



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

ANSWER AND COUNTERCLAIM \$75
January 25, 2023 15:45

By: DANIEL F. LINDNER 0063918

Confirmation Nbr. 2759371

MARK F. PERKINS, ET AL

CV 23 973251

vs.

Judge: PETER J. CORRIGAN

C.A.J. PROPERTIES, INC., ET AL

Pages Filed: 27

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

| | | |
|---------------------------------|---|--------------------------|
| MARK F. PERKINS, et al. |) | CASE NO. CV 23 973251 |
| |) | |
| Plaintiffs, |) | JUDGE PETER J. CORRIGAN |
| |) | |
| Vs. |) | |
| |) | |
| C.A.J. PROPERTIES, INC., et al. |) | <u>ANSWER</u> |
| |) | <u>AND COUNTERCLAIM</u> |
| Defendants. |) | (Trial by Jury Demanded) |

Now come Defendants C.A.J. Properties, Inc. (“CAJ”), Perk Company, Inc. (“Perk”), Anthony Cifani (“AC”), and Joseph Cifani (“JC”) (collectively “Defendants”), by and through counsel, and for its Answer to Plaintiff’s Complaint, states the following:

1. Defendants deny the characterization of “sharing ownership of several companies” and admit the remaining allegations in paragraph 1 of the Complaint.
2. Defendants admit the allegations in paragraphs 2 and 3 of the Complaint.
3. Defendant denies that the “Cifani Family’s business interests are inextricably interwoven with each other and with Mark.” It is very simple to separate each and every one of these businesses and business interests from one another. Defendants admit the remaining allegations in paragraph 4 of the Complaint.
4. Defendants the allegations in paragraphs 5, 6, 7, 8, 9, 10 and 11 of the Complaint.
5. Defendants admit the allegations in paragraphs 12, 13, 14, 15, 16, and 17 of the Complaint.
6. Defendants admit the address and deny the remaining allegations and implications of paragraphs 18, 19 and 20 of the Complaint.
7. Defendants admit the allegations in paragraphs 21 and 22 of the Complaint.

8. Defendants deny the characterization of “a web” and admit the remaining allegations in paragraph 23 of the Complaint.
9. Defendants admit the allegations in paragraphs 24 and 25 of the Complaint.
10. Defendants deny that C&S is a construction manager, and admits the remaining allegations in paragraph 26 of the Complaint..
11. Defendants deny for want of firsthand knowledge the number or employees or the annual revenues of TRM and admit the remaining allegations in paragraph 27 of the Complaint.
12. Defendants deny that CAJ is McTech’s commercial landlord and admit the remaining allegations in paragraph 28 of the Complaint.
13. Defendants admit the allegations in paragraph 29 of the Complaint.
14. No responsive pleading is required for paragraphs 30 and 31 of the Complaint.
15. Defendants admit the allegations in paragraphs 32 and 33 of the Complaint.
16. Defendants deny that allegations in paragraph 34 of the Complaint.
17. Defendants deny that allegations in paragraph 35 of the Complaint for want of firsthand knowledge.
18. Defendants deny that allegations in paragraph 36A of the Complaint.
19. Defendants Admit that Lisa Profughi refused to guarantee TRM’s loans and lines of credit. Defendants deny for want of firsthand knowledge the remaining allegations in paragraph 36B of the Complaint.
20. Defendants deny that allegations in paragraphs 36C, 36D, 36E, 36F, 36G, 36H, 36I, 36J, 36K, 36L and 36M of the Complaint.
21. Defendants deny that allegations in paragraph 37 of the Complaint.
22. Defendants admit that allegations in paragraph 38 of the Complaint.

