

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STAR DEVELOPMENT CORPORATION,

Respondent,

v.

URGENT CARE ASSOCIATES, INC., et al,

Appellant.

DOCKET NUMBER WD76619

Date: April 29, 2014

Appeal from:
Clay County Circuit Court
The Honorable Janet L. Sutton, Judge

Appellate Judges:
Division Four: James E. Welsh, Chief Judge, Presiding, Lisa White Hardwick, Judge
and Gerald D. McBeth, Special Judge

Attorneys:
Juliann W. Graves, Overland Park, KS, for appellant.
Scott R. Ast, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

STAR DEVELOPMENT CORPORATION

Respondent,

v.

URGENT CARE ASSOCIATES, INC., et al,

Appellant.

WD76619

Clay County

Before Division Four: James E. Welsh, Chief Judge, Presiding, Lisa White Hardwick, Judge and Gerald D. McBeth, Special Judge

Urgent Care Associates, Inc., d/b/a Liberty Urgent Care ("Urgent Care"), and its owner and operator, David Ochs, D.O., appeal the circuit court's judgment awarding damages and attorneys' fees to Star Development Corporation ("SDC") based upon the parties' lease agreement. Urgent Care and Ochs contend the circuit court erred in: (1) ordering them to pay late charges; (2) finding that Urgent Care was required to give SDC a thirty-day written notice of termination of its month-to-month tenancy; and (3) awarding SDC attorney's fees.

AFFIRMED; MOTION FOR ATTORNEY'S FEES ON APPEAL SUSTAINED AND CASE REMANDED FOR ATTORNEY'S FEES HEARING.

Division Four holds:

(1) The circuit court did not err in ordering Urgent Care and Ochs to pay late charges because sufficient evidence established that the lease's late charges provision

was a liquidated damages clause and not a penalty clause and there was no express or implied act by SDC waiving its right to collect the late charges.

(2) The circuit court did not err in holding that Section 441.060.4(1), RSMo 2000, required them to give SDC a thirty-day written notice of termination of its month-to-month tenancy. When Urgent Care remained in possession of the leased space after the lease expired, it became a month-to-month tenant, and Section 441.060.4(1) provides the method for terminating such a tenancy.

(3) The circuit court did not err in ordering Urgent Care and Ochs to pay SDC's attorney's fees pursuant to the lease's attorney's fees provision. Urgent Care and Ochs sought reversal of the attorney's fees award solely on the basis that the court's award of late charges was erroneous, and we found no error in the award of late charges.

(4) SDC is entitled to its attorney's fees on appeal pursuant to the lease's attorney's fees provision. The circuit court is better equipped to hear evidence and argument on this issue and determine the reasonableness of the requested amount of fees; therefore, the case is remanded.

Opinion by: Lisa White Hardwick, Judge

April 29, 2014

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.