

**VP UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION**

MAYFIELD CONSUMER PRODUCTS, LLC,

Plaintiff

v.

CASE NO.: 5:22-CV-46-BJB

UB (MVP-MAYFIELD), LLC,

Defendant

and

MVP GROUP INTERNATIONAL, INC.,

Interested Party

COMPLAINT

Mayfield Consumer Products, LLC (“MCP”), for its complaint against UB (MVP-Mayfield), LLC (“Landlord”), states:

INTRODUCTION

1. On December 10, 2021, MCP suffered a devastating loss at the facility located at 112 Industrial Boulevard, Mayfield, Kentucky (the “Candle Factory”), due to a catastrophic tornado. The tornado leveled the Candle Factory and injured many of MCP’s full-time and temporary workers, killing nine individuals working at the Candle Factory that night. Needless to say, MCP’s employees and business suffered a great loss, one from which they continue to recover—physically, mentally, emotionally, and financially.

2. While MCP and its employees continue to recover from the devastating tornado, MCP’s Landlord has attempted at every turn to interfere with MCP’s recovery, attempting to take

as much of the available insurance proceeds as possible, thereby placing MCP's business and employees' jobs in jeopardy.

3. Recently, matters came to a head when MCP's Landlord sent a letter to MCP's insurers telling them not to disburse any additional insurance proceeds to MCP.

4. Landlord had no right to instruct MCP's insurers in this way. By doing so, Landlord has interrupted the distribution of insurance proceeds to which it has no right, but which are necessary to allow MCP to continue its operation.

5. To make matters worse, Landlord interfered with the insurance proceeds after MCP told Landlord that it would reconstruct the Candle Factory back to the way it was when MCP began its lease with Landlord, as required under the Lease. This offer was not enough. Landlord's greed overcame it, so it rejected MCP's offer and then attempted to stranglehold MCP by cutting off insurance proceeds rightly payable to it.

6. Landlord must be punished in the maximum amount provided for by law for its egregious, exploitive, and devastating conduct. While MCP and its employees try to recover, Landlord is taking advantage of the devastation caused by the tornado to get more than it is entitled to.

PARTIES, JURISDICTION AND VENUE

7. MCP is a Kentucky limited liability company with one member: The Van DeVenter Irrevocable Trust (the "Trust"), a Wyoming trust. Willow Street Trust Company of Wyoming, LLC ("WSTC") serves as trustee of the Trust. The sole member of WSTC is WSG Holdco, LLC ("Holdco"), a Wyoming limited liability company with its principal place of business in Jackson, Wyoming. Holdco is ultimately owned and controlled by six members, all of whom are citizens of Wyoming. Thus, for jurisdictional purposes, MCP is a citizen of the state of Wyoming.

8. MCP operates a candle manufacturing business and, prior to the tornado, employed more than 500 individuals in the Graves County, Kentucky area.

9. Landlord is a Delaware limited liability company whose members are not citizens or residents of Wyoming. Its registered agent for service of process is Cogency Global, Inc., 828 Lane Allen Road, Suite 219, Lexington, KY 40504. Its principal office is located at 9450 W. Bryn Mawr, Suite 750, Rosemont, IL 60018. It is an entity ultimately owned by Brennan Investment Group, which owns and operates a national portfolio of industrial properties throughout major regions of the United States.

10. MVP Group International, Inc. is a corporation incorporated under the laws of the state of Kentucky, with a principal place of business in North Carolina. Its registered agent for service of process is Corporation Service Company, 421 W. Main Street, Frankfort, KY 40601. Its principal office is located at 430 Gentry Road, Elkin, NC 28621.

11. MVP is the original tenant of the Candle Factory. MVP sublet its interest in the Candle Factory to MCP. It is named herein as an interested party only.

12. Jurisdiction and venue in this Court are proper because the parties are citizens of different states and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332. In addition, the Candle Factory that is the subject of this action is located in this district and the events or omissions giving rise to the claim occurred in this district. 28 U.S.C. § 1391.

FACTUAL BACKGROUND

13. The December 10, 2021 tornado that struck Mayfield, Kentucky destroyed the Candle Factory operated by MCP, including all equipment, inventory, and other personal property owned by MCP. The tornado shut down MCP's operations, disrupting its cashflow and causing the layoff of hundreds of employees who no longer had a place to work.

