

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

GARRISON SOUTHFIELD PARK LLC	*	
	*	
Plaintiff,	*	Case No. 15 CV006697
	*	
v.	*	Judge Michael Holbrook
	*	
CLOSED LOOP REFINING AND RECOVERY, INC.,	*	Magistrate Watters
	*	
Defendant.	*	

GARRISON SOUTHFIELD PARK LLC	*	
	*	
Plaintiff,	*	Case No. 16 CV 002317
	*	
v.	*	Judge Michael Holbrook
	*	
CLOSED LOOP REFINING AND RECOVERY, INC., et al.,	*	Magistrate Watters
	*	
Defendants.	*	

FINAL JUDGMENT ENTRY

The Court conducted a bench trial in these consolidated cases on August 2, 2017. At the trial, Plaintiff Garrison Southfield Park LLC (“Garrison”) presented evidence regarding the April 6, 2012 Lease Agreement and April 15, 2014 First Amendment of Lease (together, the “Lease”), the March 24, 2014 Temporary Occupancy Agreement (the “TOA”), the April 15, 2014 Guaranty of Lease (the “Guaranties”) signed by each of Defendants Brent Benham, David Cauchi, and Brian LaPoint (together, “Defendants”), and the execution and terms of each, as well as the conditions at and state of the premises located at 1655 Watkins Road, Columbus, Ohio (the “1655 Premises”) and 1675 Watkins

Road, Columbus, Ohio (the “1675 Premises,” and together with the 1655 Premises, the “Properties”).

Testimony was taken, and evidence admitted, on the amounts owed by Defendants under the Lease, TOA, and Guaranties from Kristi Mazejy, an employee of Garrison, who is an owner’s representative for the Properties, and Daniel Wendorf, a Senior Vice President at Jones Lang LaSalle, which is the manager of the Properties on behalf of Garrison. Additionally, the Court received testimony from two experts -- Michael Koenig, an environmental consultant at Atwell, LLC, and Tom Bolon, the CEO of NovoTec Recycling, LLC, an electronics recycler – that established the nature and quantity of hazardous cathode ray tubes (“CRTs”) and related electronic scrap material (collectively the “CRT Waste”) abandoned by Defendants at the Properties. Said witnesses also provided estimates of the costs for the removal and remediation of the CRT Waste. Finally, Garrison’s legal counsel, John Stock of Benesch, Friedlander, Coplan & Aronoff LLP, testified concerning the amount, reasonableness and necessity of attorney fees Garrison incurred in connection with this action as of the date of the bench trial.

Additionally, prior to the bench trial on March 7, 2017, the Court granted Garrison’s unopposed Motion for Default Judgment filed on February 13, 2017 against Defendant Closed Loop Refining and Recovery, Inc. (“Closed Loop”) based upon Closed Loop’s failure to plead or respond to the complaint following service of process. The Court held that the matter would proceed to a hearing before the Court’s Magistrate to determine Garrison’s claim for damages and attorney’s fees against Closed Loop.

Accordingly, pursuant to Civil Rule 53 and Local Rule 99.02, this case was referred to the magistrate for a damages hearing, which was held on May 8, 2017.

At the May 8, 2017 damages hearing, testimony was taken, and evidence admitted, on the amounts owed by Closed Loop under the Lease and TOA from Kelly Tamulonis, an employee of Jones Lang LaSalle. Additionally, the Court received testimony Messers. Koenig and Bolon concerning the costs for the removal and remediation of the CRT Waste. Finally, Garrison's legal counsel, Mr. Stock, testified concerning the amount, reasonableness and necessity of attorney fees Garrison incurred in connection with this action as of the date of the damages hearing.

Having considered the original materials submitted in support of default judgment, and upon the independent review of the additional testimony and evidence submitted at the May 8, 2017 damages hearing and August 2, 2017 bench trial, the Court finds that Closed Loop is in default of the terms of the TOA and Lease for failure to pay rent, utilities and late fees, and for committing waste at the Properties. To that end, the Court finds that Closed Loop was not engaged in legitimate CRT recycling operations at the Properties, but was instead engaged in the speculative accumulation and subsequent abandonment and disposal of the CRT Waste at the Properties without any feasible means of recycling it. The testimony established that Closed Loop and the Defendants also failed to segregate leaded funnel glass from panel glass during its CRT recycling operation, resulting in the abandonment of over 113 million pounds of crushed, commingled leaded and unleaded glass at the Properties in addition to approximately 15 million pounds of other electronic waste. As testified to by Mr. Koenig, a legitimate CRT recycling operation at the Properties would not have commingled the CRT glass because the cross-contamination of leaded and unleaded glass would have rendered any available

downstream recycling option unprofitable, *i.e.*, no legitimate market existed for this commingled glass as a feedstock for lead smelters or otherwise. The Court further finds that Defendants have breached the Guaranty by failing to perform or fulfill Closed Loop's obligations under the Lease and TOA.

