

STATE OF MAINE
SAGADAHOC, ss.

BUSINESS AND CONSUMER DOCKET
Location: West Bath
Docket No. BCD-WB-CV-08-035

Blue Snow, Inc.,

Plaintiff

v.

DECISION AND JUDGMENT

Merrill Lee Williams,
Trustee of the Williams Trust,

Defendant

This matter was heard on Plaintiff's Complaint on September 9, 2009. Attorney Christopher MacLean represented Plaintiff. Attorney James Strong represented the Defendant. On September 18, 2009, the parties filed written argument.

Findings of Fact

After consideration of the evidence, the Court finds the following facts:

1. Plaintiff is a Maine corporation organized in part to operate Thorndike Creamery in Rockland, Maine.
2. Plaintiff purchased Thorndike Creamery from Michael Kushner in January 2007.
3. Defendant owns the property in which Mr. Kushner operated Thorndike Creamery prior to the sale in January 2007, which property is located at 385 Main Street in Rockland.
4. Before the purchase of the business, Mr. Kushner provided to Plaintiff's representatives certain information regarding the operation of the business. The information reflected that Mr. Kushner leased the property at which he operated the business, and that he paid for the cost of electricity used by the business.

Contrary to Defendant's argument, Plaintiff has not waived its ability to enforce the utility provision of the agreement. When Sarah Vokey, who was not involved in the negotiation of the lease terms, transferred the CMP accounts to Plaintiff's name, and paid the first electric bill, she was unaware of the terms of the agreement. After Matthew Vokey, who negotiated the lease agreement on Plaintiff's behalf, learned of initial payment, Plaintiff submitted the subsequent bills to Defendant for payment. Simply stated, these facts do not constitute a "voluntary and knowing relinquishment" of Plaintiff's contractual right to require Defendant to pay for the electric costs.

In addition, Plaintiff's knowledge of Mr. Kushner's agreement with Defendant is of no consequence. The lease agreement between Plaintiff and Defendant is clear, unequivocal and binding on the parties. Neither party to the subject lease is bound by the terms of the lease between Mr. Kushner and Defendant.¹ Furthermore, because Mr. Kushner was not at the time of his conversations with Ms. Vokey an agent of Defendant, Defendant cannot claim that the cost of electric service was a term that Ms. Vokey and Mr. Kushner negotiated for Plaintiff and Defendant. In short, the terms of the agreement between Mr. Kushner and Defendant are not relevant to the parties' obligations under the subject lease.

In sum, the parties signed a lease agreement pursuant to which Plaintiff leased certain property from Defendant, which agreement provides that Defendant is responsible for the payment of the electric costs of the property. The Court will enforce the terms of the written agreement.

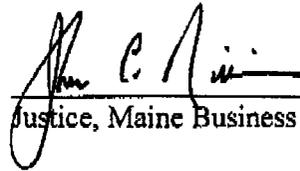
Conclusion

Based on the foregoing analysis, the Court enters judgment in favor of Plaintiff and against Defendant in the amount of \$19,764.75, plus interest and costs.

¹ The lease terms are not identical. The written utility term of the subject lease requires Plaintiff to pay for a service (i.e., "cable hookup") that Mr. Kushner was not required to pay under the terms his written lease agreement with Defendant.

Pursuant to M.R. Civ. P. 79(a), the Clerk shall incorporate this Decision and Judgment into the docket by reference.

Date: 9/30/09



Justice, Maine Business & Consumer Docket