

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY,
FLORIDA

WAWA FLORIDA, LLC
a Florida limited liability company,

Plaintiff,

v.

BAHAMIAN VILLAGE, LLC
a Florida limited liability company,

Defendant.

GENERAL JURISDICTION
DIVISION

CASE NO.

COMPLAINT¹

Plaintiff, Wawa Florida, LLC (“Wawa”) sues Defendant, Bahamian Village, LLC (“Bahamian Village”) and states:

Introduction

1. This is an action for declaratory and supplemental relief under Chapter 86, Florida Statutes based on a lease agreement between Wawa, as tenant, and Bahamian Village, as landlord, for real property within the City of Coral Gables.

2. Bahamian Village, as landlord, contracted and agreed to deliver to Wawa, as tenant, a site with the necessary approvals so Wawa could build its desired store.

¹ Many of the exhibits referenced herein are confidential in nature. As such, Wawa will file them separately and with a notice of confidential information within court filing and a motion to determine confidentiality of court records upon receiving a case number so that the Clerk of the Court may properly designate those records as confidential. Defendant is in possession of all referenced exhibits, and Defendant will be served with a copy of said exhibits at the time of service of this Complaint.

3. Wawa invested and spent significant funds toward the future development of that location based upon representations made by Bahamian Village that Bahamian Village had obtained the required final approvals.

4. On January 22, 2021, however, a group of plaintiffs led by the “Gables Accountability Project, Inc.” sued the City of Coral Gables alleging that the approvals obtained by Bahamian Village were void as illegal ultra vires acts. See *Gables Accountability Project, Inc. v. City of Coral Gables, et al.*, Case No., 2021-001892-CA-01, pending in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the “2021 Lawsuit”).

5. The 2021 Lawsuit prompted Wawa and Bahamian Village to enter into a Third Amendment to Land Lease Agreement. That Amendment recognizes that the 2021 Lawsuit, if successful, “would adversely affect Wawa’s development of the Property” and, therefore, provides that if the 2021 Lawsuit is not fully and finally resolved by February 28, 2022, Wawa may terminate the parties’ lease upon thirty (30) days prior written notice.

6. The 2021 Lawsuit was not resolved by February 28, 2022. Wawa delivered the required notice of termination to Bahamian Village on February 28, 2022. Bahamian Village, however, has refused to recognize the notice of termination. Instead, Bahamian Village has wrongfully challenged the termination and attempted, improperly, to obtain a significant monetary bond that Wawa posted under this lease (“the Bond”).

7. Based on Bahamian Village’s conduct, Wawa has no choice but to sue to enforce its rights to terminate said lease, obtain the return of the Bond and enjoin Bahamian Village’s further interference with same.

Jurisdictional Allegations

8. Wawa is a Delaware limited liability company.
9. Bahamian Village is a Florida limited liability with its principal place of business within Miami-Dade County, Florida.
10. This Court has subject matter jurisdiction.
11. The amount in dispute exceeds \$30,000.00 excluding attorneys' fees and costs, and it involves claims for declaratory relief.
12. Venue lies in this Court. The lease that is the subject of this dispute involves real property within Miami-Dade County, Florida and provides that the venue for any litigation arising between the parties shall be in Miami-Dade County.

GENERAL ALLEGATIONS

A. Wawa and Bahamian Village enter into a Lease

13. On or about August 1, 2019, Wawa and Bahamian Village entered into a Land Lease Agreement for the property at 280 South Dixie Highway within Coral Gables, Florida. See Exhibit A (the "Lease").
14. The Lease required Bahamian Village to obtain "Landlord's Approvals" which are defined as a "final unappealable Site Plan approval from the City of Coral Gables."
15. Bahamian Village, in the Lease, represented and warranted that it: (a) has the full right, power, and authority to enter into this Lease and to perform its covenants for the entire tenancy created hereby . . . (d) to [its] knowledge, as of the date of execution of this Lease there are no violations of any federal, state, county or municipal law, code,

ordinance, order, regulation, rule or requirement affecting the Leased Premises, including, but not limited to, those relating to zoning, subdivision, environmental, building, fire and health. . .”

