

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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CROSSROADS BANK f/k/a FIRST FEDERAL
SAVINGS BANK OF WABASH,

Plaintiff,

Docket No.
Civil Action

-against-

ALLIED HEALTH CARE SERVICES, INC. and
CHARLES K. SCHWARTZ,

COMPLAINT

Defendants.
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Plaintiff, Crossroads Bank f/k/a First Federal Savings Bank of Wabash (First Federal), by counsel, files this Complaint against defendants, Allied Health Care Services, Inc. (Allied) and Charles K. Schwartz (Schwartz) (collectively, Defendants).

I.
INTRODUCTION

1. This action involves a breach by Allied of a lease for certain equipment used in connection with its health care operation. Specifically, First Federal is the assignee of AEL Financial, LLC (AEL) in connection with two leases under which Allied was required to make certain monthly rental payments in return for specific equipment. Allied's obligations under the leases were guaranteed by Schwartz.

2. Allied has failed to make payments required under the leases, breaching its obligations and, despite demand, has failed to cure this default.

3. As a result, First Federal now brings suit seeking to take possession of the leased equipment and to recover any and all related damages, costs and expenses from Allied and Schwartz.

II.
PARTIES AND VENUE

4. Plaintiff, First Federal, is a corporation organized and existing under the laws of the State of Indiana, which maintains a place of business at 1205 N. Cass Street, Wabash, Indiana 46992.¹

5. Upon information and belief, defendant, Allied, is a corporation organized and existing under the laws of the State of New Jersey, which maintains its principal place of business at 89 Main Street, Orange, New Jersey 07051.

6. Upon information and belief, defendant, Schwartz, is an individual residing in the State of New Jersey, who maintains a residence at 3 Anna Drive, Budd Lake, New Jersey 07051.

7. The venue in this action is based upon 28 U.S.C. § 1391(a). Defendants reside in New Jersey, the events that give rise to this action occurred in the State of New Jersey, and the property that is the subject of this action is located in the State of New Jersey.

8. Jurisdiction is based on 28 U.S.C. § 1332. There is complete diversity of citizenship of the parties and the amount in controversy exceeds \$75,000.00.

III.
THE FACTS

9. Allied executed Lease No. L1127-1001/GV1032, dated October 27, 2005 (Lease No. 1), pursuant to which it agreed to make monthly payments to First Personal Bank in return for the lease of certain health care equipment.

¹ First Federal changed its name to Crossroads Bank subsequent to the assignments of the leases upon which this action is based.

10. Specifically, under Lease No. 1, Allied was provided with forty (40) home care ventilator systems (the Lease No. 1 Equipment). Lease No. 1 had a 60-month initial term lease period for a monthly payment of \$4,695.00, among other terms.

11. First Personal Bank received a security interest in the Lease No. 1 Equipment as security for Allied's obligations.

12. First Personal Bank assigned its interest in Lease No. 1 to AEL, which has received payment in the past from Allied.

13. First Federal is now the assignee of AEL for Lease No. 1.

14. Under Lease No. 1, in the event Allied breached its obligation to make rental payments or any other payment due under Lease No. 1 within ten days of its due date, or in the event Allied failed to perform any other obligation under Lease No. 1 and that failure continued for ten days, it constituted a default of its obligation and a breach of Lease No. 1.

15. Under Lease No. 1, in the event of a default, First Personal Bank is entitled to, among other things, cancel or terminate Lease No. 1, require Allied to pay the value of all unpaid rental payments for the remainder of the term plus the fair market value of the Lease No. 1 Equipment, discounted at the higher of 6% or the lowest rate allowed by law, together with all other amounts due and to become due under Lease No. 1.

16. In the event of a default, First Personal Bank is entitled to charge a late charge to cover collection costs, and charge interest on any late or non-payment amounts in the amount of 18% per annum or the highest legal rate from the due date until paid.

17. In the event of a default, First Personal Bank also has the right to take possession of the Lease No. 1 Equipment and to require Allied to deliver the Lease No. 1 Equipment to First Personal Bank.

18. Further, Allied is obligated, in the event of a default under Lease No. 1, to pay all the costs incurred by First Personal Bank in enforcing its rights against Allied, including reasonable attorneys' fees.

19. First Personal Bank provided the Lease No. 1 Equipment to Allied, which accepted delivery and acknowledged acceptability of the Lease No. 1 Equipment on October 28, 2005.

20. First Personal Bank filed a UCC-1 financing statement in connection with the Lease No. 1 Equipment, perfecting its security interest, on or about November 1, 2005.

21. Lease No. 1 also contained a personal guaranty executed by Schwartz, under which Schwartz agreed that, if Allied defaulted under Lease No. 1, he would immediately perform all obligations of Allied including, but not limited to, paying all amounts due under Lease No. 1. He also agreed to pay all expenses, including counsel fees, incurred in enforcing Lease No. 1 against Allied or Schwartz.