23. Defendants deny that allegations in paragraphs 39 through 50, inclusive, of the Complaint.
24. Defendants deny for want of firsthand knowledge the allegations in paragraph 51 of the Complaint.
25. Defendants admit the allegations in paragraphs 52 and 53 of the Complaint.
26. Regarding paragraph 54 of the complaint, Defendants deny that the document entitled “Lease Agreement” has been in force or effect at any time material to this lawsuit, and admit the remaining allegations.
27. Regarding paragraph 55 of the complaint, Defendants deny that they operated pursuant to the terms of the document entitled “Lease Agreement” after its expiration in 2019, and otherwise state that the expired and void document speaks for itself.
28. Defendants deny that allegations in paragraph 56 through 64, inclusive, of the Complaint.
29. Regarding paragraph 65 of the complaint, Defendants incorporate by reference all answers, allegations and defenses set forth herein by reference.
30. Defendants admit the allegations in paragraph of the Complaint.
31. Regarding paragraphs 66, 67, and 68 of the complaint, Defendants deny that they operated pursuant to the terms of the document entitled “Lease Agreement” after its expiration in 2019, and otherwise state that the expired and void document speaks for itself.
32. Defendants deny that allegations in paragraph 69 through 75, inclusive, of the Complaint.
33. Regarding paragraph 76 of the complaint, Defendants incorporate by reference all answers, allegations and defenses set forth herein by reference.
34. Defendants deny that allegations in paragraph 76 through 82, inclusive, of the Complaint.

35. Regarding paragraph 83 of the complaint, Defendants incorporate by reference all answers, allegations and defenses set forth herein by reference.
36. No responsive pleading is required for paragraphs 84 or 85 of the complaint as it is an attempt to state Ohio law. Ohio law speaks for itself.
37. Defendants deny that allegations in paragraph 85 through 87, inclusive, of the Complaint.
38. Regarding paragraph 88 of the complaint, Defendants incorporate by reference all answers, allegations and defenses set forth herein by reference.
39. No responsive pleading is required for paragraphs 89 or 90 of the complaint as it is an attempt to state Ohio law. Ohio law speaks for itself.
40. Defendants deny that allegations in paragraph 91 through 92, inclusive, of the Complaint.
41. Regarding paragraph 93 of the complaint, Defendants incorporate by reference all answers, allegations and defenses set forth herein by reference.
42. Defendants deny that allegations in paragraph 94 through 98, inclusive, of the Complaint.
43. Regarding paragraph 99 of the complaint, Defendants incorporate by reference all answers, allegations and defenses set forth herein by reference.
44. Defendants deny that allegations in paragraph 100 through 105, inclusive, of the Complaint.
45. Regarding paragraph 106 of the complaint, Defendants incorporate by reference all answers, allegations and defenses set forth herein by reference.
46. Defendants deny that allegations in paragraph 107 through 109, inclusive, of the Complaint.
47. Regarding paragraph 110 of the complaint, Defendants incorporate by reference all answers, allegations and defenses set forth herein by reference.

48. Defendants deny that allegations in paragraph 111 through 115, inclusive, of the Complaint.
49. Regarding paragraph 116 of the complaint, Defendants incorporate by reference all answers, allegations and defenses set forth herein by reference.
50. Defendants deny that allegations in paragraph 117 through 120, inclusive, of the Complaint.
51. Regarding paragraph 121 of the complaint, Defendants incorporate by reference all answers, allegations and defenses set forth herein by reference.
52. Defendants deny that allegations in paragraph 122 through 131, inclusive, of the Complaint.

AFFIRMATIVE DEFENSES

53. Defendant restates all answers and defenses set forth herein as if rewritten fully.
54. Plaintiffs have failed to state a claim upon which relief may be granted.
55. Plaintiffs lack standing to bring the claims set forth in the Complaint.
56. There has never been any binding contract between the Plaintiffs and the Defendants at any time material to this lawsuit.
57. Plaintiffs' claims are barred by the statute of frauds.
58. Plaintiffs' claims are barred due to his spoliation of the material evidence in this case.
59. Plaintiffs' claims are barred by waiver, estoppel and/or laches.
60. Plaintiffs have not incurred any damages.
61. If any damages are found to have been incurred by Plaintiffs, Plaintiffs' claims are barred by the actions and/or inactions of the Plaintiffs and/or other parties.
- Defendants was not the cause of any of the alleged damages.

62. Plaintiffs have failed to add necessary parties to this litigation.

63. Plaintiffs' claims are barred, in whole or in part, to the extent that the alleged damages were caused by intervening or supervening causes over which Defendants had no control.

64. At all times material hereto, the damages or injuries, if any, of which Plaintiffs complain of in the Complaint, are the result of the actions/inactions of the Plaintiffs and/or third person(s) not under the control of Defendants.

65. At all times, Defendants acted in good faith, within industry standards, and within their own reasonable business judgment.

66. Plaintiffs' claims are barred by their inability to establish the breach of any duty by Defendants, proximate causation and/or damages.

