

STATE OF MINNESOTA
 COUNTY OF HENNEPIN

FILED

DISTRICT COURT

2011 JUL -1 PM 3:30 FOURTH JUDICIAL DISTRICT

BY _____ DEPUTY Case Type: 1-Conciliation Appeal
 HENN CO. DISTRICT
 COURT ADMINISTRATOR

Ruth Ann Shaugobay Elbaz,

Plaintiff,

Court File No. 27-CV-10-16164

Hon. Tanya M. Bransford

vs.

Aychoeun Tea,

**FINDINGS OF FACT, CONCLUSIONS OF
 LAW AND ORDER FOR JUDGMENT**

Defendant.

The above-entitled matter came before the Honorable Tanya M. Bransford in Hennepin County District Court on March 21, March 22, and March 25, 2011 for a bench trial. The record closed on April 4, 2011 upon receipt of post-trial memoranda from counsel.

Kristin Berger Parker of Leonard, Street and Deinard P.A. appeared for and on behalf of Plaintiff Ruth Ann Shaugobay Elbaz who was present at the trial.

Morgan Greenwood Smith of Smith & Raver, LLP appeared for and on behalf of Defendant Aychoeun Tea who was present at the trial.

Based on the records, and proceedings herein, the Court hereby enters the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Defendant Aychoeun Tea ("Ms. Tea") owns and operates the apartment buildings located at 5761 33rd Ave. S (10 unit building) and 4604 Bloomington Ave. S. (4 unit building) in Minneapolis, Minnesota. In addition, Ms. Tea owns two other properties.

2. Plaintiff Ruth Ann Shaugobay Elbaz ("Ms. Elbaz") was a tenant in the building located at 5761 33rd Ave. S. from April 1, 2007 through April 2010.
3. Ms. Tea and Ms. Elbaz became friends during the tenancy. They would get together for meals and on occasion would go to Mystic Lake Casino together. Ms. Tea would occasionally loan money to Ms. Elbaz.
4. Ms. Tea was authorized to enter into lease agreements and other contracts as the owner of 5761 33rd Ave. S. Ms. Tea is Cambodian, but has lived in Minnesota for over 10 years. Ms. Tea normally conducts business in English but has difficulty understanding some concepts in English and conveying her thoughts in English. Ms. Tea speaks broken English with a heavy accent, yet she also has difficulty speaking Cambodian and using a Cambodian interpreter. Ms. Tea has difficulty writing English using correct grammar and sentence structure.
5. On occasion Ms. Tea hired Ms. Elbaz to serve eviction summonses to tenants on behalf of Ms. Tea. Ms. Tea compensated Ms. Elbaz by crediting her \$40.00 towards her rent for each eviction notice served. Ms. Elbaz served eviction notices approximately five times on behalf of Ms. Tea. Ms. Tea would immediately apply the rent credits for Ms. Elbaz serving eviction notices.
6. Ms. Tea credited Ms. Elbaz's rent by \$20 to \$40 and recorded this in her ledger as compensation for Ms. Elbaz driving Ms. Tea on a particular day. (Ex. 15).
7. Ms. Tea kept records of her payments for hired contractors work. (Exs. 107 and 11).
8. Ms. Tea paid Ms. Elbaz \$170.00 for cleaning services rendered at a different property. (Ex. 100.)

9. Ms. Tea asked Ms. Elbaz to take a telephone call from a plumber regarding one of the properties. Ms. Elbaz requested Ms. Tea to buy her lunch as compensation for taking the phone call.
10. Ms. Elbaz assisted in locating a Section 8 rent check for one of the building tenants at the request of Ms. Tea.
11. Ms. Tea's son, Oudam Tun Tea, performed and continued at the time of trial to perform caretaking duties for his mother's various properties in the Twin Cities. The duties consisted of cleaning the common areas of the building, cleaning and painting apartments after a tenant moved out and yard work which included mowing the lawn, racking leaves and shoveling walkways.
12. Oudam Tun Tea would cut the grass approximately once per week and would clean the hallways approximately once per week. Oudum Tun Tea would transport a lawn mower from Ms. Tea's home in Prior Lake when he needed to cut the grass of Ms. Tea's rental properties.
13. Oudum Tun Tea was compensated for his caretaking by receiving free rent. In addition, he would receive \$100.00 for every move-in referral. Oudum Tun Tea recruited Ms. Elbaz to be a tenant in Ms. Tea's 5761 33rd Ave. S property.
14. Oudam Tun Tea moved out of the building located at 5761 33rd Avenue South in early July 2008. Oudam Tun Tea relocated to another property owned by his mother, Ms. Tea. Oudom Tun Tea moved out after a verbal disagreement with his mother.
15. Ms. Elbaz asked Ms. Tea if she could be the building manager of 5761 33rd Ave. S after Oudum Tun Tea moved out. Ms. Elbaz at this time requested compensation of \$1000.00