14. In addition to the Candle Factory, MCP lost another distribution center and all of its contents and inventory in the December 10, 2021 tornado.

15. Since then, MCP has worked diligently to clean up the debris at the Candle Factory and to restart its business at a different location, with hopes of hiring many of the employees who depended on and lost their job as a result of the December 10, 2021 tornado.

16. MCP had obtained insurance to address a casualty such as the tornado, which included, among others, real property coverage, equipment coverage, inventory coverage, and time element coverage. MCP's limit on its insurance policy is \$40,000,000. Of that amount, \$5,500,000 was the stated value for the Candle Factory and its industrial machinery.

17. MCP's lease with Landlord clarifies the parties' rights to the insurance proceeds, including the insurance proceeds allocable to the Candle Factory. Section 6.01 provides:

Condemnation and Casualty.

(a) **General Provisions.** Except as provided in Section 6.01(b) and (c), Lessee hereby irrevocably assigns to Lessor any award, compensation or insurance payment to which Lessee may become entitled by reason of Lessee's interest in the Premises (i) if the use, occupancy or title of the Premises or any part thereof is taken, requisitioned or sold in, by or on account of any actual or threatened eminent domain proceeding or other action by any person having the power of eminent domain ("Condemnation") or (ii) if the Premises or any part thereof is damaged or destroyed by fire, flood or other casualty ("Casualty"). All awards, compensations and insurance payments on account of any Condemnation or Casualty are herein collectively called "Compensation." Lessee may not unilaterally negotiate, prosecute or adjust any claim for any Compensation. Lessee must consult with and obtain Lessor's consent thereto. If the parties are unable to so agree, then they shall appoint an entity or individual that specializes in such negotiations who shall negotiate, prosecute and adjust a claim for Compensation. Lessor shall be entitled to participate in any such proceeding, action, negotiation, prosecution, appeal or adjustment as contemplated herein. *Notwithstanding anything to the contrary contained in this Article VI, if permissible under applicable law, any separate Compensation made to Lessee for its moving and relocation expenses, anticipated loss of business profits, loss of goodwill or fixtures and equipment paid for by Lessee and which are not part of the Premises (including, without limitation, the Severable Property) shall be paid directly to and shall be retained by Lessee (and shall not be deemed to be "Compensation").* All Compensation shall be applied

pursuant to this Section 6.01, and all such Compensation (less the expense of collecting such Compensation) is herein called the “Net Proceeds.” Except as specifically set for herein, all Net Proceeds shall be paid to the Proceeds Trustee (as defined herein) and applied pursuant to this Section 6.01. If the Premises or any part thereof shall be damaged or destroyed by Casualty, and if the estimated cost of rebuilding, replacing or repairing the same shall exceed \$50,000, Lessee promptly shall notify Lessor thereof.

18. Pursuant to the emphasized portion of Section 6.01, MCP is entitled to recover and receive “separate Compensation” for “moving and relocation expenses, anticipated loss of business profits, loss of goodwill or fixtures and equipment paid for by the Lessee and which are not part of the Premises.”

19. Landlord submitted a claim for the reconstruction of the Candle Factory with an estimated rebuilding cost of \$15,000,000. A copy of the estimate submitted by Landlord is attached hereto as **Exhibit A**. This estimate would result in the Candle Factory being underinsured. Moreover, it is an inflated rebuilding cost designed to exploit the insurance proceeds.

20. MCP agreed to reconstruct the Candle Factory at its expense within eight months. MCP received an estimate that the reconstruction cost would be less than or equal to \$5,000,000. A copy of MCP’s offer to reconstruct the Candle Factory is attached hereto as **Exhibit B**.

21. Landlord refused MCP’s offer without justification. A copy of Landlord’s refusal is attached hereto as **Exhibit C**. By doing so, Landlord failed to mitigate its losses or damages.

22. Landlord then maliciously sent a letter to MCP’s insurers that was intended to, and did in fact, interfere with MCP’s recovery of insurance proceeds to which it is entitled. The letter, sent on behalf of Landlord by Landlord’s counsel, instructed the insurers not to make any further payment of insurance proceeds to MCP, stating: “Lessor also requests that no further payments be made upon receipt of this letter by any insurance related to any damage or loss or claim arising

from the tornado that occurred on December 10, 2021.” Lessor then went on to claim: “Both MCP and MVP had no authority under the Lease to request or obtain compensation under any applicable insurance without first consulting with Lessor and complying with the above Lease provision.”