67. One or more of Plaintiffs' claims are barred by the applicable limitations of action.

68. Defendants reserve the right to supplement these affirmative defenses as further defenses become known.

WHEREFORE, Defendants pray that all counts of Plaintiffs' Complaint are dismissed with prejudice, and that Defendants are awarded all costs of defense, including reasonable attorney's fees, and any other relief the court deems just.

COUNTERCLAIM OF CAJ

Now comes Defendant CAJ, by and through counsel, and for its counterclaim, states the following:

COUNT I

1. Defendant CAJ restates all answers, allegations and defenses set forth herein as if rewritten fully.

2. CAJ has at all times material been the fee owner of the real property commonly known as 5000 Crayton Avenue, Cleveland, Ohio, Cuyahoga County Permanent Parcel Number 123-05-011. (“Real Property”).
3. Plaintiff Tech Ready Mix, Inc. (“TRM”) was a tenant at the Real Property pursuant to a written “Lease Agreement” dated January 3, 2017. A copy of said document is attached hereto as Exhibit A.
4. The “Lease Agreement” expired by its express terms on December 31, 2019.
5. The “Lease Agreement” expressly provided:

“Upon termination or expiration of this lease, Tenant (TRM) shall surrender the Leased Premises (the Real Property) to Landlord (CAJ) in substantially the same condition as the Leased Premises were in as of the date of this lease, ordinary wear and tear excepted or loss by fire or other casualty.” (See Exhibit A).
6. TRM did not surrender the Real Property to CAJ at the expiration of the Lease Agreement.
7. Instead, TRM remained in possession of the Real Property as a holdover tenant.
8. CAJ accepted rent from TRM in December 2020, and again in December 2021, which rent included a base rent payment plus TRM’s payment of the CAJ property taxes and loan payments to the City of Cleveland.
9. CAJ demanded TRM pay in addition to the previous rental amount, all property taxes for 2022. TRM refused.
10. Pursuant to Ohio Supreme Court law, “The holding over after the end of any year, without the landlord's consent, is equivalent to holding over after the expiration of a lease for a specific term; and, if the landlord does not choose to accept the proffered tenancy

for another year, he is at liberty to treat the occupant as a trespasser, and may maintain ejectment against him, without previous notice of his intention not to prolong the tenancy." *Gladwell v. Holcomb* (1899), 60 Ohio St. 427, 42 W.L.B. 105, 54 N.E. 473, paragraph one of the syllabus, affirmed by *Maggiore v. Kovach*, 101 Ohio St.3d 184, 803 N.E.2d 790, 2004 Ohio 722.

11. Further, pursuant to Ohio Supreme Court law, in commercial evictions "the only notice necessary was the three-day notice required by *R.C. 1923.04* in forcible entry and detainer actions." *Maggiore v. Kovach*, 101 Ohio St.3d 184, 803 N.E.2d 790, 2004 Ohio 722.
12. While no advanced notice was required by CAJ, on December 27, 2022, counsel for CAJ served a "Notice of Termination of Holdover Tenancy and Notice to Leave the Premises" upon TRM and its attorney/registered statutory agent that "This letter is notice to you that the Landlord will not be accepting or permitting your holdover tenancy to continue after December 31, 2022. ...My client, your Landlord, hereby demands that you leave the Real Property by December 31, 2022." (See "Notice of Termination of Holdover Tenancy and Notice to Leave the Premises attached as Exhibit B, and the email read receipts from the recipients attached as Exhibit C).
13. CAJ refused to accept rent or any other monies from TRM after this Notice of Termination of Holdover Tenancy and Notice to Leave the Premises.
14. TRM attempted to force a deposit of monies into CAJ's bank account without CAJ's knowledge or consent on December 28, 2022 through TRM/McTech employee Jason Boros – who has admitted to forging a deposit slip in CAJ's name - but upon learning of this fraudulent activity by TRM, the monies were promptly returned to TRM.

15. On January 2, 2023, CAJ served a statutory three (3) day notice upon TRM to leave the premises pursuant to Section 1923.04 of the Ohio Revised Code for reason of
HOLDOVER TENANCY AND NON-COLOR OF TITLE. Said statutory notice was served by posting the same in multiple locations at the Real Property. (See (3) day notice attached as Exhibit D, and Photos attached as Exhibit E).
16. TRM has since January 1, 2023 unlawfully and forcibly detained from CAJ possession of the above-described Real Property.
17. As a direct and proximate result of TRM's refusal to leave the premises, CAJ has sustained damages and asks for process and restitution and the costs of this action.