to do the caretaking work. Ms. Tea declined Ms. Elbaz's offer, indicating to Ms. Elbaz that her son would continue to manage and care for the property.

16. Ms. Elbaz is employed as a stage hand and receives \$25.00 to \$55.00 per hour working on various productions.
17. Ms. Elbaz was frequently late paying her rent and was threatened with eviction on more than one occasion (a formal eviction on Ms. Elbaz was never pursued) (Exs. 105, 106, 108, 111, 113).
18. Ms. Elbaz entered into a verbal agreement with Ms. Tea in July 2008 to do caretaking work for 5761 33rd Avenue S. The caretaking work included cleaning and maintaining the apartment building and overturning apartments when tenants vacated the apartment, in exchange for her electric bill being paid.
19. Ms. Elbaz's electric bill from July 13, 2008 through March 15, 2009 totaled \$286.24 (Ex. 112).
20. On September 16, 2008, Ms. Tea executed a Power of Authority authorizing Ms. Elbaz to act as attorney in fact in housing court.
21. Ms. Elbaz contends she was hired on July 13, 2008 and her employment was terminated by Ms. Tea on October 16, 2009.
22. Ms. Elbaz testified that she would do lawn work from 8:00 a.m. until 10:00 p.m. Ms. Elbaz stated she would do lawn work two to three times each week.
23. Ms. Elbaz asserts she would overturn apartments approximately four to five times per month.
24. There was no testimony regarding Ms. Elbaz's intellectual capacity. However, during the trial Ms. Elbaz displayed difficulty conceptualizing numbers. For example, she testified

that she thought her electric bill was \$5.00 a month in the summer and \$20.00 a month in the winter. Ms. Elbaz was adamant in her testimony that it took her fourteen hours from 8am to 10pm to cut the lawn. Ms. Elbaz displayed confusion when cross examined about her testimony regarding the number of hours she spent doing yard work.

25. After an incident in the neighborhood where another landlord was assaulted and robbed, Ms. Tea asked Ms. Elbaz to help her draft a memorandum to be posted in the building informing tenants that payment of rent would no longer be accepted in cash. Ms. Elbaz wrote the document and included that she was the building manager and directed the tenants to contact her. After reading the document, Ms. Tea scratched out the language that stated: "she is responsible take care the apt except for the collecting the rent 1) any questions ask her she responsible for the apt." (sic) (Ex 3).
26. Ms. Tea signed a letter that Ms. Elbaz typed dated July 13, 2008 indicating that Ms. Elbaz would serve as the building manager and to pay rent using money orders. Ms. Tea denies ever signing the document (Ex. 4).
27. Ms. Elbaz asserts Exhibit 4 was posted in the common area while Ms. Tea maintains that the document was never posted and was thrown away.
28. Although Ms. Tea denies entering into an agreement with Ms. Elbaz, Ms. Tea references the agreement in Exhibit 6, when Ms. Tea writes "agreement July 13-08 no more." However, this same letter goes on to assert that Ms. Tea would pay Ms. Elbaz immediately when she would do work or would credit her rent.
29. Exhibit 6 reads in relevant part:

Agreement July 13-08 no more
Ruth when you do work for me when I ask you I paid you that time
or take off from money you borrow me or I will take off from rent

in than time, I all ready paid you. I don't owed you anything about cleaning. (sic)