16. The Lease also required Wawa to post the Bond. The basis for the Bond was that prior to the Lease, Bahamian Village was involved in litigation with Miami-Dade County in connection with the property. That litigation was ultimately settled, and a condition of settlement was that Bahamian Village create (15) jobs in connection with its property. If Bahamian Village, or its lessee, failed to satisfy that job creation requirement, Bahamian Village would be fined \$35,000.00 for each failure by the County (the “Job Penalty”). The Bond was security for the payment of the Job Penalty, and Bahamian Village was and is only entitled to the Bond based on the occurrence of five limited enumerated conditions set forth in Section 1A(d) of the Lease.

B. The First Amendment to the Lease

17. On December 28, 2020, Wawa and Bahamian Village executed the First Amendment to Land Lease Agreement. See Exhibit B (the “First Amendment”).

18. The First Amendment, provided amongst other things, that “Landlord and Tenant hereby acknowledge and agree that Landlord has successfully obtained all Landlord’s Approvals required pursuant to the Lease.”

19. This First Amendment was consistent with Bahamian Village’s representations that it had properly obtained a final site plan approval that would allow Wawa to build its desired store.

C. The Second Amendment to the Lease

20. With the Landlord's Approvals now allegedly in place, Wawa and Bahamian Village, on or about February 1, 2021, executed a Second Amendment to Land Lease Agreement that, amongst other things, extended the period for Wawa to obtain its approvals. See Exhibit C.

D. Gables Accountability Project Challenges the Landlord's Approvals, and Wawa and Bahamian Village Amend the Lease for a Third Time to Address the 2021 Lawsuit.

21. Gables Accountability Project filed the 2021 Lawsuit against the City of Coral Gables on January 21, 2021, challenging the validity of the Landlord's Approvals as ultra vires and illegal actions.²

22. Specifically, the plaintiffs in the 2021 Lawsuit challenged the legality of a modification to a 2014 Planned Area Development ("PAD") and site plan adopted by the City Commission via Ordinance No. 2014-21. That modification authorized the construction/lease of a Wawa store (in lieu of an initially approved restaurant) on Bahamian Village's property. The modification to the PAD/site plan was approved administratively by the City Attorney for the City of Coral Gables via a January 28, 2020 "Legal Opinion regarding Bahamian Village Site Plan". The plaintiffs' contention, in the 2021 Lawsuit, is essentially that the site plan could not lawfully be modified by the City Attorney, but instead could be approved only with mandatory public notice and meeting and opportunity for public comment.

²Wawa and Bahamian Village were not named as defendants in the initial iteration of the complaint, and Wawa and Bahamian Village did not learn about the lawsuit until later.

23. When Wawa learned about the 2021 Lawsuit challenging the Landlord's Approvals, it was obviously concerned.

24. To address the 2021 Lawsuit, Wawa and Bahamian Village promptly agreed to execute a Third Amendment to Land Lease Agreement with Bahamian Village. See Exhibit D (the "Third Amendment").

25. The Third Amendment recognized that the 2021 Lawsuit, if successful, "would adversely affect Tenant's development of the Property." See Exhibit D, p. 1. Therefore, the Third Amendment provided:

"Notwithstanding any provision herein to the contrary, if on February 28, 2022, (i) the Lawsuit remains pending or any appeal period related thereto has not yet expired, or (ii) a judgment has been entered in favor of the plaintiffs which judgment could result in Tenant's permits or Landlord's Approvals being rescinded, revoked or modified, either party may terminate this Lease upon thirty (30) days prior written notice to the other party (which 30 day notice must be given no later than ten (10) days after February 28, 2022), in which event there shall be no further liability hereunder between the parties, except for liabilities which specifically survive the termination of this Lease and except for liabilities arising prior to the date of such termination. . ."

Exhibit D, Section 3, "Permits and Approvals."

