

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

STRECK, INC., A Nebraska Corporation,)	CASE NO. CI 16- _____
)	
Plaintiff,)	
)	
vs.)	
)	COMPLAINT
THE RYAN FAMILY, L.L.C., A Limited Liability Company,)	
)	(Equity)
)	
Defendant.)	

Plaintiff Streck Inc. (hereinafter “Streck”), by and through its attorneys, and for its claims against Defendant, hereby states as follows:

1. Streck is a Nebraska Corporation, with its principal place of business at 7002 S. 109th Street, La Vista, Sarpy County, Nebraska 68128.
2. Defendant, the Ryan Family L.L.C. (hereinafter the “Company” or “Defendant”) is a manager-managed, Nebraska limited liability company, manager-managed.
3. Constance “Connie” Ryan is the Company’s registered agent at such address.
4. The Company owns property located at 7002 South 109th Street, La Vista, Nebraska, legal description: *Lot 16 Brook Valley Business Park, being replat of Lots 16, 17, 18B, 21B, 22 & 22, as surveyed, platted and recorded in La Vista, Sarpy County, Nebraska* (hereinafter “the Property”).

5. The co-managers of the Company are Wayne Ryan and Connie Ryan, and the members of the Company are said co-managers and Timothy Ryan, Stacy Ryan, Carol Ryan and Steven Ryan.

Factual Background

6. The only assets of the Company are the Property and cash generated from the rental of the Property to Streck.

7. The Property was leased to Streck pursuant to a lease dated December 15, 1999 (the "Lease"), as amended by a Lease Amendment dated November 7, 2007 (collectively the "Lease Agreement"), which Lease Agreement is attached to this Complaint as Exhibit A and incorporated by reference.

8. The only business of the Company relates to the Property and includes (1) the collection of rents from Streck; (2) transmitting funds from rent to its members in proportionate amounts equal to their respective interests in the company; and (3) the exercise of rights and obligations under the Lease Agreement.

9. The Lease Agreement provides Streck with an "exclusive option to purchase" the Property from the Company (the "Option"), conditioned only upon the giving of notice and exercise of the Option within designated time periods relating to the termination date (June 30, 2015) of the Lease Agreement. See Lease Agreement, Article XXV.

10. On or about November 25, 2014, Plaintiff provided the Company with notice of its intent to exercise the Option, and on July 1, 2015, provided actual notice of the exercise of the Option, a true and correct copy of such notice of

exercise being attached hereto as Exhibit “B”. Notice of Streck’s exercise of the Option was received by the Company on or about July 6, 2015.

11. The Option provides a procedure whereby the purchase price for the Property is to be determined.

12. Pursuant to the terms of the Option, the maximum period between the exercise of the Option and closing on the purchase of the building was one-hundred and eighty days. Based on the date of Streck’s exercise of the Option, closing on Streck’s purchase of the Property should have occurred no later than January 3, 2016.

13. Defendant has failed and refused to meet or acknowledge its obligation under the Option, and Streck presently continues to lease the Property under a “holdover” provision in the Lease Agreement, with rental payments increased to 125% of the monthly rent.

14. The Company is presently in a situation whereby its co-managers are unable to agree as to the Company’s obligation under the Option and the Company has failed to respond to Streck’s exercise of the Option.

Procedural Background of Present Dispute

15. On or about March 22, 2015, the members of the Company, excepting Connie Ryan, filed a lawsuit against Connie Ryan at CI 15-307 in Sarpy County District Court (the “First Lawsuit”).

16. The Company was named as a nominal defendant in the First Lawsuit.

17. Streck filed a Complaint in Intervention in the First Lawsuit on or about June 19, 2015, seeking declaratory relief concerning its anticipated exercise of the Option.

18. The Company failed to timely answer or otherwise respond to Streck's Complaint in Intervention, presumably due to the deadlock between the two co-managers.