30. Ms. Elbaz did not keep a record of the hours she worked or a record of how many apartments she overturned. Ms. Elbaz asserts she worked a minimum of 15 hours per week from July 13 2008 until October 16, 2009. This is approximately 66 weeks for a total of 990 hours.
31. Ms. Elbaz did not have a key to the boiler room where maintenance supplies were kept. Ms. Tea and her son Oudam Tun Tea had keys to the boiler room.
32. Ms. Elbaz kept a broom, mop, bucket and lawnmower in her apartment.
33. On April 6, 2009, Ms. Elbaz sent a letter to Ms. Tea (Ex. 3). In this letter:
 - a. Ms. Elbaz recited the terms of the alleged July 2008 Agreement between Ms. Tea and Ms. Elbaz;
 - b. Ms. Elbaz stated that she had performed her duties in accordance with the July 2008 Agreement until the writing of the letter;
 - c. Ms. Elbaz stated that Ms. Tea had not compensated her in accordance with the July 2008 Agreement;
 - d. Ms. Elbaz informed Ms. Tea that she was withholding \$324 from her rent, in order to pay the electric bill.
34. When Ms. Tea learned that Ms. Elbaz was withholding rent, Ms. Tea became angry.
35. Ms. Tea addressed the electric bill in Exhibit 6 which states in relevant part:

I'm will pay you electric but you don't give me electric bill all this time now you sent me the bill \$324.00 this bill charge before July 13, 2008 and after you and me have little problem about (illegible) I will see you discuss about this electric how much you still owed me rent. As today I don't need you no more since you have't talk to me or work since. I will see you on Monday. (sic)

36. Ms. Tea raised Ms. Elbaz's rent from \$585.00 per month to \$650 per month, effective May 1, 2009 after the one year lease had expired. (Exs. 2 and 105.)
37. In or around March 2010, Ms. Tea informed Ms. Elbaz that she would not renew Ms. Elbaz's lease.

Conclusions of Law

1. When the language is clear and unambiguous, courts enforce the agreement of the parties as expressed in the language of the contract. Dykes v. Sukup Mfg. Co., 781 N.W. 2d 578, 582 (Minn. 2010). The language of a contract is ambiguous if it is susceptible to two or more reasonable interpretations. Id. Courts decide as a matter of law whether a contract is ambiguous. Id. Ambiguous contract terms are generally construed against the drafter. Hilligoss v. Cargill, Inc., 649 N.W.2s 142, 148 (Minn. 2002).
2. It is a fundamental rule of law that an alleged contract that is so vague, indefinite, and uncertain as to place the meaning and intent of the parties in the realm of speculation is void and unenforceable. King v. Dalton Motors, Inc. 109 N.W.2d 51, 52 (Minn. 1961). Consequently, where substantial and necessary terms are specifically left open for future negotiation, the purported contract is fatally defective. Id.
3. The July 13, 2008 memorandum does not constitute a written employment contract because the terms of the contract are not defined, such as the payment terms, duration of the contract, and amount of hours to be worked.
4. Plaintiff asserts that an oral agreement was entered into between the parties. An oral contract also requires agreement "with reasonable certainty about the same thing and on the same terms." Peters v. Mut. Benefit Life Ins. Co., 420 N.W.2d 908, 914 (Minn. App.

1988). There must be a “meeting of the minds concerning [the alleged agreement’s] essential elements.” Minneapolis Cablesystems v. City of Minneapolis, 299 N.W.2d 121, 122 (Minn. 1980). Whether an oral agreement exists is a question of fact. Husbyn v. Lunde, 166 N.W.2d 333, 335 (Minn. 1969). The written documentation in Exhibits 3, 4 and 6 supports an oral agreement between the parties. Ms. Tea acknowledged in Exhibit 6 the existence of an agreement to pay the electric bill of Ms. Elbaz beginning July 13, 2008 for occasional caretaking work. There was an agreement between Ms. Elbaz and Ms. Tea for payment of the electric bill from July 13, 2008 through April 8, 2009. The agreement was terminated on April 8, 2009 when Ms. Tea wrote to Ms. Elbaz “agreement July 13-08 no more” and later stating in the same document, “I don’t need you no more.” Plaintiff’s electric bill from July 13, 2008 through March 15, 2009 totaled \$286.24. (Ex. 112). There is insufficient evidence to establish that Ms. Tea agreed not to raise Ms. Elbaz’s rent as part of the July 2008 caretaking agreement.

