inability to open the inn and restaurant without interference from Ms. Carter. On this point, the evidence of lost income was derived from Mr. Corsetti's conversations with other restaurant operators in the Ludlow area, and the fact that he got the inn up and running for two or three weeks during the summer of 2009. However, there were no income or expense records entered into evidence, and in any event, this was a start-up business being operated by a person with no track record in the Ludlow area. Any figures representing lost income from this venture are simply too speculative and unreliable to form the basis for an award of damages. See *Berlin Development Corp. v. Vermont Structural Steel Co.*, 127 Vt. 367, 372 (1968) (explaining that "recovery for lost profits is not generally allowed for injury to a new business with no history of profits").

Moreover, and more importantly, it was not solely Ms. Carter who terminated or interfered with the written lease agreement. The parties terminated the lease by mutual agreement on May 2nd, at least a month before the inn was ever scheduled to open. Any actions taken thereafter by Ms. Carter were not in derogation of the written lease, because

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the lease no longer existed. Furthermore, any other actions taken by Ms. Carter concerning interference with the lease prior to May 2nd were unsupported by anything more than scant evidence, and in any event were resolved by the parties' mutual May 2nd agreement.

Mr. Corsetti's fourth claim involves alleged civil rights violations on the part of Chief Billings. Here, there was no credible evidence that Chief Billings did anything improper in dealing with the long-running dispute between the parties. He showed restraint in dealing with multiple citizen complaints from Ms. Carter. He sought advice from the State's Attorney's Office, and ultimately declined to involve himself more deeply in a civil matter.

At the time of the first complaint, he was asked to become involved in a possible trespass where the tenant had taken possession of a property before the written lease had commenced. There was no written agreement at the time, and it was not clear what the terms of the rental agreement were; even now, the parties continue to dispute the terms. In other words, it was very reasonable for the police chief to involve himself to the extent of investigating a possible criminal offense of trespass. The credible evidence did not support the allegations that the police chief was threatening or abusive in dealing with this, or that he pushed Mr. Corsetti. For these reasons, the Town of Ludlow is entitled to judgment on the claims against it.

Mr. Corsetti's fifth claim is that he is entitled to damages for pain and injury caused by the two kicks delivered by Ms. Carter. The credible evidence showed that she kicked him twice, that it hurt, and that it left bruises. Although there were no medical bills from this, the court finds that Mr. Corsetti is entitled to damages for pain and suffering in the amount of \$200.

Mr. Corsetti's remaining claims were not supported by the evidence.

Finally, both parties have claimed a right to attorneys' fees pursuant to the written lease agreement. The court has determined that the lease was voluntarily terminated by the parties. It is the termination agreement—and not the written lease agreement—that Mr. Corsetti has breached by failing to vacate the premises. Since the termination agreement does not provide for attorneys' fees, and since there is no other enforceable provision providing for them, the general rule against awards of attorneys' fees prevails here. *Fletcher Hill, Inc. v. Crosbie*, 2005 VT 1, ¶ 5, 178 Vt. 77.

ORDER

For the foregoing reasons:

(1) Ms. Carter is entitled to a judgment for possession of the Jewel Brook Inn, located on Andover Road in Ludlow, Vermont. A writ of possession shall issue today directing the sheriff to serve the writ upon the defendant and, no sooner than ten days after the writ is served, to put the plaintiff into possession.

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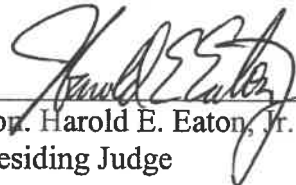
(2) Ms. Carter is entitled to a judgment in the amount of \$955.57 on her claims for damages.

(3) On the defendant's counterclaims against Ms. Carter, Mr. Corsetti is entitled to judgment in the amount of \$200.

(4) On the defendant's third-party claim against the Town of Ludlow, judgment is for the Town of Ludlow.

(5) Ms. Carter shall return the security deposit, minus any offset to account for the judgments herein stated, within the time and in the manner prescribed by law.

Dated at Woodstock, Vermont this 21 day of December, 2009.


Hon. Harold E. Eaton, Jr.
Presiding Judge