IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

APPELLANT

NO.

, BY ITS BOARD OF TRUSTEES,
APPELLEE

SUMMARY JUDGMENT MOTION

Hospital moves for summary judgment, and in support of the motion, would show the Court the following:

1. The hospital owned and leased an office to Dr. by a written lease agreement for five years, with the lease terminating on , . Upon termination of the lease term, the hospital made a demand on to vacate the office, he/she continued to occupy the office for an additional months, days until he/she finally vacated the office on , 20 . Hospital is entitled to judgment against as a "hold-over tenant or trespasser", pursuant to Miss. Code Ann. Sec. 89-7-25 (1972), and the facts are supplied by 's Rule 36 admissions.

2. Dr. has admitted the following facts in response to requests for admissions:

(a) Hospital owns the office located at

(b) The office was purchased and leased pursuant to local and private legislation, specifically Senate Bill 2214 (Ch. No. 803)6 Laws of Mississippi of 1980.

(c) The County Board of Supervisors and the Board of A1derman passed resolutions authorizing the purchase and

(f) Upon termination of the lease term, Hospital made a written demand on to vacate the office.

(g) refused to voluntarily leave the office, and the hospital petitioned the County Justice Court for an order of eviction.

(h) The County Justice Court issued an order of eviction to and during an appeal of that order, vacated the office on , 20 .

(i) possessed the office after the term of the lease expired on , 20 , for an additional period of months, days until , 20 .

(j) never paid any rent to the hospital during the months, days (s)he possessed the office as a hold-over tenant.

(See 's Responses to Aberdeen Monroe Hospital's Requests for Admission, numbers 1-14', copy attached as Exhibit "A" to Motion).

3. Hospital previously filed suit against Dr. to recover rent in arrears during the lease term, and received a judgment against in Cause No. in the County Circuit Court. (See attached copy of judgment - Exhibit "B" to Motion). The amount sued for in that lawsuit, and the judgment awarded, was the past due rent incurred during the term of the lease, which terminated on , , and pre-judgment interest from the date of termination of the lease term. (See affidavits of -- attached as Exhibits "C" and "D" to Motion). The former lawsuit did not seek recovery against for the statutory double-rent penalty owed by as a hold-over tenant or trespasser, after termination of the lease term. (Id.)

4. Miss. Code Ann. Sec. 89-7-25 (1972) provides that:

> The landlord double the rent which (s)he should otherwise have said to be levied, sued for, and recovered as the single rent before the giving of notice could be. And double rent shall continue to be said during all the time the tenant shall so continue in possession. (emphasis supplied).

was lawfully notified by the hospital to vacate the premises, but failed and refused to do so until , 20 , months and days after termination of the lease term. The monthly payment under the lease was $ per month. The proper measure of damages would be double rent multiplied by the period of time in which occupied the office as a hold-over tenant or trespasser after termination of the lease. Damages would therefore be $ (33 18/31 x $ x 2).

5. 's argument that the hospital's lease of the office was a proprietary rather than a governmental function, and that the one year statute of limitations in Miss. Code Ann. Sec. 15-1-33, should bar some portion of the hospital's claim, has been rejected by the Mississippi Supreme Court. Hospital in a community hospital owned and operated by the City of and County, and the office was expressly purchased and leased to recruit doctors to this area. (See affidavit of ; Exhibit "E" to Motion). As such, no statute of limitations Is available to bar any part of the claim made by the hospital in this case. Miss. Code Ann. Sec. l5-1-51 (Supp. 1991); Enroth v. Memorial Hospita1 at Gulfport, 566 So.2d 202 (Miss. 1990). The operation of a hospital and related matters is a governmental function and not a proprietary function. Enroth, 566 So.2d at 206; City of Leland v. Leach, 227 Miss. 558, 560-61, 86 So.2d 363, 364-65 (1956). The one year statute of limitations in Miss. Code Ann. Sec. 15-1-33 is not a defense to the hospital's claim for the statutory double rent penalty.

6. denies that only used a portion of the office, or that it acquiesced to less than full rental payments, the doctrine of collateral estoppel precludes from relitigating issues that have already been decided adversely to him in the prior judgment rendered in Monroe County Circuit Cause No. 90-025-W. Dunaway V. W. H. Ho~Der & Associates. Inc., 422 So.2d 749 (Miss. 19~2),' Strain v. Gayden, 20 So.2d 697 (Miss. 1945). The prior judgment held that was liable jointly and severally for the entire past due rent under the terms of the lease contract. Further, as a matter of common law contract principles, this Court would likewise

conclude that has joint and several liability under the lease agreement, even if the issue had not already been decided adversely against him. 17 Am.Jur.2d, Contracts, 5298 at pp. 717-718 ("An obligation by ... two or more persons is a joint obligation ... unless distinct words of Severance are used to produce a several responsibility .~. If an instrument worded in the singular is executed by several parties, the obligation is a joint and several one."). The lease contract does not contain any language which would limit 's obligation to anything less than the full monthly payment required by the lease agreement.

7. also vaguely argues that the hospital should be estopped from recovering the Statutory double rent penalty in this lawsuit, because it could have sued for that statutory remedy in the earlier County Circuit Court suit, when the hospital sued for the rent in arrears owed during the lease term. This legal contention has also been rejected. , Landlord and Tenant, at p. ("Accordingly, under the theory that a holding over at the expiration of a definite term and each holding over thereafter constitutes a new term separate and distinct from hospital has split a cause of action, but in fact, the first lawsuit was for the rent in arrears owed through the date of , 20 , and the instant action is for the statutory double penalty owed from , 20 through , 20 . These are two separate causes of action, one based on a contract and the other on a statute, and for two separate periods of time.

8. Finally, appears to be arguing that the doctrine of laches or estoppel would apply because of the hospital's failure to file this lawsuit sooner. However, the doctrine of laches is inapplicable where a claim has not been barred by the applicable statute of limitations. West End Cor~. v. Royals, 450 So.2d 420 (Miss. 1984). Further, the doctrine of laches is inapplicable to claims by the state government or its other agencies or officials. Alexander V. Mayor and Bd. of Alderman of City of Natchez, 219 Miss. 78, 6~ So.2d 434, motion overruled, 220 Miss. 207, 70 So.2d 529 (1954); Aetna Ins. Co. V. Robertson, 131 Miss. 343, 94 So. 7, judgment modified on suggestion of error, 95 So. 137 (1922).

WHEREFORE, PREMISES CONSIDERED, Hospital moves the Court to grant summary judgment, for the hospital in the principal sum of $, plus pre-judgment interest at % per annum from , 20 , court costs, and interest on the judgment at the highest rate allowed by law.

THIS the day of , 20 .

Respectfully submitted,

_____

Attorney for

Of Counsel:

Telephone:
MSB #
Attorney for