COUNT II

18. Defendant CAJ restates all answers, allegations and defenses set forth herein as if rewritten fully.
19. Since January 1, 2023, TRM has remained on CAJ's Real Property without CAJ's authority or consent.
20. TRM's existence upon CAJ's Real Property without CAJ's authority or consent constitutes a trespass as a matter of law. *Gladwell v. Holcomb* (1899), 60 Ohio St. 427, 42 W.L.B. 105, 54 N.E. 473, paragraph one of the syllabus, affirmed by *Maggiore v. Kovach*, 101 Ohio St.3d 184, 803 N.E.2d 790, 2004 Ohio 722.
21. TRM has trespassed upon CAJ's Real Property and acted with malice to prevent CAJ from removing TRM from the Real Property by, among other things, attempting to fraudulently deposit several years of future rents into CAJ's account after CAJ expressly communicated that it would not renew the tenancy at the Real Property, and by filing he present frivolous lawsuit to try to delay TRM's removal from the Real Property.

22. As the direct and proximate result of TRM's unauthorized and malicious holdover tenancy and trespass at the Real Property, TRM owes to CAJ all utility charges, holdover rent at a commercially reasonable rate, back rent for unpaid 2022 monies due, reimbursement for the Real Property's property taxes, insurance and maintenance, and future holdover rent at a commercially reasonable rate, until CAJ has restitution of the premises, plus damages to be determined after TRM vacates the Real Property for any extraordinary damages that may be caused and all costs of collection, including but not limited to reasonable attorney's fees, all in an amount in excess of twenty five thousand dollars (\$25,000.00+).

WHEREFORE, CAJ demands judgment against TRM as follows:

1. For process and restitution of the above-stated premises on Count I; and
2. In a sum in excess of twenty five thousand dollars (\$25,000.00+) in compensatory damages, a sum in excess of twenty five thousand dollars (\$25,000.00+) in punitive damages, reimbursement of costs including reasonable attorney's fees, prejudgment and post-judgment interest and any other relief the court deems just on Count II.

COUNTERCLAIM OF CAJ, PERK, AC AND JC

Now come Defendants CAJ, Perk Company, Inc. ("Perk"), Anthony Cifani ("AC"), and Joseph Cifani ("JC"), by and through counsel, and for their counterclaim, states the following:

1. CAJ, Perk AC and JC restate all answers, allegations and defenses set forth herein as if rewritten fully.
2. In calendar year 2008, CAJ, Perk, AC and JC were required to execute General Agreements of Indemnity ("GAI") in favor of Travelers Casualty and Surety Company of America ("Travelers") in order to cause Travelers to issue surety bonding on behalf of

McTech as a principal, including performance and payment bonds (the “Bonds”) for various projects (the “Projects”).

3. In addition, TRM and Mark Perkins (“Perkins Parties”) were required to GAIs in favor of Travelers in order to cause Travelers to issue surety bonding on behalf of McTech as a principal, including the Bonds for the Projects.
4. Pursuant to the terms of the Bonds, among other things, Travelers was obligated to cure contract several defaults of McTech incurred on the Projects and to fund their obligations to pay for labor, materials and equipment.
5. Following execution of the foregoing Bonds, Travelers received notice of various claims and demands for payment from various project owners, contractors, subcontractors, and/or suppliers who performed work or supplied materials on the McTech Projects. These claims also constituted defaults on the Bonds by McTech.
6. After investigating and confirming the validity of claims made under the Bonds, Travelers made payments exceeding \$24,063,209.23.
7. Travelers sued the principals and the indemnitors – including CAJ, Perk AC and JC – in litigation known as *Travelers Casualty and Surety Company of America vs. Perk Company, Inc et al.*, United States District Court for the Northern District of Ohio case number 1:21-cv-01940-CAB (“Federal Lawsuit”), alleging that Travelers had incurred paid losses under the GAI and Riders in connection with the McTech defaults upon the Bonds in excess of \$24,063,209.23, which remains subject to alleged escalation, plus interest, legal fees, and costs (the “GAI Loss Payments”).
8. CAJ, Perk AC and JC were not sued for causing the defaults on the Bonds, but rather as joint and several indemnitors on the Bond claims.

