

IN THE COUNTY COURT IN AND FOR PALM BEACH COUNTY, FLORIDA

PENINSULA CORPORATE, LTD.
a Florida corporation,

CASE NO.: 502015CC001638XXXXSB (RD)

Plaintiff,

CIVIL DIVISION: (RD) REGINALD CORLEW

vs.

ARBITRAGE INTERNATIONAL
MANAGEMENT, LLC,
ARBITRAGE INTERNATIONAL
MARKETING, INC. D/B/A LIFE
INSURANCE CONCEPTS,
CAMBRIDGE FINANCING COMPANY,
LIFE INSURANCE CONCEPTS, L.L.C.,
LIFE INSURANCE CONCEPTS, INC.,
and all others in possession,

Defendants.

PLAINTIFF'S, PENINSULA CORPORATE, LTD., OPPOSITION TO DEFENDANTS' NOTICE OF MOOTNESS OR IN THE ALTERNATIVE MOTION TO STRIKE NOTICE OF MOOTNESS AND INCORPORATED MEMORANDUM OF LAW

Plaintiff, PENINSULA CORPORATE, LTD., ("Plaintiff" or "Landlord"), by and through its undersigned counsel, hereby files this Plaintiff's Opposition to Defendants', ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, ARBITRAGE INTERNATIONAL MARKETING, INC. D/B/A LIFE INSURANCE CONCEPTS, CAMBRIDGE FINANCING COMPANY, LIFE INSURANCE CONCEPTS, L.L.C., LIFE INSURANCE CONCEPTS, INC., ("Defendants"), Notice of Mootness or in the Alternative Motion to Strike Notice of Mootness and Incorporated Memorandum of Law, and as grounds therefore states:

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INTRODUCTION

1. This matter is a simple and straightforward commercial Landlord / Tenant dispute.
2. In February 2015 Plaintiff filed suit for eviction pursuant to Chapter 83, Florida Statutes for Defendants' failure to pay rent.
3. Defendants have chronically failed to pay the monthly rent due and owing for the Premises and the Plaintiff issued a three-day notice to pay rent or deliver possession of the Premises.
4. The Defendants refused to return possession of the Premises.
5. Since inception of this lawsuit the Defendants have failed to remit *any* rent to the Landlord.
6. In addition to monies outstanding in the three-day notice, March and April, 2015 have also accrued and have not been paid by Defendants.
7. Since inception of this lawsuit, Defendants have failed to pay any rent into the Court Registry, however preserved a right to determine monies into the registry with a hearing set for April 8, 2015. As of date of this opposition the Defendants have failed to pay over \$129,668.42 in rent and additional rent as defined by the terms of the Lease Agreement at issue. This amount does not include the accelerated rents that the Plaintiff is now entitled to as well.
8. Landlord has been, and is, suffering an extreme hardship for Defendants' failure to remit rent as Tenants occupy large spaces incorporating suites 3008, 3009, 3010, 3011, 3012 and 3013 at the Premises.
9. During the pendency of this lawsuit, and whilst awaiting a court ordered hearing on a motion to order rent into the court's registry, the Defendants have been removing property

19. Landlord then visited the Premises for purposes of inspection and to determine whether the Defendants were still present.

20. The Landlord observed that the Premises remained abandoned and closed for business.

21. The Landlord posted a notice on the door advising the Defendants that the locks were changed to secure the Premises.

22. On Friday, April 3, 2015, counsel for the Defendants contacted the undersigned counsel stating that landlord had utilized self-help by changing the locks, that the eviction was moot, and requesting the Plaintiff dismiss the eviction as moot.¹

23. Further, on suggestion of the undersigned, counsel for the Defendants offered to mail the keys to the Plaintiff and again insisted this matter was moot.

24. Undersigned counsel for the Plaintiff requested the Defendants advise if they had any personal effects remaining within the Premises as it was Landlord's understanding that Tenants' belongings had already been removed in their entirety and the Premises abandoned.

25. Further, Landlord offered to provide access to the Defendants for purposes of securing any additional effects remaining within the Premises.

26. On April 6, 2015, approximately two days before the court ordered hearing to determine rent payable into the court's registry, the Defendants filed a "Notice of Mootness and Request that Action be Dismissed."