E. Fourth Amendment to Land Lease Agreement

26. On September 13, 2021, Wawa and Bahamian Village executed the Fourth Amendment to Land Lease Agreement. See Exhibit E.

27. The Fourth Amendment did not change Wawa's termination rights.

F. The 2021 Lawsuit Remains Pending

28. On April 26, 2021, the plaintiffs in the 2021 Lawsuit amended their complaint and added both Bahamian Village and Wawa as defendants.

29. On October 21, 2021, the plaintiffs filed their second amended complaint in the 2021 Lawsuit.

30. The City of Coral Gables moved to dismiss the second amended complaint, and Bahamian Village and Wawa joined.

31. On January 6, 2022, the trial court denied the motion to dismiss the plaintiffs' second amended complaint, and as of today's date, the 2021 Lawsuit remains pending. See Exhibit F (Order Denying Defendants' Motion to Dismiss).

G. Wawa Terminates the Lease, but Bahamian Village Refuses to Acknowledge the Termination and Instead Wrongfully Attempts to Obtain Wawa's Bond.

32. On February 28, 2022, and as allowed by the Lease (as amended by the Third Amendment) Wawa delivered a Notice of Termination to the Landlord, stating that it was terminating the Lease as the 2021 Lawsuit remained pending. See Exhibit G.

33. In that same notice, Wawa provided written notice and demand that the Bond be released and returned to Wawa. See Exhibit G.

34. Bahamian Village, however, has refused to recognize the termination of the Lease and has instead stated that "[t]he termination attempt was [] ineffective." See Exhibit H (a March 7, 2022 email from counsel for Bahamian Village to counsel for Wawa).

35. And more egregiously, Bahamian Village, knowingly or negligently, has made misrepresentations to Travelers Casualty and Surety Company of America ("Travelers"), to demand, improperly, that Travelers pay the Bond amount to Bahamian Village.

36. Specifically, on March 7, 2022 Bahamian Village sent Travelers the

following demand:

Landlord and Tenant entered into the Land Lease Agreement (“Lease”) for the real property and improvements located at 280 South Dixie Highway, Coral Gables, Florida. Under Section 1A(d) of the Lease, Landlord makes its demand against the Bond. Tenant bore the obligation to commence construction, and once it commenced construction, Tenant bore the obligation to continue construction until complete. Tenant ceased construction and has since attempted to terminate the Lease after it had already failed to comply with the Lease terms. Tenant has also demanded Landlord return the Bond, despite its breach. Landlord therefore has the right to demand the Surety pay over the Bond because the defaults and breaches have triggered the Surety’s obligations to Landlord.

Landlord therefore demands Surety pay over the Bond amount totaling \$525,000 per the terms stated in the Bond and the Lease.

See Exhibit I (March 7, 2022 letter from Jon Polenberg, Esq. on behalf of Bahamian Village to Travelers Casualty and Surety Company of America).

37. But Bahamian Village’s contentions in its March 7, 2022, letter are not supported by the Lease.

38. First, the Lease does not require Wawa to “continue construction until complete.”

39. Wawa on March 8, 2022, brought this fact to Bahamian Village’s attention and asked Bahamian Village to identify what provision of the Lease required Wawa to “continue constriction until complete.” See Exhibit J (a March 8, 2022, letter from Michael B. Green, Esq. on behalf of Wawa to Bahamian Village c/o its counsel Jon Polenberg, Esq.).

40. Bahamian Village has not responded to Wawa’s March 8, 2022 inquiry.

41. Second, even if Wawa was obligated to “continue construction until complete”, which it is not, failing to “continue construction until complete” is not a basis for Bahamian Village to obtain the Bond.

42. Section 1A(d) of the Lease specifically states that “[t]he Bond may be drawn upon by Landlord **only** upon the occurrence of one [or] more (sic) of” five specified “events.” (emphasis added). None of those events include an alleged failure by Wawa to “continue construction until complete. . .”