9. All defaults on the Bonds were caused solely by McTech and the Perkins Parties.
10. As the direct and proximate result of McTech and the Perkins Parties' defaults on the Bonds, indemnitors CAJ, Perk AC and JC have been sued in the Federal Lawsuit by Travelers to reimburse for the claims on the Bonds plus costs including certain consulting fees, legal fees, expenses, costs and interest.
11. Since receiving the notice of default on the Bonds and indemnification claims from Travelers, CAJ, Perk, AC and JC have worked with Travelers, and have made payments and incurred expenses to cause the \$24,063,209.23 loss to be reduced to roughly \$8,700,000.00.

COUNT I

(Indemnification from Perkins Parties)

12. CAJ, Perk AC and JC restate all answers, allegations and defenses set forth herein as if rewritten fully.
13. CAJ, Perk AC and JC have been and are continuing to be compelled to pay for the active defaults by the Perkins Parties and debts of the Perkins Parties.
14. CAJ, Perk AC and JC have only been passively involved in the Bond claims brought by Travelers as they were nothing but indemnitors under the GAIs. The Perkins Parties were solely the cause of the defaults under the Bonds.
15. As a matter of law, CAJ, Perk AC and JC are entitled to complete indemnification from the Perkins Parties, jointly and severally, for all monies paid to Travelers, all claims asserted against them by Travelers, all costs incurred in trying to rectify the Perkins Parties' defaults and all costs incurred in defending against the claims asserted by Travelers against them in the Federal Lawsuit.

23. As the direct and proximate result of the Perkins Parties' default under the Travelers Bonds, CAJ, Perk AC and JC have incurred damages in excess of twenty five thousand dollars (\$25,000.00+).

COUNT II

(Contribution from Perkins Parties)

24. CAJ, Perk AC and JC restate all answers, allegations and defenses set forth herein as if rewritten fully.

25. CAJ, Perk AC and JC have been and are continuing to be compelled to pay for the active defaults by the Perkins Parties and debts of the Perkins Parties due to the joint and several liability created by the GAIs to Travelers.

26. CAJ, Perk AC and JC have only been passively involved in the Bond claims brought by Travelers as they were nothing but indemnitors under the GAIs. The Perkins Parties were solely the cause of the defaults under the Bonds.

27. As a matter of law and equity, CAJ, Perk AC and JC are entitled to complete contribution from the Perkins Parties, jointly and severally, for all monies paid to Travelers, all claims asserted against them by Travelers, all costs incurred in trying to rectify the Perkins Parties' defaults and all costs incurred in defending against the claims asserted by Travelers against them in the Federal Lawsuit.

28. As the direct and proximate result of the Perkins Parties' default under the Travelers Bonds, CAJ, Perk AC and JC have incurred damages in excess of twenty five thousand dollars (\$25,000.00+).

WHEREFORE, CAJ, Perk AC and JC demand judgment against the Perkins Parties, jointly and severally, as follows:

1. In a sum in excess of twenty five thousand dollars (\$25,000.00+) in compensatory damages, reimbursement of costs including reasonable attorney's fees, prejudgment and post-judgment interest and any other relief the court deems just on Count I; and
2. In a sum in excess of twenty five thousand dollars (\$25,000.00+) in compensatory damages, reimbursement of costs including reasonable attorney's fees, prejudgment and post-judgment interest and any other relief the court deems just on Count II.

Respectfully submitted,

//s// Daniel F. Lindner
Daniel F. Lindner (0063918)
The Lindner Law Firm LLC
2077 East 4th Street, Second Floor
Cleveland, Ohio 44115
(216) 737-8888, (216) 737-9999 Fax
Daniel@Justuslawyers.com

Attorney for Defendants CAJ, Perk AC and JC

CERTIFICATE OF SERVICE

A copy of the foregoing Answer was served via the court's e-filing system on this 25th day of January, 2023.

//s// Daniel F. Lindner
Daniel F. Lindner (0063918)
The Lindner Law Firm LLC
2077 East 4th Street, Second Floor
Cleveland, Ohio 44115
(216) 737-8888, (216) 737-9999 Fax
Daniel@Justuslawyers.com

Attorney for Defendants CAJ, Perk AC and JC

EXHIBIT A

LEASE AGREEMENT

This agreement made and entered into this 1st day of January, 2017 by and between **C.A.J. Properties, Inc.** (Lessor) and **Tech Ready Mix, Inc.** (Lessee) until **December 31, 2019**.

