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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

MAY 24 2017

LSJE, LLC

Plaintiff,

v.

BETTERROADS ASPHALT
CORPORATION

Case No. ST-16-CV-615

THIRD-PARTY HEAVY MATERIALS, LLC'S NOTICE OF REMOVAL & DISPOSAL

Heavy Materials, LLC ("Heavy Materials")—the prior landlord of Defendant, Betterroads Asphalt Corporation a/k/a Betterroads Asphalt LLC ("Betterroads")—respectfully notifies the parties and the Court that it intends to remove and dispose of the asphalt plant ("Plant")¹ which still remains on Heavy Materials' property located in Estate Bovoni, St. Thomas ("Premises") over five (5) months after Betterroads' month-to-month lease of the Premises ended.

Betterroads' failure to remove its property, including the Plant, from the Premises necessitated the filing of a forcible entry and detainer action by Heavy Materials to establish its right to restitution of the Premises. On December 8, 2016, the Court entered judgment granting Heavy Materials the right to immediate restitution of the Premises. A copy of the Judgment is attached as **Exhibit 2**. The Court's order correctly stated that "removal or disassembly of the asphalt plant on the premises is really an issue for which Defendant [Betterroads] is responsible, unless the parties can arrive at a mutually satisfactory agreement to resolve same." *See id.* at p. 3. Subsequent to the entry of the Judgment, Heavy Materials made multiple requests for Betterroads to remove the Plant from the Premises. As of the date of this Notice, Betterroads has not removed the Plant.

¹ The component parts of the Plant are specifically set forth on **Exhibit 1** hereto.

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As recognized by the Court in the portion of the Judgment quoted above, the law imposes a duty on the outgoing tenant to restore the premises to its former condition by removing his personal property. *See Coin Amusement Co., Inc. v. R.C. Spenceley, Inc.*, 14 V.I. 561, 565 (Terr. Ct. 1978). A tenant may not, after termination of the lease, interfere with the landlord's right to exclusive use and possession of the premises. *Id.* at 566. In the absence of an agreement between the parties to the contrary, a building erected by a tenant for the purposes of his trade or business is to be regarded as a trade fixture which is the tenant's personal property and is removable by the tenant during or at the expiration of his tenancy. *Resevic v. Henderson*, 7 V.I. 326, 332 (Terr. Ct. 1969). The tenant may remove the structure during his tenancy or a reasonable time thereafter. *Id.*; *see also Coin Amusement*, 14 V.I. at 565 ("Restoration of the premises must be effected within a reasonable time of termination of the lease if termination is neither foreseeable nor due to the tenant's default; otherwise it is at the time the lease terminates."). Virgin Islands law has defined a "reasonable time" for a former tenant to remove property from the leased premises as a month after the tenancy ends. *See Coin Amusement*, 14 V.I. at 566-7. Notably, if the tenant fails to remove a structure within a reasonable time he thereby relinquishes his ownership of the structure to the owner of the land upon which it has been left and the latter may thereafter deal with it in any way he sees fit without incurring any obligation to its former owner for its value, use or destruction. *Resevic*, 7 V.I. at 332.

Accordingly, Heavy Materials intends to remove the Plant from its Premises and dispose of the same.

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: May 22, 2017

By:



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Attorneys for Heavy Materials, LLC

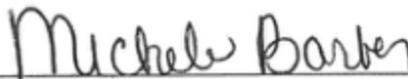
CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on May 22, 2017, I served a copy of the foregoing, *THIRD-PARTY HEAVY MATERIALS, LLC'S NOTICE OF REMOVAL AND DISPOSAL*, which complies with the page and word limitations set forth in Rule 6-1(e), by U.S. Mail on:

Marjorie Whalen, Esq.
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Attorneys for Betteroads Asphalt Corp.


Michele Barber

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EXHIBIT 1

Betterroads Asphalt Corporation
 #3G Estate Bovoni
 St. Thomas, USVI

Components List

Sent Via Email

Date: January 20, 2017
 Re: Plant #7
 Location: St. Thomas, USVI
 Prepared By: E. Jeffers

