

NOT FOR PUBLICATION

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

P.D.C.M. ASSOCIATES, S.E.,

Plaintiff,

v.

**CITY FITNESS, LLC, D/B/A FLEX, LISA
STINES, AND ABEL STINES**

Defendants.

SX-11-CV-103

ACTION FOR DEBT

MEMORANDUM OPINION

THIS MATTER is before the Court on Plaintiff P.D.C.M. Associates, S.E.'s (hereinafter "Plaintiff") Motion for Summary Judgment, filed May 14, 2012. No opposition has been filed in response to Plaintiff's Motion. For the reasons set forth below, the Court shall grant in part and deny in part Plaintiff's Motion.

FACTS AND PROCEDURAL HISTORY

Plaintiff is the owner and landlord of the Golden Rock Shopping Center (hereinafter "Golden Rock") located in Christiansted, St. Croix. On September 26, 2009, Defendant City Fitness, LLC d/b/a Flex (hereinafter "City Fitness") entered into a lease with Plaintiff to take possession of Unit 13 in Golden Rock. The lease was signed by City Fitness' representatives Defendants Lisa and Abel Stines (hereinafter "the Stines"), President and Vice-President of City Fitness, respectively. Simultaneous to the signing of the lease, the Stines also signed a Guaranty in their personal capacity to guarantee the lease between City Fitness and Plaintiff.

Plaintiff commenced this action against Defendants on March 4, 2011. According to Plaintiff's Complaint, City Fitness is in arrears of the monthly rental and maintenance fees owed

to Plaintiff. Plaintiff also alleges that as guarantors, the Stines are jointly and severally liable for the payment owed by City Fitness. On April 7, 2011, Defendants filed an Answer to Plaintiff's Complaint. A Scheduling Order was entered in this matter on March 13, 2012. On May 14, 2012, Plaintiff filed its Motion for Summary Judgment. Defendants have not filed a brief in opposition to Defendant's Motion but have filed a supplemental brief regarding the issue of damages.¹

DISCUSSION

A Motion for Summary Judgment shall be granted, "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the burden of identifying the portions of the record that show there is no genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). To determine whether summary judgment should be granted, the Court must review the facts in the light most favorable to the non-moving party. *Id.* If the non-moving party fails to respond to the assertion of facts in the motion for summary judgment, Rule 56(e)(3) states that the Court may, "grant summary judgment if the motion and supporting materials – including the facts considered undisputed – show that the movant is entitled to it..." A movant is entitled to summary judgment if, after analyzing all the supporting materials, the Court concludes no reasonable trier of fact could find for the non-moving party.

Matsushita Elec. Indus., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

The test to determine summary judgment is two-part: "[W]hether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law."

¹ The Court heard oral arguments regarding the issue of damages in this matter on June 6, 2013.

Maduro v. American Airlines, Inc., No. 2007/029, 2008 WL 901525 *3 (V.I. 2008). The parties do not dispute any of the facts at issue in this case. Defendants, however, argue that they should be allowed to offset costs incurred by them against the judgment amount.

To succeed on a breach of contract claim Plaintiff must prove that it entered into a contract with Defendants, the contract created a duty that Defendants breached, and Plaintiff suffered damages as a result. *Chapman v. Cornwall*, 58 V.I. 431, 437 (V.I. 2013).² Plaintiff has established that it entered into a contract, i.e., the lease agreement, with City Fitness. The lease created a duty for City Fitness to pay Plaintiff rent and certain other fees on a monthly basis. Plaintiff has provided documents evidencing City Fitness' breach of the lease agreement and the damages incurred as a result of the breach. City Fitness has not submitted any evidence rebutting this fact, nor do they deny that they are in breach of the lease. In its supplemental brief, Defendants only argue that Plaintiff's failure to comply with its duty to repair may give rise to Defendants' right to offset rents against monies spent. Defendants, however, have not plead any affirmative defenses concerning their allegation that Plaintiff failed to comply with any duty to repair. Moreover, neither City Fitness nor the Stines have provided evidence of damages incurred as a result of Plaintiff's alleged duty to repair. Because Defendants have failed to set forth any genuine issue of material fact, this Court finds that City Fitness has in fact breached its lease agreement with Plaintiff and Plaintiff is entitled to judgment as a matter of law.

² In *Government v. Connor*, S. Ct. Civ. No. 2013-0095, 2014 WL 702639 (V.I. Feb. 24, 2014) (per curiam), the Supreme Court of the Virgin Islands held that pursuant to its opinion in *Banks v. International Rental & Leasing Corp.*, 55 V.I. 967, 979 (V.I. 2011), in the absence of binding precedent the Superior Court must perform a three-part analysis when determining the common law. In *Connor*, the Supreme Court also called into question some of its earliest cases issued prior to *Banks* which cited the Restatements without first determining if it was the soundest rule. *Id.* at *4 n.1. This Court has cited the Supreme Court's decision in *Chapman v. Cornwall*, 58 V.I. 431, 437 (V.I. 2013), a post-*Banks* case, for the rule of law in a breach of contract action. The Supreme Court did not perform a three-part analysis to determine the common law in *Chapman* and this Court does not find it necessary to do so at this juncture.

CONCLUSION

Based on the foregoing analysis, the Court shall grant Plaintiff's Motion for Summary Judgment. By providing un rebutted evidence that City Fitness breached the lease agreement, Plaintiff has met its burden of showing that there is no genuine issue of material fact and it is entitled to judgment as a matter of law. An Order consistent with this Opinion will be entered by the Court.

Dated: 3/17/15

ATTEST:

Estrella George
Acting Clerk of the Court

By: [Signature]
Deputy Clerk

Dated: 3/23/15

[Signature]
HAROLD W. L. WILLOCKS
Administrative Judge of the Superior
Court