

FILED _____

AT _____ O'Clock _____ M
CLERK OF DISTRICT COURT

Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

TRIPLE C IRONWOOD, LLC,)
)
 Plaintiff,)
 vs.)
)
 SPOKANE HOME HEALTHCARE, INC., a)
 Washington corporation, DBA, Idaho)
 Home Medical,)
)
 Defendant.)
 _____)

Case No. **CV 2011 1814**
**MEMORANDUM DECISION
GRANTING SUMMARY JUDGMENT
FOR PLAINTIFF**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on the Motion for Summary Judgment filed by plaintiff Triple C Ironwood, LLC, (Triple C) on May 26, 2011. Triple C filed its Complaint against defendant Spokane Home Healthcare (SHH) on March 1, 2011, alleging breach of a lease agreement that was entered into on or about July 11, 1990, via SHH's failure to pay rent, timely vacate, failure to pay CAM charges (presumably common area maintenance, although the acronym was undefined in Triple C's briefing), failure to pay insurance, failure to pay taxes, failure to pay late charges, and failure to pay administrative charges and management expenses. Plaintiff's Memorandum Supporting Motion for Summary Judgment, pp. 3-4. SHH filed its Answer on April 13, 2011.

On May 26, 2011, Triple C filed its motion for summary judgment and supporting brief and affidavits. SHH has failed to respond in any fashion to the pending motion for

summary judgment. At oral argument on August 3, 2011, counsel for Triple C appeared, but no attorney appeared for SHH. Counsel for Triple C presented a proposed Order Granting Triple C Ironwood, LLC's Motion for Summary Judgment, and represented that this was prepared in conjunction with SHH's counsel, incorporating SHH's counsel's changes, although SHH's counsel was not stipulating to the motion for summary judgment or the proposed order.

II. STANDARD OF REVIEW.

In considering a motion for summary judgment, the Court is mindful that summary judgment may properly be granted only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c). In determining whether any issue of material fact exists, this court must construe all facts and inferences contained in the pleadings, depositions, and admissions, together with the affidavits, if any, in the light most favorable to the non-moving party. I.R.C.P. 56(c); *Sewell v. Neilson, Monroe Inc.*, 109 Idaho 192, 194, 706 P.2d 81, 83 (Ct. App. 1985). A mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue for purposes of summary judgment. *Samuel v. Hepworth, Nungester & Lezamiz, Inc.*, 134, Idaho 84, 87, 996 P.2d 303, 306 (2002). Summary judgment must be denied if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence. *Smith v. Meridian Joint School District No. 2*, 128 Idaho 714, 718, 918 P.2d 583, 587 (1996); *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 519, 650 P.2d 657, 662 (1982). In a matter set for a court trial, in which the Court acts as the trier of fact, the District Judge is entitled to draw all reasonable inferences from any undisputed facts "because the court alone would be responsible for resolving the conflict between those inferences." *Parker v.*

Kokot, 117 Idaho 963, 967, 793 P.2d 195, 199 (1990) (citing *Riverside Dev. v. Ritchie*, 103 Idaho 515, 650 P.2d 657 (1982)).

III. ANALYSIS.

Triple C contends:

...Defendant was to pay rent for the months of January 2010 through October 2010, in the amount of \$4,917 per month. And where as here Defendant remained in possession the lease premises after October 31, 2010, rent in the amount of \$9,834.62 per month was due. (internal citations omitted).

Plaintiff's Memorandum Supporting Motion for Summary Judgment, p. 6. Portions of the lease agreement are cited to and quoted by Triple C, including ¶ 21.1. (stating a holdover tenancy is charged at two times the minimum monthly rent rate), ¶ 29.12 (providing an interest rate of 18% on rent due), ¶ 4.4(b) (providing for common area maintenance charges are due monthly in addition to rent), ¶ 4.4(a)(2) (requiring payment of certain taxes), ¶ 4.4(b)(1) (requiring payment of management expenses and administrative expenses), ¶ 4.4(a)(1) (requiring pro rata payment of insurance premiums), ¶ 14.1 (requiring tenant to maintain liability insurance at its own expense), and ¶ 29.12 (addressing late charges of 10% of any overdue amounts, plus any attorney fees incurred by the landlord.). *Id.*, pp. 6-8. Triple C has provided SHH's discovery responses to the proffered Requests for Admission as an attachment to the affidavit of Jason Wing. SHH has admitted to being bound by the terms of the lease, and to having failed to pay rent due, common area management charges, insurance charges, taxes, and other fees and charges. Exhibit A to the Affidavit of Jason S. Wing Supporting Plaintiff's Motion for Summary Judgment, at pp. 9-10. It is Triple C's belief that SHH is merely disputing the amount due under the lease agreement, not that amounts are due under the lease agreement. Plaintiff's Memorandum Supporting Motion for Summary Judgment, p. 2. However, SHH has not responded to the motion

for summary judgment and, therefore, SHH's disputes are simply a matter of conjecture. SHH filed its answer on April 13, 2011. Since the answer is not a "verified" answer, this Court is unable to substitute such answer for an affidavit in order to place any matter in dispute. I.R.C.P. 56(e); *Camp v. Jimenez*, 107 Idaho 878, 881, 693, P.2d 1080, 1083 (Ct.App. 1984).

As stated, *supra*, a mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue for purposes of summary judgment. *Samuel v. Hepworth, Nungester & Lezamiz, Inc.*, 134, Idaho 84, 87, 996 P.2d 303, 306 (2002). Here, SHH, by failing to respond to Triple C's motion for summary judgment, has not set forth even a scintilla of evidence or slight doubt as to the facts of the instant matter. In *Mountain Restaurant Corp. v. Parkcenter Mall Associates*, 122 Idaho 261, 833 P.2d 119 (Ct.App. 1992), the Idaho Court of Appeals wrote:

A material breach of a contract is a breach so substantial and fundamental that it defeats the object of the parties in entering into the contract...There is no material breach of the contract where substantial performance has been rendered...Whether a breach of contract is material is a question of fact. (internal citations omitted).

122 Idaho 261, 265, 833 P.2d 119, 123. The lease agreement provides that the tenant's failure to pay rent for three days following written notice thereof by the landlord amounts to a default. Exhibit A to the Complaint, p. 8 ¶ 16.1. SHH admitted Triple C's Request for Admission Number 9: "Admit that the 3-day notice to Pay or Vacate Premises attached as Exhibit 'B' to Plaintiff's Complaint for Restitution of Lease Premises, in Kootenai County Case No. CV 2011-1588, was served on Defendant on or about February 10, 2011." Exhibit A to the Affidavit of Jason S. Wing Supporting Plaintiff's Motion for Summary Judgment, at pp. 9-10. SHH has not provided the Court with any dispute as to any material fact in this matter. As such, Triple C has met the

burden of demonstrating its entitlement to judgment as a matter of law and the absence of disputed material facts.

III. CONCLUSION AND ORDER.

For the reasons stated above, summary judgment in favor of Triple C against SHH must be granted.

IT IS HEREBY ORDERED Triple C's motion for summary judgment is GRANTED, summary judgment in favor of Triple C against SHH is entered, the Court will sign the propose Order Granting Triple C Ironwood, LLC's Motion for Summary Judgment, and counsel for Triple C is directed to prepare an appropriate "judgment".

Entered this 3rd day of August, 2011.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of August, 2011, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer
Dennis M. Davis/Jason Wing

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| Lawyer
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Jeanne Clausen, Deputy Clerk