Qty.	Description	Condition	Remarks
4	Cold Aggregate Feed Bins	Fair	Contains aggregates
1	Cold Aggregate Feed Conveyor	Fair	Not serviced since July 2016
1	Counter Flow Dryer Drum	Fair	Not serviced since July 2016
1	Hot Aggregate Escalator	Fair	Not serviced since July 2016
1	Burner	Fair	Not serviced since July 2016
1	Bag House Dust Collector	Fair	Not serviced since July 2016
1	Storage Silo	Fair	Approximate 80-Ton Capacity
1	Weigh Scale	Fair	Not serviced since July 2016
1	Control Room	Fair	Unused since July 2016
1	Generator	Fair	Not serviced since July 2016
1	Electrical Transformer	Fair	Not serviced since July 2016
2	Bitumen Supply Tank	Fair	Contains approximately 500 gallons bitumen
2	Spare Bitumen Tank	Fair	May contain sludge



1	Diesel Supply Tank	Fair	Contains approximately 100 gallons diesel
1	Storage Tank	Fair	Contains approximately 150 gallons Tack Oil
2	Storage Tank	Poor	Unusable
Mixing Tower System			
UNK	Hot Aggregate Bins	Fair	Not serviced since July 2016
UNK	Aggregate Scales	Fair	Not serviced since July 2016
N/A	Vibrating Screens	Fair	Not serviced since July 2016
1	Pugmill Mixer	Fair	Not serviced since July 2016

EXHIBIT 2

RECEIVED
R. 12/16/16
5394-72

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

HEAVY MATERIALS LLC)
Plaintiff)
)
)
)
vs)
)
BETTERROADS ASPHALT CORP.)
)
)
Defendant

CASE NO. ST-16-CV-0000678

ACTION FOR: FORCIBLE ENTRY,
DETAINER, AND RESTITUTION

**NOTICE OF ENTRY OF
JUDGMENT**

TO: ~~LISA MICHELLE KOMIVES~~, ESQUIRE
WILFREDO A. GEIGEL, ESQUIRE

Please take notice that on December 14, 2016 a(n) JUDGMENT dated
December 08, 2016 was entered by the Clerk in the above-entitled matter.

Dated: December 14, 2016

Estrella H. George
Acting Clerk of the Court


LATOYA CAMACHO
COURT CLERK II

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

HEAVY MATERIALS, LLC)

Plaintiff)

vs.)

BETTERROADS ASPHALT, LLC)

Defendant)

CASE NO: ST-16-CV-678
ACTION FOR FORCIBLE ENTRY
AND DETAINER

JUDGMENT

THIS MATTER came on for hearing before the Magistrate Judge Henry V. Carr, III of the Superior Court of the Virgin Islands on Saturday, December 3, 2016.¹ Attorney Lisa M. Komives (Dudley, Topper and Fuerzeig, LLP) appeared on behalf of Plaintiff Heavy Materials, LLC. Present with her was Kurt Nose, its Regional Vice President. Defendant Betterroads Asphalt, LLC appeared telephonically² through its counsel, Wilfredo A. Geigel. No other representative appeared on Defendant's behalf.

The Court asked the parties whether they had an opportunity to resolve this FED case, whether this case was an emergency, and if not, why this case could not be continued to another date. Attorney Komives stated that Defendant, through its counsel, would admit that Plaintiff had a right to re-enter the premises. Attorney Geigel stated on the record and admitted that Plaintiff had such a right to re-enter the premises. Upon questioning by the Court, Attorney Geigel admitted and/or stipulated that all the required lease termination and notices to quit were properly served on Defendant. The notices required Defendant to vacate the premises October 31, 2016, and Defendant is still in possession. The reason why Plaintiff's counsel wanted an immediate hearing was due to her client's claim of exigent circumstances by virtue of an environment protection order. Its counsel represented that that order required Plaintiff to take certain remediation matters regarding the premises. However, Plaintiff's counsel did not have a

¹ This FED case was originally scheduled for hearing on Thursday, December 1, 2016 at 10:00. It was continued by Magistrate Carr to allow him to attend the investiture of the Honorable Superior Court Judge Jomo Meade held in St. Croix, United States Virgin Islands at 10:00 on Friday, December 1, 2016. He continued his advice of rights as well as his FED cases until 2:30, confident that he could return in time to dispose of these matters. However, he later learned that his scheduled return flight to St. Thomas would not leave St. Croix until Friday night, and all other flights and airlines were booked up. He, therefore, continued his cases to Saturday morning, December 3, 2016

² Attorney Geigel filed a motion to continue the December 1, 2016 hearing, which motion the Court denied. He appeared in person. In light of the inconvenience that the Court had already caused the parties, it allowed Attorney Geigel to appear telephonically, which was his alternate request had the court denied his motion for continuance.

copy of this EPA order with her in court. Nor did she supply a copy of said order when the Court requested same this week.