TERMS AND CONDITIONS

1. In consideration of the terms and conditions herein set forth, Lessor hereby leases to Lessee the following: **Batch Plant located at 5000 Crayton Avenue, City of Cleveland, County of Cuyahoga, identified at Rex-Batch 150 Wet/Dry Batch Plant and adjacent Recycling Water Plant. Said lease includes Parking, Yard, Wash Racks and all plant appurtenances located on 4.84 acres of property.**
2. Lessee shall pay a sum of **Thirty-Six Thousand Three Hundred Sixty Dollars annually due on or before December 31 of each year.**
3. **Above amount payable shall remain unchanged through December 31, 2019. Prior to that time, it is the intent for Tech Ready Mix, Inc., to enter into negotiations with C.A.J. Properties, Inc., for the purchase of the Plant and Land included in this lease.**
4. Lessee shall place all utilities into their name. Lessee is responsible for paying all utilities (which include; but are not limited to, electric, natural gas, water, sewer).
5. The Tenant has been the Lessee on this property since 1999; Landlord shall deliver possession of the Leased Premises to Tenant on the Commencement Date in its "AS IS" condition as of the execution and delivery hereof, reasonable wear and tear excepted. Tenant acknowledges that it has fully inspected the Leased Premises and accepts the same in its "AS IS" condition as suitable for Tenant's purposes and that no representation or warranty whatsoever regarding the Leased Premises has been made by Landlord or any agent of Landlord. Upon termination or expiration of this lease, Tenant shall surrender the Leased Premises to Landlord in substantially the same condition as the Leased Premises were in as of the date of this lease, ordinary wear and tear excepted or loss by fire or other casualty.

EXHIBIT A

6. Tenant shall have the right at its own sole cost and expense to make, at any time and from time to time during the initial Term, any alterations, additions, improvements and replacements in and to the Leased Premises which in the reasonable judgment of the Tenant shall be necessary or desirable for the purpose of the business of the tenant, provided that the value of the Leased Premises shall not be diminished and that said improvements shall be in accordance with all state and local building ordinances and permits. Tenant agrees to maintain the property and plant in good working condition at all times including plant and recycling facilities, land, parking areas, roadway and fencing and includes any necessary dust control, watering, snow removal, and street cleaning, or signage required to maintain a suitable business environment.
7. Tenant agrees that in the conduct of its business and occupancy of the Leased Premises it will comply with all valid laws, ordinances, rules and regulations of all public authorities having any jurisdiction over the Leased Premises or any part thereof to include all City of Cleveland Dept. of Utilities Inspections or EPA Inspections.
8. Tenant agrees to provide and keep in force, during the term of this lease, public liability and property damage insurance showing Landlord as an additional insured to afford protections to the limit of not less than \$ 1,000,000 with respect to injury or death of a single person and to the limit of \$ 1,000,000 with respect to any one accident and to the limit of \$ 1,000,000 with respect to property damage.
9. Tenant shall maintain at its sole cost, and Landlord shall have no duty to maintain, insurance against loss or damage by fire and all risks comprehended by standard extended coverage endorsements with respect to any personal property brought upon the Leased Premises.
10. **Termination:** If Tenant shall fail to pay within five (5) days of the due date set forth, with or without notice from the Landlord, any rent or other sums due under this lease; or if Tenant shall neglect or fail to perform or observe any of the other covenants contained in this lease on Tenant's part to be performed and shall not have remedied the same within 15 days after written notice thereof given by Landlord: or if any execution or attachment shall be issued against Tenant and such execution of attachment shall not be discharged within 60 days after levy or seizure hereunder; or if Tenant shall violate any provision of any of the insurance policies referred to herein so that such policy shall

EXHIBIT A

be void or unenforceable in whole or in part; or if there shall be filed against Tenant in any court, pursuant to any statute either of the United States or of any state thereof, a petition alleging bankruptcy or insolvency of Tenant. In the event of such termination, Landlord may reenter the Leased Premises and take possession of the same by summary proceedings, reentry or otherwise, and remove all persons and/or any property from the Leased Premises without being liable to indictment, prosecution or damages thereof, and without prejudice to any other rights which it may have by reason of such breach, default, matter or condition.

