

TWENTY-THIRD JUDICIAL CIRCUIT
OF VIRGINIA



J. CHRISTOPHER CLEMENS, JUDGE
ROANOKE CITY COURTHOUSE
315 CHURCH AVENUE, S.W.
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CIRCUIT COURT FOR THE COUNTY OF ROANOKE
CIRCUIT COURT FOR THE CITY OF ROANOKE
CIRCUIT COURT FOR THE CITY OF SALEM

COMMONWEALTH OF VIRGINIA

June 23, 2021

BY EMAIL ONLY

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RE: *Mignon, LLC v. Roanoke Wreck Repair, Inc.*
Circuit Court for the City of Roanoke
CL17-260

Dear Counsel:

This letter is in regard to our trial from April 27 - 29, 2021, in the above-referenced matter. Upon consideration of the written filings, exhibits, testimony and demeanor of witnesses, and written argument of counsel received May 7 and May 20, 2021, the Court is prepared to rule on issues raised by the parties. The Court finds that Roanoke Wreck Repair, Inc. (hereinafter "Roanoke Wreck Repair") breached its contract with Mignon, LLC (hereinafter "Mignon") and awards Mignon \$263,496.20 for damages caused by Roanoke Wreck Repair's breaches.

Mignon brought the current suit against former tenant Roanoke Wreck Repair for damages caused by alleged breaches of contract. Mignon argued that Roanoke Wreck Repair breached the contract by failing to make repairs and maintain Mignon's property during the course of the lease, which led to various property damage that required repair. Roanoke Wreck Repair argued that Mignon was not damaged to the extent alleged and that Mignon failed to prove its damages claims.

The Court finds Mignon's witness testimony and evidence compelling and rejects Roanoke Wreck Repair's argument that Mignon has failed to prove its damages to a reasonable degree of certainty. There is ample evidence before the Court that Mignon's property was damaged by Roanoke Wreck Repair's failure to properly maintain the Vinyl Composition Tile ("VCT") flooring and failure to regularly service the HVAC system. Mignon also presented evidence of broken light fixtures, non-functioning machinery, and peeling paint-conditions that fall below the industry standard.¹ Further, the Court finds that Roanoke Wreck Repair, despite having personal knowledge of the damage, spent very little time or money on repairs during the tenancy.²

Roanoke Wreck Repair argues that the damage presented in Mignon's exhibits was caused in large part by roof leaks that were Mignon's responsibility to fix. The Court finds this argument unpersuasive. With respect to the VCT flooring, Roanoke Wreck Repair's own witness testified that the roof leak affected only two or three tiles. However, the property is covered in around 10,600 tiles.³ Based on the testimony of Roanoke Wreck Repair's own witness, the Court finds that any tile damage from water coming from a roof leak was *de minimis*.

The Court similarly finds Roanoke Wreck Repair's claims that the roof leaks were generally responsible for the property's condition at the end of the lease unpersuasive. The Court finds Roanoke Wreck Repair's failures to perform maintenance, cleaning, and waxing, as well as water damage from flooding caused by broken sprinklers, all responsibilities of the Roanoke Wreck Repair pursuant to the lease, caused the damage to the VCT flooring.

The Court finds that Roanoke Wreck Repair's actions, and failure to act, caused the damage to Mignon's property. This damage required Mignon to make repairs and that in doing so, Mignon suffered lost rent. While the Court awards Mignon damages, the Court finds that Mignon's payment of the workers who repaired their property excessive, and has reduced the amount of damages accordingly.

The Court issues the following awards:

1. Materials – \$60,143.87 (including \$4,000 in damage to the VCT flooring, per findings listed above)

¹ As noted by Mignon's Witness William Hume.

² The evidence before the Court is that during their 10-year tenancy, Roanoke Wreck Repair spent only \$7,220.05 on maintenance. Under the parties' Lease, paragraph 13, Roanoke Wreck Repair was responsible for taking "good care of the building," keeping the property "in good order and condition," and making "all non-structural repairs necessary to maintain such good order."

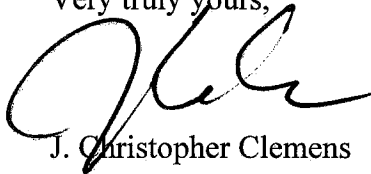
³ Mignon Witness David Underwood's Report notes on page 17 that VCT tiles are typically 12 x 12 square tiles; Mignon Witness William Hume's report notes in Exhibit 'A' that 10,600 square feet of VCT flooring was removed and reinstalled.

2. Labor – \$83,352.33 (at the \$18.43 per hour for Mr. Meade and \$40 per hour for Mr. Johnson, neither of which were contested by Roanoke Wreck Repair and which the Court finds reasonable).
3. Lost Rent – \$120,000 (Mignon is not entitled to lost rent for the entire time its property was empty, but only for the time that Roanoke Wreck Repair's breach caused the lack of a tenant while Mignon made necessary repairs. The Court finds a period of 12 months of recovery is appropriate based on the evidence presented).

The Court declines to award Mignon pre-judgment interest.

By July 7, 2021, Ms. Grubb shall prepare and submit a fully endorsed Order to the Court for entry, which of course preserves both parties' objections. If counsel are unable to agree on the form of the Order, then Ms. Grubb shall submit her proposed Order by July 7. Mr. Sharp shall submit his proposed Order by July 9. The Court will review both proposed Orders and enter one of them.

Very truly yours,



J. Christopher Clemens

JCC/ddh