22. On or about September 13, 2006, First Personal Bank executed an assignment of Lease No. 1, without recourse, in favor of AEL (the AEL Assignment). Under the terms of the AEL Assignment, First Personal Bank assigned and transferred to AEL all rights it possessed under Lease No. 1, together with all rental payments due and to become due thereunder and all of First Personal Bank's "rights and remedies...to take all such proceedings, legal, equitable, or otherwise, that [First Personal Bank]

might take, but for this assignment.”

23. Thereafter, on or about November 1, 2006, AEL executed an assignment of Lease No. 1, without recourse, in favor of First Federal (the First Federal Assignment). Under the terms of the First Federal Assignment, AEL assigned and transferred to First Federal all rights it possessed under Lease No. 1, together with all rental payments due and to become due thereunder and all of AEL’s “rights and remedies...to take all such actions or proceedings...legal, equitable, or otherwise, that AEL might take except for this assignment.”

24. Beginning in April 2010, Allied failed to timely make the required payments under Lease No. 1. AEL and First Federal contacted Allied and demanded that it cure its failure to make timely payment and that it bring all payments under Lease No. 1 current.

25. Allied breached its obligations under Lease No. 1 by failing to make the required payments that would have cured the default.

26. First Federal then made demand upon Schwartz to make payment of the amount owed by Allied under Lease No. 1, but Schwartz failed to make payment.

27. First Federal also demanded that Allied return the Lease No. 1 Equipment, as it was obligated to do under Lease No. 1 upon demand in the event of a default but, once again, Allied breached its obligation by failing to return the Lease No. 1 Equipment.

28. As a result, First Federal has suffered damages in the current amount of \$34,743.00, plus counsel fees in an amount to be determined as a result of Allied’s breach of Lease No. 1 and Schwartz’s breach of the guaranty.

29. Allied also executed Lease No. L1127-1002, dated October 12, 2006 (Lease No. 2), pursuant to which it agreed to make monthly payments to AEL in return for the lease of certain health care equipment.

30. Specifically, under Lease No. 2, Allied was provided with fifty (50) home care ventilator systems (the Lease No. 2 Equipment). Lease No. 2 had a 60-month initial term lease period for a monthly payment of \$5,731.00, among other terms.

31. AEL received a security interest in the Lease No. 2 Equipment as security for Allied's obligations.

32. AEL assigned its interest in Lease No. 2 to First Federal, which has received payment in the past from Allied.

33. Under Lease No. 2, in the event Allied breached its obligation to make rental payments or any other payment due under Lease No. 2 within ten days of its due date, or in the event Allied failed to perform any other obligation under Lease No. 2 and that failure continued for ten days, it constituted a default of its obligation and a breach of Lease No. 2.

34. Under Lease No. 2, in the event of a default, AEL is entitled to, among other things, cancel or terminate Lease No. 2, require Allied to pay the value of all unpaid rental payments for the remainder of the term plus the value of anticipated residual interest in the Lease No. 2 Equipment, each discounted at 4% per year, compounded monthly, together with all other amounts due and to become due under Lease No. 2.

35. In the event of a default, AEL also has the right to take possession of the Lease No. Equipment and to require Allied to deliver the Lease No. 2 Equipment to

AEL.

36. Further, Allied is obligated, in the event of a default under Lease No. 2, to pay all the costs incurred by AEL in enforcing its rights against Allied, including reasonable attorneys' fees.

37. AEL provided the Lease No. 2 Equipment to Allied, which accepted delivery and acknowledged acceptability of the Lease No. 2 Equipment on October 18, 2006.

38. AEL filed a UCC-1 financing statement in connection with the Lease No. 2 Equipment, perfecting its security interest, on or about December 14, 2006.

39. Lease No. 2 also contained a personal guaranty executed by Schwartz, under which Schwartz agreed that, if Allied defaulted under Lease No. 2, he would immediately perform all obligations of Allied, including, but not limited to, paying all amounts due under Lease No. 2. He also agreed to pay all expenses, including counsel fees, incurred in enforcing Lease No. 2 against Allied or Schwartz.

40. On or about January 31, 2007, AEL executed an assignment of Lease No. 2, without recourse, in favor of First Federal (the Assignment). Under the terms of the Assignment, AEL assigned and transferred to First Federal all rights it possessed under Lease No. 2, together with all rental payments due and to become due thereunder and all of AEL's "rights and remedies...to take all such actions or proceedings...legal, equitable, or otherwise, that AEL might take except for this assignment."

41. Beginning in April 2010, Allied failed to timely make the required payments under Lease No. 2. First Federal contacted Allied and demanded that it cure its failure to make timely payment and that it bring all payments under Lease No. 2 current.

42. Allied breached its obligations under Lease No. 2 by failing to make the required payments that would have cured the default.