43. Finally, and most incredibly, Bahamian Village did not inform Travelers about the Third Amendment.

44. The Third Amendment amended Section 8(k) of the Lease to clearly and unequivocally give Wawa the right to terminate the Lease if the 2021 Lawsuit remained pending as of February 28, 2022.

45. The Lease provides that within five (5) business days following the termination of the Lease under Section 8 thereof and Wawa’s demand to Bahamian Village “the Bond shall be released and returned to Tenant [Wawa].” Exhibit A, Section 1A(d). Wawa made that demand in its February 28, 2022 Notice of Termination. See Exhibit G. Wawa is entitled to the Bond.

COUNT I – DECLARATORY RELIEF
(Seeking a Declaration that the Lease is Terminated)

46. Wawa re-asserts the allegations in paragraphs 1 through 45 as though fully set forth herein.

47. There is a bona fide, actual, present practical need for a declaration that the Lease is terminated.

48. Specifically, Wawa properly and timely terminated the Lease, under Section 8(k) of the Lease, as amended by the Third Amendment, because the 2021 Lawsuit remained pending as of February 28, 2022.

49. Bahamian Village, however, has refused to acknowledge that the Lease is terminated, and it has challenged the termination of same.

50. Based on the foregoing the requested declaration that the Lease is terminated deals with a present set of facts and a present controversy as to those facts.

51. The right of Wawa to have a terminated Lease depends upon applying the law regarding the present set of facts.

52. Wawa and Bahamian Village have an actual adverse and antagonistic interest regarding the termination of the Lease, and the antagonistic and adverse interests are all before the Court.

53. Finally, the requested declaration is not merely the giving of legal advice by the Court or an answer to questions propounded from curiosity.

WHEREFORE, Wawa respectfully requests that this Court declare that the Lease is terminated as of March 30, 2022, award Wawa its attorneys' fees and costs, and grant such other and further relief (including supplemental injunctive relief) as is necessary and proper.

COUNT II – DECLARATORY RELIEF
(Seeking a Declaration that the Bond Belongs to Wawa)

54. Wawa re-asserts the allegations in paragraphs 1 through 45 as though fully set forth herein.

55. There is a bona fide, actual, present practical need for a declaration that the Bond posted under the Lease belongs, and shall be returned, to Wawa.

56. Section 1A(d) of the Lease provides that, if the Lease is terminated in accordance with Section 8 (or other referenced sections) of the Lease, then “[w]ithin five (5) business days [thereof] and Tenant’s demand to Landlord for return of the Bond, the Bond shall be released and returned to Tenant.”

57. Wawa properly and timely terminated the Lease because the 2021 Lawsuit remained pending as of February 28, 2022. This was a proper termination of the Lease under Section 8. In the Notice of Termination, Wawa also provided “written notice and demand that the Bond shall be released and returned to Tenant within five (5) business days of the date hereof.” Exhibit G.

58. Based on this termination, Wawa is entitled to have the Bond released and returned to Wawa.

59. Bahamian Village, however, has refused to acknowledge that the Lease is terminated, and it has challenged the termination of same. Bahamian Village has interfered with Wawa’s ability to recover the Bond and Bahamian Village demands instead that Travelers “pay over the Bond” to Bahamian Village. Exhibit I.

60. Based on the foregoing the requested declaration that the Bond belongs and shall be returned to Wawa deals with a present set of facts and a present controversy as to those facts.

61. The right of Wawa regarding the Bond depends upon applying the law regarding the present set of facts.

62. Wawa and Bahamian Village have an actual adverse and antagonistic interest regarding the Bond, and the antagonistic and adverse interests are all before the Court.

63. Finally, the requested declaration is not merely the giving of legal advice by the Court or an answer to questions propounded from curiosity.

WHEREFORE, Wawa respectfully requests that this Court declare that Wawa is entitled to the immediate return of the Bond to Wawa, award Wawa its attorneys' fees and costs, and grant such other and further relief (including supplemental injunctive relief) as is necessary and proper.

Respectfully submitted,

By: /s/ Michael B. Green

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