

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: CACE 07-002490 (14)
Judge Thomas M. Lynch, IV

LYONS FAMILY LIMITED
PARTNERSHIP,

Plaintiff,

v.

J. MILES CLOTHING CO., ENTERPRISES,
INC., a Florida Corporation, GERALD R. MILES,

Defendants.

DECLARATORY JUDGMENT

THIS CAUSE having come before the Court on the bifurcated trial of the parties' claims for Declaratory relief as to the validity and terms of the Business Lease at issue dated December 2, 2002, and the Court having conducted a non-jury trial on the matter on June 30, July 1, July 2, August 28, and October 1, 2008, and the Court being fully advised in the premises, it is

ORDERED AND ADJUDGED that the Court finds that the December 2, 2002, Business Lease is void and unenforceable and that the Plaintiff did not ratify the Lease. The Tenant, J. MILES CLOTHING CO. ENTERPRISES, INC., is a tenant at will. The Court retains jurisdiction on the remaining issues.

DONE AND ORDERED in chambers at Fort Lauderdale, Broward County, Florida, this

_____ day of October 2008.

Thomas M. Lynch, IV
Circuit Court Judge

Copies furnished to:
Jeffrey L. Hochman, Esq.
William M. Tuttle, II, Esq.

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J. MILES CLOTHING CO., ENTERPRISES,
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Defendants.

**DEFENDANTS, J. MILES CLOTHING CO., ENTERPRISES, INC., AND
GERALD R. MILES', MOTION FOR HEARING ON FORM AND CONTENT OF
PROPOSED DECLARATORY JUDGMENT**

Defendants, J. MILES CLOTHING CO., ENTERPRISES, INC., and GERALD R. MILES ("Defendants"), by and through undersigned counsel request a hearing on the form and content of the proposed declaratory judgment to be entered in this matter, and state:

1. The form and content of the declaratory judgment proposed by the Plaintiff exceeds the scope of the non-jury proceedings, exceeds the scope of the relief sought (in Count I of the Complaint and Count I of the Counterclaims), and creates ambiguity. The Defendants request a hearing on the form and the content of the proposed declaratory judgment, and submit that the declaratory judgment should read as follows:

ORDERED AND ADJUDGED that the Court finds that the December 2, 2002, Business Lease is void and unenforceable and that the Plaintiff did not ratify the Lease. The Tenant, J. MILES CLOTHING CO. ENTERPRISES, INC., is a tenant at will. The Court retains jurisdiction on the remaining issues.

2. The draft proposed by the Plaintiff creates ambiguity in at least four ways. First, its language -- that "The Counter-Claim is dismissed" -- fails to limit the dismissal to Counts I and V of the Counterclaims. Second, the draft proposed by the Plaintiff addresses an entitlement to

damages, a determination which exceeds the scope of the Court's limited role in determining whether the Business is valid and enforceable. Third, the draft proposed by the Plaintiff makes factual findings as to Barbara Schweppe's authority which creates ambiguity and may lead to unintended issue preclusion about her relationship with the Plaintiff at the subsequent jury trial. Without limitation, the proposed draft suggests that the Court has determined that Barbara Schweppe lacked not only actual authority to sign the Lease, but also lacked any authority to make representations on behalf of the Plaintiff. Such a determination exceeds the scope of the Court's limited role in this non-jury proceeding and would deprive the Defendants of their right to have a jury determine the relationship between the Plaintiff and Barbara Schweppe. Fourth, the draft proposed by the Plaintiff suggests that Defendant, GERALD R. MILES, may be subject to personal liability for damages. The record includes no evidence allowing the Plaintiff to impose such personal liability.

3. A proposed alternative Final Judgment is attached.

WHEREFORE, Defendants, respectfully request a hearing on the form and content of the proposed declaratory judgment, request consideration of the specific issues raised herein, together with such other and further relief as the Court deems just and proper.