

STATE OF VERMONT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No. 698-11-13 Wrcv

CHRISTOS PANAGIOTIDIS,
HRISANTHI PANAGIOTIDIS,
Plaintiffs

v.

ALEXANDROS GALANIS and
other occupants,
Defendant

DECISION

PLAINTIFF'S MOTION TO RECONSIDER

Before the court is plaintiffs' motion to reconsider the issuance of a stay pending disposition of defendant's appeal. When reviewing defendant's request for a stay, it was incumbent upon the court to consider whether defendant had demonstrated a strong likelihood of success on the merits of his appeal. See *Gilbert v. Gilbert*, 163 Vt. 549, 560 (1995). The crux of plaintiffs' motion to reconsider is the court's determination that such likelihood existed on the issue of whether plaintiffs provided defendant with a proper notice of breach, as per the terms of the parties' lease agreement.

Plaintiffs' arguments were all previously raised in its opposition to defendant's motion or a stay and considered by the court. In its underlying action, it was necessary for plaintiffs to plead and prove that defendant, in fact, breached the terms of the parties' lease agreement, including by demonstrating that defendant had not cured any breach within the contractual time period triggered by provision of adequate notice. At the conclusion of the merits hearing and prior to this court's rendering judgment, defendant, through counsel, argued that plaintiffs had failed to adequately show proper notice was provided, thereby leaving defendant with an open opportunity to cure any breach. The court considered this argument and made related rulings in favor of plaintiffs, but the issue remains preserved for appeal.

Plaintiffs continue to claim that defendant admitted to an allegation in the original complaint that "counsel for Plaintiff notified counsel for Defendant regarding the failure to make payments under the Lease." However, whether the wording of defendant's answer may be deemed an "admission" is equivocal at best. Moreover, even if admitted, defendant's appeal contends that neither this correspondence between counsel nor any other notice was provided per the exact terms of the lease, which requires notices of breach to be sent to the

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defendant at his address, by certified mail, return receipt requested. The question is whether this failure equates to an absence of "punctilious compliance" with the terms of the lease. See *Vermont Small Business Development Corp. v. Fifth Son Corp.*, 2013 VT 7, ¶ 15, 193 Vt. 185. Whereas there is no dispute that defendant received actual notice of his breach, and while the court did not find defendant was prejudiced by the actual notice provided, the "punctilious compliance" standard, as it may be applied by the Supreme Court, provides defendant with a "strong likelihood of success on the merits."

ORDER

Plaintiffs' motion to reconsider is **DENIED**.

Dated this *26* day of August, 2014.


Harold E. Eaton, Jr.
Superior Court Judge

FILED

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