43. First Federal then made demand upon Schwartz to make payment of the amount owed by Allied under Lease No. 2, but Schwartz failed to make payment.

44. First Federal also demanded that Allied return the Lease No. 2 Equipment, as it was obligated to do under Lease No. 2 upon demand in the event of a default but, once again, Allied breached its obligation by failing to return the Lease No. 2 Equipment.

45. As a result, First Federal has suffered damages in the current amount of \$110,035.20, plus counsel fees in an amount to be determined, as a result of Allied's breach of Lease No. 2 and Schwartz's breach of the guaranty.

IV.
CAUSES OF ACTION

Count I
(Replevin)

46. First Federal repeats each of its allegations in Paragraphs 1 through 45 of this Complaint.

47. First Federal possesses an assignment of AEL's interest in the Lease No. 1 Equipment and Lease No. 2 Equipment (collectively, the Leased Equipment) under Lease No. 1 and Lease No. 2 (collectively, the Leases), having taken the First Federal Assignment and the Assignment (collectively, the Assignments) without recourse of AEL's rights.

48. Under the Leases and the Assignments, First Federal retains a security interest in the Leased Equipment, which security interest was perfected on or about

November 1, 2005 and December 14, 2006, respectively.

49. In addition, under the Leases and the Assignments, First Federal is expressly authorized, in the event of a default by Allied, to take possession of the Leased Equipment and, in fact, Allied is obligated to deliver the Leased Equipment to First Federal on demand.

50. As a result, First Federal is lawfully entitled to possession of the Leased Equipment, which Allied has wrongfully retained despite demand by First Federal that Allied return the Leased Equipment.

51. As a result, First Federal is entitled to an order of replevin obligating Allied to immediately deliver the Leased Equipment to First Federal, as required under the Leases.

Count II
(Breach of Leases)

52. First Federal repeats each of its allegations in Paragraphs 1 through 51 of this Complaint.

53. Under the express terms of the Leases, Allied was obligated to make certain required payments to First Federal in return for its possession of the Leased Equipment.

54. Despite accepting the Leased Equipment, Allied breached its obligation to make payment to First Federal as required under the Leases and the Assignments and, despite demand, Allied failed to cure this breach.

55. Allied also failed to return the Leased Equipment upon demand, as required under the Leases.

56. As a result, Allied has breached the Leases, and First Federal has been

immediately and directly damaged as a result of that breach in the current amount of \$144,778.20.

57. In addition, under the express terms of the Leases, Allied is obligated to reimburse First Federal for any and all costs and expenses incurred, including counsel fees, in enforcing its rights under the Leases.

58. As a result, based on Allied's breach of the Leases, First Federal is entitled to recover damages, including payments owed under the Lease, in the current amount of \$144,778.20, plus counsel fees in an amount to be determined.

Count III
(Breach of the Guaranties by Schwartz)

59. First Federal repeats each of its allegations in Paragraphs 1 through 58 of this Complaint.

60. Schwartz executed guarantees of Allied's obligations under the Leases, pursuant to which he was obligated, upon demand, to immediately perform all of Allied's obligations, including, but not limited to, paying all amounts due under the Leases and paying all expenses, including counsel fees, incurred in enforcing the Leases against Schwartz or Allied.

61. Allied breached its obligation to make payments to First Federal under the Leases and failed to cure those breaches despite demand.

62. As a result, under the terms of the guarantees, Schwartz is obligated to make payment of the outstanding amounts owed under the Leases.

63. Despite demand, however, Schwartz breached his obligations under the guarantees by failing and refusing to make payments to First Federal of the outstanding amount owed under the Leases.

64. As a result, Schwartz is in breach of the guaranties and First Federal is entitled to recover damages, including payments owed under the Leases in the current amount of \$144,788.20, plus counsel fees in an amount to be determined.

V.
REQUEST FOR RELIEF

WHEREFORE, plaintiff, First Federal, on the first cause of action, seeks an order of replevin obligating Allied to immediately deliver the Leased Equipment to First Federal; on the second cause of action, a judgment against Allied in the amount of \$144,788.20, plus counsel fees in an amount to be determined; on the third cause of action, a judgment against Schwartz in the amount of \$144,788.20, plus counsel fees in an amount to be determined; and on all causes of action, for such other and further relief as this Court deems just and proper, including counsel fees and costs of court.

Dated: Uniondale, New York
July 8, 2010

CROSSROADS BANK f/k/a
FIRST FEDERAL SAVINGS BANK OF
WABASH

By: /s/Stephen J. Gillespie (SG-1871)

Stephen J. Gillespie, Esq.
WESTERMANN SHEEHY KEENAN
SAMAAN & AYDELOTT, LLP
The Omni Building, Suite 702
333 Earle Ovington Boulevard
Uniondale, New York 11553
(516) 794-7500

Counsel for plaintiff,
Crossroads Bank f/k/a
First Federal Savings Bank of Wabash