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Beer company wins fees in rooftop ad spat

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A state appeals panel granted nearly \$279,000 in attorney fees Tuesday to a beer company in a lease dispute over advertising space on a roof near Wrigley Field.

Anheuser-Busch Inc. (ABI) leased the rooftop space at 3701 N. Kenmore Ave. from March 2005 to February 2009. The Budweiser advertisement greeted anybody looking beyond Wrigley Field's left field bleachers.

If either party took legal action to interpret or enforce the terms of the lease, the agreement stated the prevailing party is entitled to attorney fees.

As the baseball season neared an end with the Cubs headed to the playoffs in September 2008, the building owner filed a forcible entry and detainer action against ABI. The complaint sought to terminate the lease early, alleging that ABI defaulted on the agreement by not paying rent by the due date.

The owner also covered ABI's sign with a tarp.

ABI responded with a complaint seeking declaratory judgment that it didn't violate the lease.

Both parties' complaints were consolidated in front of Cook County Circuit Judge Martin S. Agran.

ABI obtained a temporary restraining order to display its ad through the end of the contract.

After Agran dismissed the owner's forcible entry and detainer complaint with prejudice in November 2008, ABI made its final rent payment.

The litigation continued through the length of the contract, and ABI removed its sign in February 2009.

The owner filed a motion to dismiss ABI's declaratory judgment action. The owner also negotiated a new roof lease with an Indiana casino.

In May 2009, Agran granted summary judgment to ABI on its declaratory judgment action, ruling that ABI's late rent payment didn't constitute a default under the agreement and that the owner didn't have the right to try to terminate the lease early.

Next, Agran granted attorney fees of \$278,699 to ABI.

The owner appealed, arguing that ABI wasn't the prevailing party in the litigation, so attorney fees shouldn't have been issued.

By the time ABI won its motion for summary judgment on the lease issue, the owner argued, it was a moot point because ABI's ad was off the roof and the owner signed a new lease with the casino. ABI had a right to continue leasing the roof after the lease terminated if it matched other deals that the owner secured, and ABI didn't do that, the owner argued.

So, the owner alleged that it prevailed because it ultimately regained possession of the premises and received the full

amount of rent payments.

The 1st District Appellate Court rejected the owner's appeal and affirmed the attorney fees in an unpublished order written by Justice Joy V. Cunningham. Justices Themis N. Karnezis and Maureen E. Connors concurred.

Cunningham wrote that ABI won summary judgment that it didn't default on the lease. And the owner unsuccessfully tried to prematurely terminate ABI's lease with the forcible entry and detainer action, Cunningham wrote.

ABI was represented by Thomas M. Crisham, Thomas W. Mulcahy and Clare J. Quish of Schuyler, Roche & Crisham P.C.

Mulcahy declined to comment other than to say that the trial and appellate courts made the correct ruling.

The owner, 3701 North Kenmore LLC, was represented by Paul M. Bauch, Kenneth A. Michaels Jr., Carolina Y. Sales and Luke J. Hinkle of Bauch & Michaels LLC; and Thomas S. Moore and Jane F. Anderson of Anderson & Moore P.C.

Bauch said he didn't agree with the appellate court ruling because when the trial court ruled that ABI didn't violate the rooftop lease, the lease had already expired and the owner secured a new lease with the casino.

"There's no question this case was moot," Bauch said.

The case is *Anheuser-Busch, etc. v. 3701 North Kenmore LLC*. 2011 IL App (1st) 092715-U.