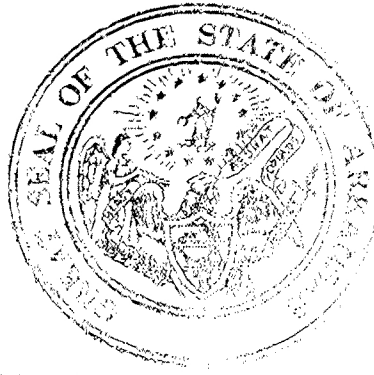


BENTON COUNTY CIRCUIT COURT  
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DOUG SCHRANTZ, JUDGE  
Darlene Young, Court Reporter  
Chea Ball, Trial Court Assistant  
Mary Allen, Court Orders Clerk  
A. Roy Bell, Bailiff

**STATE OF ARKANSAS  
CIRCUIT COURT  
NINETEENTH JUDICIAL DISTRICT WEST  
DIVISION VI**

September 9, 2010

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Mr. Seth Haines  
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**RE: *Pinnacle Point Properties, LLC, et al. v. Metropolitan National Bank  
Benton County Circuit Case No. CV 2009-3666-6***

Dear Counsel:

Metropolitan National Bank filed a motion for order directing the receiver to reject the lease of Pinnacle Investments on April 5, 2010. Metropolitan National Bank alleges that the lease is a fraudulent transfer to the detriment of Metropolitan National Bank as a creditor. On April 20, 2010, the Plaintiffs responded alleging there was no intent to defraud any creditor, the lease was for substantial value, and there was no privity of contract between Metropolitan National Bank and Pinnacle Investments.

**Counsel of Record**

**RE: Pinnacle Point Properties, LLC, et al. v. Metropolitan National Bank  
Benton County Circuit Case No. CV 2009-3666-6**

**September 9, 2010**

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The facts are these:

- 1) The real property and office suite which is the subject of this motion is owned by Pinnacle Properties, LLC.
- 2) Pinnacle Investments is an assumed name for Thornhart Venture, LLC. Thornhart Venture, LLC is owned by Schwyhart, LLC, which is owned entirely by Bill and Carolyn Schwyhart and Robert B. Thornton, LLC, which is owned entirely by Robert B. Thornton and family.
- 3) A lease agreement dated January 10, 2008 between Pinnacle Point Properties, LLC and Pinnacle Investments for the subject leased property has been introduced as Exhibit T.
- 4) The lease agreement was not produced for the property manager or the receiver until January of 2010 despite numerous requests.
- 5) Bill Schwyhart is the managing partner of Pinnacle Point Properties, LLC.
- 6) Bill Schwyhart acts as the manager for Pinnacle Investments.
- 7) Among the terms of the lease agreement, Pinnacle Investments leased the property for a period of 60 months with no cash rent due until January 1, 2012. Instead, Pinnacle Investments is to receive credit for "premises build out in exchange for prepaid rent".
- 8) The rent credit for the first four years of the lease term is in excess of \$790,000.
- 9) The actual cost of "premises build out" was \$587,000.
- 10) No other tenant lease agreement provided similar terms.

Metropolitan National Bank points to Ark. Code Ann. § 4-59-204 as authority for avoidance or termination of the lease. This statute enumerates factors for the Court to consider in its determination of the question raised by this motion.

The testimony supports the argument that a lease for no cash rental payments for a period of four years diminishes the value of the commercial park property. The transfer of the leasehold for rent credit for a period of four years is for much less than equivalent value. The lease negotiation could in no way be described as an "arm's length" transaction but clearly resulted in a transfer to an insider. Plaintiff did not retain possession of the leased property after the transfer. However, the transfer was to a related party of the Plaintiff. The purported landlord did not own legal title to the leasehold nor is there any apparent right to transfer the leasehold.

**Counsel of Record**

**RE: Pinnacle Point Properties, LLC, et al. v. Metropolitan National Bank  
Benton County Circuit Case No. CV 2009-3666-6**

**September 9, 2010**

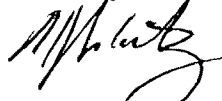
**Page 3**

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The property was represented to be income producing but was not. The transfer terms were not disclosed to the bank.

Based upon the facts of this case, the Court finds that the lease is fraudulent. The lease is terminated. Pursuant to Ark. Code Ann. § 4-59-207(a)(3)(ii), the receiver appointed by previous order of the Court is to take charge of the leasehold and properly administer it for the benefit of the creditor, Metropolitan National Bank.

Sincerely,



Doug Schrantz  
Circuit Judge

DS/cb

cc: Court file