There was no dispute that Defendant operated a road paving business on a portion of a quarry site owned by Plaintiff at Parcel 3A Estate Bovoni, St. Thomas, United States Virgin Islands ("the premises"). The parties admitted that there was no written lease and that Defendant maintained possession of the premises as a month-to-month tenant. They also admitted that Defendant's asphalt plant on the premises ceased operations on September 30, 2016. The parties, through their respective legal counsel, admitted that Plaintiff had offered to remove the equipment, trailers and other movable items from the premises and to store them. Defendant was concerned whether the removal of these movable items would constitute a violation of two (2) temporary restraining orders issued in the Superior Court, Division of St. Thomas and St. John, in *Gov't of the V.I. v. Betterroads Asphalt Corp.*, Case No. ST-16-CV-610³, and *LSJE, LLC v. Betterroads Asphalt Corporation*, Civil No. 615/2016.⁴ The essence of the purported violation is based on the TROs' language which enjoined Defendant from removing any property, money, or other assets from the territory. Defendant eventually relented and withdrew any further challenges or objections to Plaintiff's removal of the trailers, equipment or other movables on the premises, subject to Plaintiff storing them properly to preserve these items. Its counsel's original reluctance to allow Plaintiff to disassemble the plant and place its parts in storage was due to its concern that the disassembled structure would cause the plant to lose value to the detriment of its creditors, including LSJE, plaintiff in the above-referenced case.

The Court continued the case to December 16, 2016 to review the TROs and the preliminary injunction. It notes the specific language that the Superior Court used to distinguish two different situations when it denied Plaintiff's motion to intervene in the breach of contract action in Case No. 615:

The Temporary Restraining Order (the "TRO") prohibited Betterroads from 'removing any property, assets, or money from the U.S. Virgin Islands.' However, there was no such language in the TRO prohibiting Betterroads from removing any buildings, materials, equipment, or waste from the leased Premises.

Order denying Plaintiff's Motion to Intervene in Case No. 610, p. 3.

In further response in denying Plaintiff's motion to intervene in Case No. 610, the Superior Court stated that Plaintiff will more than likely seek relief through filing an FED action

³ Plaintiff the Government of the V.I. alleged that Defendant Betterroads is in violation of the Virgin Islands Plant Closing Law at 24 V.I.C. § 471 *et seq.*

⁴ Plaintiff LSJE, LLC alleges that Defendant Betterroads violated its contract to pave certain roads in Little St. James and that it is entitled to recover its \$170,833.33 deposit. There was also a preliminary injunction issued by the Court in Case No. 615: "Defendant, and anyone acting on its behalf, are enjoined from removing any property, money, or other assets from the territory."

to re-enter the premises and to remove any remaining buildings, materials and equipment from the premises.

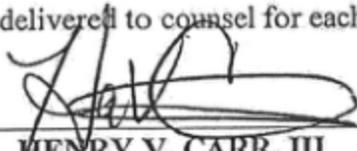
This Court, therefore, cannot find any conflict or violation of the aforementioned temporary restraining orders and permanent injunction that would occur, should it grant Plaintiff immediate restitution of the premises and allow Plaintiff to re-enter same and to remove the trailers, equipment and other movable items. Further, as to the asphalt plant, Plaintiff has stated in open court that it is willing to disassemble the plant and store same. Nevertheless, the issue of removal or disassembly of the asphalt plant on the premises is really an issue for which Defendant is responsible, unless the parties can arrive at a mutually satisfactory agreement to resolve same.

After review of the TROs and preliminary injunction, and based upon the agreements and stipulations between the parties that Plaintiff is entitled to re-enter the premises and to retake possession of same, it is hereby:

ORDERED, ADJUDGED AND DECREED:

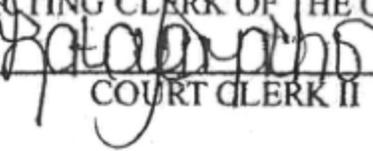
1. Plaintiff is granted immediate restitution of the premises where Defendant operated a paving business on a quarry site on a portion of its commercial property located at Parcel 3A, Estate Bovoni, St. Thomas, United States Virgin Islands.
2. Copies of this Judgment shall be personally delivered to counsel for each party.

DATED: December 8, 2016


HENRY V. CARR, III
Magistrate of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Acting Clerk of the Court

By: 
FOR HYACINTH M. LOCKHART
Senior Deputy Clerk 12/14/2016

A CERTIFIED TRUE COPY
DATE 12/15/2016
ESTRELLA H. GEORGE
ACTING CLERK OF THE COURT
BY: 
COURT CLERK II