

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF GOODHUE

FIRST JUDICIAL DISTRICT

Goodhue County Court File 25-CV-11-2279

OSEMI Inc., a Minnesota
Corporation,

Plaintiff,

v.

Red Wing Port Authority,
a municipal corporation,

Defendant.

**ORDER DENYING MOTION FOR
TEMPORARY INJUNCTION**


The above-entitled matter came on before the Honorable Kevin F. Mark, Judge of District Court, on August 24, 2012, at the Goodhue County Government Center, Red Wing, Minnesota. OSEMI Inc., ("OSEMI") appeared through its counsel George May, Attorney at Law and David Braddock, President. The Red Wing Port Authority ("RWPA") was represented by Justin Templin, Attorney at Law and George Hoff, Red Wing Port Authority President. The matter was before the Court on Defendant's Motion to Stay the Eviction Proceedings pursuant to Minn. Stat. § 559.211.

Based upon all the files, records, and proceedings herein, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. That Defendant's Motion to Stay the Eviction Proceedings pursuant to Minn. Stat. § 559.211 is **DENIED**.

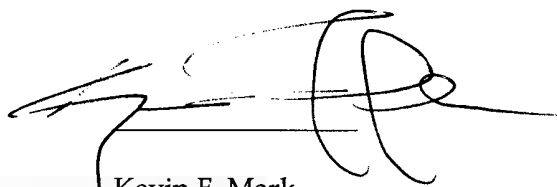
2. That the following memorandum is hereby incorporated by reference. **Filed**

AUG 31 2012

Yvonne A. Black
Court Administrator
By  Deputy

Dated: August 31, 2012

BY THE COURT:



Kevin F. Mark
Judge of District Court



MINNESOTA
JUDICIAL
BRANCH

MEMORANDUM

Landlord Red Wing Port Authority (RWPA) and tenant Osemi Inc. (Osemi) entered into a written lease agreement in February 2007 for a commercial property located in Red Wing, Minnesota. In January of 2010, RWPA and Osemi executed a Memorandum of Understanding (Memorandum) identifying the terms and conditions for Osemi's future purchase of the property. On June 1, 2011, RWPA gave written notice to Osemi to vacate the property by June 30, 2011. Osemi did not vacate the property, and RWPA commenced an eviction action. Before the district court held an evidentiary hearing, the parties reached an agreement wherein Osemi agreed to the allegations in the eviction petition, and RWPA agreed not to enforce the order and writ of recovery for 30 days. Consistent with this agreement, the district court issued the order and writ for recovery. For reasons not explained in the record, RWPA enforced the order and writ six days later. Osemi sought, and the district court granted, a stay pending appeal, and Osemi appealed.

On appeal, Osemi argued that the termination of the lease was in retaliation for Osemi's attempt to negotiate the purchase of the property according to its rights under the Memorandum of Understanding, that its counsel of record lacked the authority to agree to the eviction petition, and that RWPA violated the parties' agreement by seeking enforcement of the writ of recovery and order to vacate before the agreed-upon 30 days had expired. The Minnesota Court of Appeals examined and rejected each of Osemi's claims on appeal and affirmed the district court. Osemi then appealed the matter from the court of appeals to the Minnesota Supreme Court. On August 21, 2012, the supreme court denied Osemi's petition for further review.

Osemi now requests this court stay the eviction proceedings pursuant to Minn. Stat. § 559.211, Subd 1. which states:

Order; proceedings; security. In an action arising under or in relation to a contract for the conveyance of real estate or any interest therein, the district court, notwithstanding the service or publication pursuant to the provisions of section 559.21 of a notice of termination of the contract, has the authority at any time prior to the effective date of termination of the contract and subject to the requirements of rule 65 of the Rules of Civil Procedure for the District Courts to enter an order temporarily restraining or enjoining further proceedings to effectuate the termination of the contract, including recording of the notice of termination with proof of service, recording of an affidavit showing noncompliance with the terms of the notice, taking any action to recover possession of the real estate, or otherwise interfering with the purchaser's lawful use of the real estate. In the action, the purchaser may plead affirmatively any matter that would constitute a defense to an action to terminate the contract. Upon a motion for a temporary restraining order the court has the discretion, notwithstanding any rule of court to the contrary, to grant the order without requiring the giving of any security or undertaking, and in exercising that discretion, the court shall consider, as one factor, the moving party's ability to afford monetary security. Upon a motion for a temporary injunction, the court shall condition the granting of the order either upon the tender to the court or vendor of installments as they become due under the contract or upon the giving of other security in a sum as the court deems proper. Upon written application, the court may disburse from payments tendered to the court an amount

the court determines necessary to insure the timely payment of property taxes, property insurance, installments of special assessments, mortgage installments, prior contract for deed installments or other similar expenses directly affecting the real estate, or for any other purpose the court deems just. If a temporary restraining order or injunction is granted pursuant to this subdivision, the contract shall not terminate until the expiration of 15 days after the entry of the order or decision dissolving or modifying the temporary restraining order or injunction.

Id.

Osemi contends that irreparable harm will result in the event the eviction proceeds forward. Specifically, Osemi reports that their contract with the Air Force will be terminated in the event they are removed from the property. After reviewing the circumstances of the case and the case law in regards to § 559.211, Subd 1, the court is unconvinced that further delay is warranted and an injunction is appropriate.

The eviction action was commenced in September of 2011 by Summons and Complaint for unlawful detainer and the matter was set for hearing in early October. At that hearing, counsel for the parties entered into a stipulation whereby Osemi agreed to relinquish the premises. There was no contested hearing, Osemi consented to the eviction. While Osemi argued on appeal that their counsel had no authority to agree to such an arrangement, that issue has been addressed and rejected by the court of appeals.

The matter has been proceeding through the higher courts for approximately one year. During the pendency of that appeal, Osemi has retained possession of the premises. It is somewhat dubious for Osemi to argue for a stay of proceedings when they have been on notice as to a pending order for eviction for 10 months. While the record does imply ongoing negotiations between the parties in regards to the property, Osemi was fully aware a final decision on the order for eviction was imminent and could provide RWPA the necessary legal foundation to immediately expel them from the grounds.

Finally, the Court is cognizant of the particulars of the companion court file to this litigation, Goodhue County Court File #25-CV-11-3153. In that case, Osemi is asserting a right to purchase the property under the Memorandum. However, as was discussed above, no provision in the Memorandum entitles Osemi to inhabit the premises. Osemi occupies the location based upon the written lease, which was cancelled by RWPA in June of 2011.

This is not a typical Minn. Stat. § 559.211 case where a right of occupancy is guaranteed by the contested document. Rather, the document at issue only confers a right to purchase. Even if Osemi were to prevail on the merits on the companion file, they would not have a right to occupy the premises but only the option to purchase.

As such, the Court will deny the motion for a temporary injunction and allow the eviction to proceed forward.

KFM