5. There was insufficient evidence to establish that Ms. Elbaz did more than occasional service work for Ms. Tea. Ms. Elbaz was not an employee of Ms. Tea. Furthermore, Ms. Elbaz was unable to substantiate her claim for minimum wage because she could not establish with contemporaneous evidence the number of hours she worked. Ms. Elbaz testimony that she worked approximately 15 hours a week from July 13, 2008 through October 16, 2009 was not proven by the greater weight of the evidence.
6. In Exhibits 3 and 4 the documents provide that Ms. Elbaz will serve as a manager but the documentation does not describe the job duties of a “manager.”
7. It is established that Ms. Tea kept records of when she paid Ms. Elbaz for miscellaneous work in the past. In Exhibit 6, Ms. Tea indicates that she does not owe any money to Ms.

Elbaz and that she paid her for all the work she has done at the time the work was completed. Ms. Tea kept similar records for contracting work that was done at the apartment by third parties.

8. There are no records kept by Ms. Tea for Ms. Elbaz's caretaking work. Ms. Elbaz did not produce any documentation of the hours, the dates, the times she worked or the apartments she overturned. Nor did Ms. Elbaz provide testimony to these details. The record is deficient of evidence to establish the hours Ms. Elbaz worked as a caretaker.
9. Furthermore, some of Ms. Elbaz's testimony regarding her caretaking was inconceivable. Elbaz testified that she would do lawn work from 8:00 a.m. until 10:00 p.m. Ms. Elbaz stated she would do lawn work two to three times each week. It is implausible that a Minneapolis apartment building with 10 units would require 14 hours of yard work in one day. In addition, Ms. Elbaz testified she would overturn four to five apartments every month between the two Minneapolis properties which together had 14 units.
10. In a civil action the plaintiff has the burden to establish he/she has a right to recover by a fair preponderance of the evidence. Ms. Elbaz asserts three counts in her complaint: 1) failure to pay minimum wage, 2) failure to keep records, and 3) retaliation. While the court finds there was an agreement to do caretaking work for payment of Ms. Elbaz's electric bill, there was insufficient evidence to establish the amount of hours Ms. Elbaz worked as a caretaker for Ms. Tea. Ms. Elbaz's testimony that she worked approximately 15 hours per week doing caretaking work was not credible and was contradicted by her own testimony that she would do 14 hours of yard work in one day for a 10 unit apartment building. It was not credible testimony that Ms. Elbaz performed yard work 3 to 4 times per week. In addition, it was not credible testimony that Ms. Elbaz overturned

4 to 5 apartments each month. The plaintiff failed to establish when the caretaking work was performed and the amount of hours or days she worked as a caretaker for Defendant. Because the Plaintiff did not establish the amount of hours worked, the Court will not award any additional monetary amount beyond the electric bill totaling \$286.24.

Order

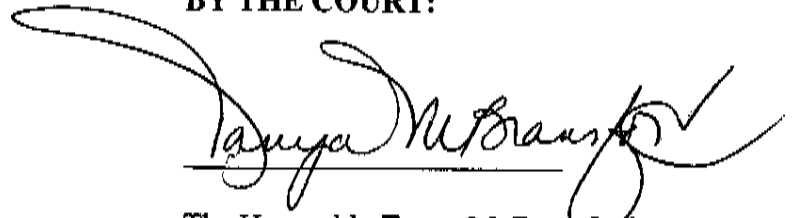
1. Based upon the foregoing Findings of Fact and Conclusions of Law, this Court enters an Order for Judgment in Plaintiff's favor against Defendant in the amount of \$286.24 plus costs and disbursements.
2. Plaintiff's motion for attorney's fees is **DENIED**.

LET JUDGMENT BE ENTERED ACCORDINGLY

BY THE COURT:

Date: _____

July 1, 2011



The Honorable Tanya M. Bransford
District Court Judge
Fourth Judicial District