1. Numerous emails between the party's attorneys were exchanged at this time and subsequently thereafter. The undersigned counsel can prepare as Exhibits all such emails to support said motion immediately if requested by the Court and/or if Defendant sets this matter for Hearing. The undersigned counsel is proceeding to file this motion in an abundance of caution on the eve of a Hearing to Determine Funds as it is believed Defendants' counsel intends to present argument on his Notice of Mootness filed April 6, 2015, for hearing only two days later on April 8, 2015.



from the Premises, of which the Plaintiff, Landlord, has a security interest in, and which security interest is perfected statutorily pursuant to Florida Statutes section 83.08.

10. All along, upon information and belief, the Defendants have been using this time to further benefit their own interest while failing to turn over possession.

11. Upon information and belief the Defendants have continued to receive income from various subleases they negotiated without Plaintiff, Landlord's consent.

12. All the while the Plaintiff has failed to receive rent and has been forced to incur attorneys' fees and costs associated with litigating this matter.

13. On March 23, 2015, it became readily apparent to the Landlord that the Defendants were beginning to remove property from the Premises for purposes of abandonment of the leasehold.

14. The Defendants had hired moving trucks, blocked and monopolized elevators, and removed items belonging to Landlord pursuant to a Landlord's lien for rent under the Lease Agreement. See March 23, 2015 email attached hereto as **Exhibit "A."**

15. All these activities were further defaults pursuant to the terms of the Lease Agreement.

16. Subsequently, upon information and belief, the Defendants removed their computers and remaining personal effects.

17. The telephones were disconnected and electricity was shut down, there was no further activity, the Defendants had "gone dark." See Photos of padlocks placed by FPL at Premises evidencing nonpayment of utility bills by Tenant attached hereto as **Exhibit "B."**

18. On or about March 31, 2015, Landlord's nighttime security found the Premises unsecured and unlocked and notified the Landlord.

27. Plaintiff has been patiently awaiting its hearing on its Motion to Order Funds Into the Registry since February, 2015.

28. To add insult to injury, on or about April 6, 2015, upon information and belief, counsel for the Defendants contacted the court and advised that this instant action was now moot and that the court ordered hearing to determine monies payable into the court registry may be removed from the court's docket.

29. The Court's judicial assistant immediately contacted undersigned who advised the Court's Judicial Assistant that this matter was still pending and requested that the hearing remain on the Court's calendar.

30. Defendants have maintained they do not seek to waive any defenses to this action but have informed undersigned that their intention is to now argue that this instant action is moot.

31. The act of unilaterally changing the issue before the court on the Court's own scheduled motion is wholly improper.

32. The Defendants now seek to solely benefit themselves and to prejudice the Plaintiff by improperly arguing an alternate cause at the hearing set for April 8, 2015.

33. Additionally, the Defendants argument of mootness is nonsensical.

34. The Defendants argue that since "possession was the only relief sought in this case, this case should be dismissed as moot."

35. The Defendants neglect to mention Plaintiff's pending claim for attorneys' fees and costs pursuant to Florida Statutes sections 83.231 and 83.251, as well as the Lease.

36. The Defendants cite and paraphrase Sebastian Apartments, Inc. v. Nachman, a non-binding Third DCA case, as authority for their "Notice of Mootness," stating "appeal by

landlord of order denying eviction was dismissed as moot because the tenants were no longer in possession of the premises involved.”

37. Sadly, this is all Sebastian Apartments, Inc. has to offer. It is a two-line opinion stating no fact other than what is offered above.

38. Further, Defendants’ sole cited authority is a residential eviction matter not a commercial eviction as is this matter.

39. Finally, there is no mention of a pending claim for attorneys’ fees and costs as is at issue in this instant action.

40. The Defendants claim that possession is the only relief requested in this matter is incorrect.

41. Dismissing this case as moot would be highly prejudicial to the Plaintiff as it would leave remaining claims unresolved, specifically, an adjudication as to whether the Defendants, Tenants failed to pay rent, entitling the Landlord to an action for possession, thus in turn entitling the Plaintiff to a right to prevailing party attorneys’ fees and costs pursuant to Florida Statutes Chapter 83, Part I.

42. This matter must be adjudicated in favor of the Plaintiff so as to resolve entitlement to attorneys’ fees and costs.

43. For the above stated reasons Defendants’ Notice of Mootness and Request that Action be Dismissed must be denied in all respects or stricken and this matter be allowed to proceed to a final adjudication on attorneys’ fees and costs.