11. Subject to governmental or other security regulations, Landlord by any duly authorized agent or representative shall have access to the Leased Premises and each and every part thereof at any and all reasonable time or times during business hours to inspect the same for any purpose including, without limitation of the foregoing, the determination of the condition of the Leased Premises or any part thereof, the progress of any work undertaken by Tenant, and generally Tenant's performance of and compliance with the terms and provisions of this lease.
12. This lease is made subject to zoning, building and other government ordinances and resolutions and any amendments thereto and to restrictions, covenants, easements, encumbrances, reservations and rights of way, which may now affect the Leased Premises.

LEESEE:

TECH READY MIX, INC.

BY: 

Mark F. Perkins, President

DATE: 1/3/17

LESSOR:

C.A.J. PROPERTIES, INC.

BY: 

Anthony Cifani, Treasurer

DATE: 1-3-17

EXHIBIT A

EXHIBIT B

THE LINDNER LAW FIRM^{LLC}
ATTORNEYS AND COUNSELORS AT LAW

December 27, 2022

Tech Ready Mix, Inc.
C/o statutory agent:
Calabrese & Associates, LLC
34305 Solon Road, Suite 40
Solon, Ohio 44139
By email: mcalabrese@clabreselawfirm.com

and

Mark Perkins
By email: MPerkins@techreadymix.com and Mark.Perkins@techreadymix.com

and

Lisa Cifani
By email: LCifani@techreadymix.com

Re: Notice of Termination of Holdover Tenancy and Notice to Leave the Premises

Dear Tech Ready Mix, Inc.,

Please be advised that I have been retained to represent your landlord, C.A.J. Properties, Inc., regarding the termination of your holdover tenancy at the real property commonly known as 5000 Crayton Avenue, Cleveland, Ohio ("Real Property").

As you know, the written lease between your company and the landlord terminated on December 31, 2019. Under Ohio Supreme Court law, you have been a holdover on the Real Property since January 1, 2020. *Gladwell v. Holcomb* (1899), 60 Ohio St. 427, 42 W.L.B. 105, 54 N.E. 473, paragraph one of the syllabus:

"As the assent of both parties is necessary to the creation of this new contract at the beginning of each year, it is obvious that if the tenant chooses not to hold over, and vacates the premises at the end of any year, the tenancy ceases without liability for rent for the ensuing year, though no notice of his intention to remove be given, as certainly as it does upon the expiration of a lease expressly made for a specific term. So it does, though he hold over, unless the landlord chooses to accept him as a tenant for another year. By remaining in possession without any new arrangement, the tenant is regarded as

EXHIBIT B

offering to take the premises for another year upon the terms of his tenancy which has just expired. But the landlord is not bound to accept the offer; and, unless he does so, by receiving rent, or some other act of assent or acquiescence, the tenancy is thus terminated, and notice of his intention not to renew it for another year is unnecessary.

The holding over after the end of any year, without the landlord's consent, is equivalent to holding over after the expiration of a lease for a specific term; and, if the landlord does not choose to accept the proffered tenancy for another year, he is at liberty to treat the occupant as a trespasser, and may maintain ejectment against him, without previous notice of his intention not to prolong the tenancy." *Id at 436-437.*

This letter is notice to you that the Landlord will not be accepting or permitting your holdover tenancy to continue after December 31, 2022.

My client, your Landlord, hereby demands that you leave the Real Property by December 31, 2022.

However, having said that, my client also recognizes that due to the scope and enormity of your occupancy at the Real Property, you will require time beyond a few days to leave the property. Accordingly, if you will agree to voluntarily leave the Real Property by January 31, 2023, and you timely make your rental payment for 2022, and agree that the payment for 2022 is paid in arrears and is no way an indication of a desire to rent to you again for 2023, my client will hold off on eviction litigation until February 1, 2023.

In addition, McTech Corp. will be receiving correspondence imminently that gives them 30 day notice that Perk Company Inc. will not be renewing its lease at 8100 Grand Avenue after January, 2023. Therefore, as an additional condition to this extended move time, there must be no hostile action taken toward C.A.J. Properties, Inc., Perk Company, Inc. and/or any of their principals or affiliates by Tech Ready Mix, Inc., McTech Corp. and/or any of their employees, agents or affiliates.