19. In order to resolve the deadlock that exists with regard to the Company's managers, Streck filed an Application for the Appointment of Receiver ("Application") on or about September 17, 2015, requesting the appointment of a receiver to respond to claims involving declaration of rights under the Option.

20. The Court granted Streck's Application for a Receiver, and the Receiver was appointed on or about November 5, 2015.

21. On December 7, 2015, the Plaintiffs in the First Lawsuit filed a Notice of Appeal challenging the appointment of the Receiver.

22. On December 8, 2015, the Receiver, on behalf of the Company filed a Motion to Dismiss the Complaint in Intervention, alleging that Streck did not have any right to intervene in the First Lawsuit.

23. At a hearing held December 28, 2015, the Court stated that it did not have jurisdiction to consider the Receiver's Motion to Dismiss due to the pending appeal, and Streck notified the Court that it intended to file a separate lawsuit against the Company alleging the breach of the Option

provision contained in the Lease Agreement that arose after the filing of the Complaint in Intervention seeking declaratory relief.

COUNT I
Specific Performance

24. Plaintiff incorporates paragraphs 1 - 23 of this Complaint as though fully set forth herein.

25. The term of the Lease Agreement expired on June 30, 2015.

26. On or about July 1, 2015, Streck exercised its Option to purchase the Property pursuant to the Lease Agreement.

27. The Company has failed to take the required action under the Lease Agreement to effectuate the sale of the Property to Streck pursuant to the Option.

28. Streck respectfully requests that the Court order the Company to specifically perform its obligations under the Option in order to permit Streck to purchase the Property consistent with the terms of Option.

COUNT II
Breach of Contract

29. Plaintiff incorporates paragraphs 1 - 23 of this Complaint as though fully set forth herein.

30. A valid and enforceable Lease Agreement containing the enforceable Option exists between Plaintiff and Defendant.

31. Pursuant to Article 25.01 of the Lease Agreement, Streck has the exclusive right to exercise the Option within the Option Period. The Option is

an independent right of Streck which exists irrespective of whether there has been an alleged default under the Lease Agreement. *See Horne v. Krejci*, No. A-11-360, 2012 WL 1432308 (Neb. App. Apr. 24, 2012).

32. The term of the Lease Agreement expired on June 30, 2015 because Streck elected not to exercise its right to extend the term of the Lease Agreement pursuant to its terms.

33. On July 1, 2015, Streck exercised its Option to purchase the Property.

34. Pursuant to Article 25.01(f) of the Lease Agreement, “[u]pon delivery of . . . [the] Exercise Notice, [the Company] shall be deemed to have thereby agreed to sell, transfer and convey to [Streck], and [Streck] shall be deemed to have thereby agreed to purchase and acquire from [the Company], the Premises for an amount equal to Fair Market Value as of the date of the . . . Exercise Notice.”

35. Defendant has failed to take the required actions to effectuate the sale of the Property to Streck pursuant to the Option, and has thereby breached its obligations under the Option. Streck has performed all of its obligations under the Option.

36. Streck has suffered and continues to suffer damages as the result of the Company’s breach of the Option provision contained in the Lease Agreement because Streck has paid and is paying holdover rent pursuant to the Lease Agreement for an unreasonable time at a rate substantially in excess of the market rate for the Property.

WHEREFORE Plaintiff prays for judgment against the Company:

- a. Finding the Company to be in breach of the Lease Agreement by failing to perform its obligations under the Option;
- b. Requiring the Company to specifically perform its obligations under the Lease Agreement to determine the fair value of the Property and, upon such determination and payment by Streck, the Company be required to execute and deliver unto Plaintiff a deed to the Property;
- c. Awarding damages in an amount to be determined at trial in order to compensate Streck for the excess “holdover” rent being paid to the Company due to the Company’s failure to act on Streck’s exercise of the Option; and
- d. For such alternate or further relief as the Court may determine appropriate under the evidence and equitable principles.

Dated this 13th day of January, 2016.

STRECK Inc., Plaintiff.

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