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Miami Air Cargo Co. Sues Landlord Over Potential \$24M Fees

By Ama Sarfo

Law360, New York (August 09, 2013, 7:14 PM ET) -- Centurion Air Cargo has sued its landlord at Miami International Airport, contending the landlord is trying to charge up to \$24 million in unwarranted management fees, plus \$2 million for deferred rent payments Centurion denies were late, according to a complaint filed in Florida state court.

Centurion says Aero Miami III LLC's management-fee demands flout the terms of the sublease, which doesn't mention management fees. Centurion also disputes the \$2 million deferred-rent charge, saying it followed the terms of their sublease and hasn't defaulted, according to the lawsuit filed July 31.

"Aero has identified nothing under the sublease entitling Aero to provide any service for which it is not already compensated through the hundreds of millions of dollars in rent payments under the sublease," the complaint says. "Because there is no basis for any form of management fee ... Centurion requires judicial determination of the parties' respective rights and responsibilities on this distinct issue."

In 2007, Centurion secured a 30-year ground lease with Miami-Dade County in order to fulfill its plans to redevelop, build and operate additional air cargo facilities at Miami International Airport. Centurion hired Aero, which builds air terminal facilities, to finance the project and perform all remodeling, demolition and construction work, and assigned its ground lease to Aero. Aero then sublet the premises back to Centurion, according to the complaint.

The sublease says that all costs associated with the use and operation of the facilities will be paid by Centurion directly to third parties or will pass through Aero to those third parties, and it also requires Centurion's to pay a monthly base rent, the complaint says.

Centurion started paying rent to Aero in January 2013, under the terms of their sublease, and it says that in the five-plus years that preceded the January rent payment date, Aero never told Centurion about any basis for a management service charge, nor does the sublease or the Miami-Dade ground lease mention management fees.

After Centurion's payment period started, Aero allegedly started to give the company monthly invoices demanding about \$50,000 as a monthly management fee in addition to the base rent Centurion was already responsible for, the complaint says. Aero purportedly told Centurion that the fees are justified under a section of their sublease, but Centurion counters that the section Aero cites simply says that if a third-party management fee is ever charged for the facilities, then it's Centurion's responsibility to pay the charge.

Centurion says Aero is demanding about \$400,000 to \$600,000 in annual management

fees over the next 30 years, which amounts to \$12 million-\$18 million beyond its obligations in the sublease, Centurion says. The company also argues that if it exercises either or both of its two five-year lease extensions, it will pay \$16 million-\$24 million beyond what it is supposed to.

Centurion says it has paid the first seven monthly installments of the management fees, albeit under protest, and it wants the court to order a return of the fees it has already paid.

The company also strongly disputes a \$2 million deferred-rent fee that Aero has levied against it for allegedly defaulting on rent during three different months. Centurion says that while it failed to pay rent by the first of those months, as required in the sublease, when Aero sent a notice, it paid the rent within 10 days of the notices, which is a remedy that the sublease allows, the complaint says.

Aero wasn't immediately reachable for comment Friday.

Centurion is represented by Roger S. Kobert and Robert deFlesco III of Weiss Serota Helfman Pastoriza Cole & Boniske PL.

Counsel information for Aero wasn't immediately available Friday.

The case is Centurion Air Cargo Inc. v. Aero Miami III LLC, case number 2013-25508-CA-01 in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Fla.

--Editing by Rebecca Flanagan.

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