If you do not agree to these terms, you will be served with a statutory 3 day notice on January 2, 2023, and litigation will ensue on the fourth business day thereafter.

Your prompt response is required. If I do not receive a written response from you by the end of business on December 30, 2022, this offer will be revoked and null and void, and the eviction process will commence immediately. I look forward to your prompt response.

Very truly yours,



Daniel F. Lindner

EXHIBIT C

Dan Lindner

From: Maria Calabrese <mcalabrese@calabreselawfirm.com>
To: Dan Lindner
Sent: Tuesday, December 27, 2022 6:15 PM
Subject: Read: FW: Notice of Termination of Holdover Tenancy and Notice to Leave the Premises

Your message

To: Maria Calabrese
Subject: FW: Notice of Termination of Holdover Tenancy and Notice to Leave the Premises
Sent: Tuesday, December 27, 2022 4:34:00 PM (UTC-05:00) Eastern Time (US & Canada)

was read on Tuesday, December 27, 2022 6:15:21 PM (UTC-05:00) Eastern Time (US & Canada).

EXHIBIT D

THREE (3) DAY NOTICE

TO: TECH READY MIX, INC.
5000 Crayton Avenue
Cleveland, Ohio

The purpose of this letter is to ask you to LEAVE the premises now in your possession, situated in Cleveland, Cuyahoga County, Ohio, and known as 5000 Crayton Avenue, Cleveland, Ohio together with the lot of land on which these premises are located. You are being asked to leave for the following reason:

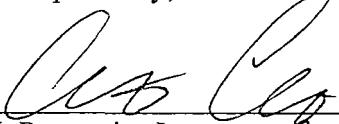
HOLDOVER TENANCY AND NON-COLOR OF TITLE.

Your compliance with this Notice within THREE (3) days after its service will prevent any further eviction action against you.

YOU ARE BEING ASKED TO LEAVE THE PREMISES. IF YOU DO NOT LEAVE, AN EVICTION ACTION MAY BE INITIATED AGAINST YOU. IF YOU ARE IN DOUBT REGARDING YOUR LEGAL RIGHTS AND OBLIGATIONS AS A TENANT, IT IS RECOMMENDED THAT YOU SEEK LEGAL ASSISTANCE.

If a judicial proceeding for eviction is instituted, you may present a defense. Nothing herein shall constitute an election of remedies by Landlord.

Yours respectfully,

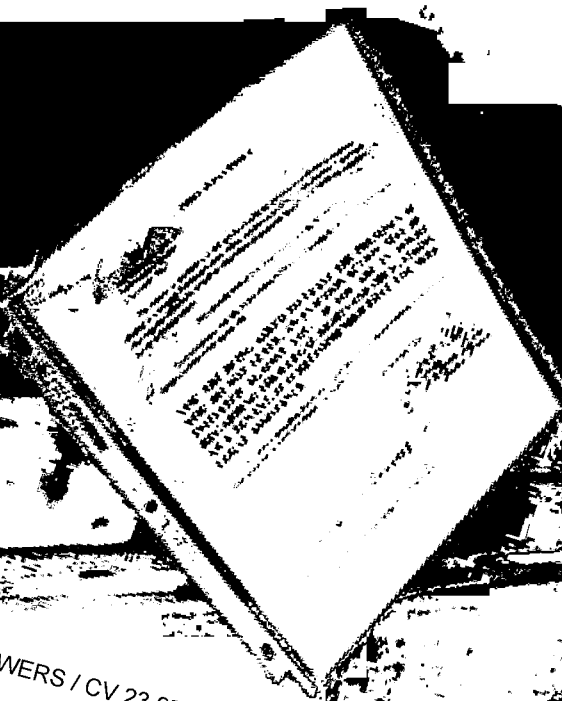

C.A.J. Properties Inc.
By: Anthony Cotan
Its: Sec / Yves

Dated this 2 day of JANUARY, 2023.

Service:

Personally served upon tenant(s) on January 2, 2023.

EXHIBIT E



Electronically Filed 01/23/23 15:45 / ANSWERS / CV 23 973251 /

2759371 / CLAJB

EXHIBIT E

90



EXHIBIT E

CHANGING
HARD HAT
AREA

EXHIBIT E



EXHIBIT E