This letter is attached hereto as **Exhibit D**.

23. Landlord’s statements are patently false. Such statements directly contradict the plain language of the Lease, which specifically gives MCP the right to receive, among other things, compensation for anticipated lost profits.

24. By instructing MCP’s insurers to cease all further payments to MCP, Landlord directly interfered with MCP’s rights to insurance proceeds—insurance proceeds to which Landlord has no right.

CAUSES OF ACTION

COUNT I

INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS

25. MCP adopts by reference the paragraphs set forth above.

26. MCP had a valid, enforceable contract with its insurers. Pursuant to that contract, MCP is entitled to insurance benefits arising out of the December 10, 2021 tornado that struck the Candle Factory.

27. Landlord has knowledge of the contract between MCP and its insurers. In fact, MCP has provided Landlord with all of its applicable insurance policies.

28. Landlord, with malice and no privilege or justification, intentionally interfered with MCP’s contractual relationship with its insurers by instructing the insurers not to pay MCP any further insurance benefits. In so interfering, Landlord intended to cause breach of the contractual relationship between MCP and its insurers.

29. Landlord had no right to so instruct MCP's insurers, and did so with an improper motive and through improper means.

30. Landlord's interference actually and proximately caused breach of MCP's contract with its insurers.

31. Landlord has thus far successfully prevented MCP's insurers from paying MCP insurance proceeds to which it is entitled, damaging MCP's business.

32. MCP is entitled to compensatory damages for any harm suffered by MCP.

33. Landlord's actions were and are willful, wanton, and intentional. Landlord has failed to exercise any form of reasonable care in regard for the lives, safety, and/or property of others. MCP is entitled to punitive damages in the maximum amount provided for by law as a result of Landlord's willful, wanton, and intentional interference with MCP's contractual relationship with its insurers.

COUNT II

DECLARATORY JUDGMENT (28 U.S.C. §§ 2201–2202)

34. MCP adopts by reference the allegations set forth above.

35. Landlord received a grossly inflated estimate to reconstruct the Candle Factory. Upon information and belief, Landlord did so to exceed its maximum insurance recovery and with an intent to pursue the excess above the available insurance proceeds intended for MCP, or from MCP on a breach of lease claim.

36. MCP has agreed to reconstruct the Candle Factory to the condition it was in when it was leased to MCP. MCP's estimated cost of doing so is less than or equal to \$5,000,000. Landlord has refused to permit MCP to reconstruct the Candle Factory, thereby failing to mitigate its losses and damages.

37. There is an ongoing dispute between the parties as to MCP's right to reconstruct the Candle Factory, which would mitigate Landlord's losses and damages, mitigate any claim against MCP for alleged breach of the lease, and preserve available insurance proceeds for other needs. This constitutes "a case of actual controversy within [the Court's] jurisdiction" as there is a substantial, immediate, and real controversy between parties with adverse legal interests of such immediacy and existence so to warrant a declaratory judgment. 28 U.S.C. § 2201(a).

38. The Court has an independent basis for jurisdiction based on the diversity of the parties. 28 U.S.C. § 1332.

39. MCP respectfully requests that the Court enter an order declaring that Landlord, as a matter of law, failed to mitigate its losses and damages, and failed to act in a commercially reasonable manner by refusing to permit MCP to reconstruct the Candle Factory back to the condition (or better) in which it was received by MCP and in accordance with the original construction plans.

WHEREFORE, MCP respectfully requests that the Court:

- A. Enter judgment for MCP for compensatory damages in the amount proven at trial;
- B. Enter judgment against Landlord for punitive damages in the maximum amount permitted by law;
- C. Enter an order declaring that Landlord, as a matter of law, has failed to mitigate its losses and damages and failed to act in a commercially reasonable manner by refusing to permit MCP to rebuild the Candle Factory;
- D. Grant a jury trial on all issue so triable; and
- E. Award MCP any and all other relief to which it appears entitled.

Respectfully submitted,

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