As a direct and proximate result of the forgoing defaults and other Closed Loop operations, Plaintiff incurred and will incur the damages proved at the damages hearing and at trial to clean-up the Properties, in addition to Closed Loop's unpaid rent, use and occupancy fees, utility costs, and interest pursuant to the Lease, TOA and Guaranty.

Based upon the foregoing findings, combining the Court's April 12, 2017, Decision Granting, in part, Motion for Default Judgment and the evidence admitted at the May 8, 2017 damages hearing and August 2, 2017 trial, judgment is entered as follows:

IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. Judgment is entered in favor of Garrison and against Closed Loop, Brent Benham, David Cauchi, and Brian LaPoint, jointly and severally, in the amount of \$72,989.95 for unpaid use and occupancy fees and utility costs for breach of the TOA for the 1655 Premises and the Guaranties. Interest on this amount shall accrue at the rate of 18% per annum as against Brent Benham, David Cauchi, and Brian LaPoint, and at the rate of 4% per annum as against Closed Loop from October 1, 2015.

2. Judgment is entered in favor of Garrison and against Closed Loop, Brent Benham, David Cauchi, and Brian LaPoint, jointly and severally, in the amount of \$3,976,268.45 for unpaid rent, utility costs, and late fees pursuant to the Lease for the 1675 Premises and the Guaranties. Interest on this amount shall accrue at the rate of 18%

per annum as against Brent Benham, David Cauchi, and Brian LaPoint, and at the rate of 4% per annum as against Closed Loop from January 1, 2014.

3. Judgment is entered in favor of Garrison and against Closed Loop, Brent Benham, David Cauchi, and Brian LaPoint, jointly and severally, in the amount of \$14,181,553.74 for costs to clean-up the CRT Waste that resides at the 1655 Premises and 1675 Premises, pursuant to (a) the TOA; (b) the Lease; and (c) the Guaranties. Interest on this amount shall accrue at the rate of 4% per annum from the date of this Judgment Entry.

4. Judgment is entered in favor of Garrison and against Closed Loop, Brent Benham, David Cauchi, and Brian LaPoint, jointly and severally, in the amount of \$151,611.56 for reasonable attorneys' fees incurred by Garrison, pursuant to (a) the TOA;

(b) the Lease and (c) the Guaranties. Interest on this amount shall accrue at the rate of 4% per annum from the date of this Judgment Entry.

5. Judgment is entered in favor of Garrison and against Closed Loop, Brent Benham, David Cauchi, and Brian LaPoint, jointly and severally, for the costs incurred herein by Garrison.

THIS IS A FINAL APPEALABLE ORDER. THERE IS NO JUST REASON FOR DELAY.

Electronic notification to counsel of record

Copy via ordinary mail to:

Dennis Hall, Esq.
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Brent Benham
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Scottsdale, Arizona 85202

David Cauchi
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Gilbert, Arizona 85233

Brian LaPoint
5954 West Gary Drive
Chandler, Arizona 85226

Franklin County Court of Common Pleas

Date: 08-07-2017
Case Title: GARRISON SOUTHFIELD PARK LLC -VS- CLOSED LOOP
REFINING & RECOVERY INC ET AL
Case Number: 16CV002317
Type: JUDGMENT ENTRY

It Is So Ordered.

A handwritten signature in black ink, which appears to read "Michael J. Holbrook", is written over a circular, embossed or stamped seal. The seal contains text around its perimeter, which is partially obscured by the signature.

/s/ Judge Michael J. Holbrook

Court Disposition

Case Number: 16CV002317

Case Style: GARRISON SOUTHFIELD PARK LLC -VS- CLOSED
LOOP REFINING & RECOVERY INC ET AL

Case Terminated: 06 - Court Trial

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 16CV0023172017-07-1399980000
Document Title: 07-13-2017-MOTION IN LIMINE - PLAINTIFF:
GARRISON SOUTHFIELD PARK LLC
Disposition: MOTION IS MOOT