

Fulton finally pays (some) rent for office, Owner Swindall appeals to county superior court for additional \$300,000

It took a dispossessory action and threats of garnishment against the county, but the former landlord for the Fulton County Public Defender's office finally collected more than \$200,000 in back taxes, utility payments, insurance and attorney fees.

Meanwhile, the PD office has moved from its old offices south of the Fulton County Courthouse on Pryor Street to the 55 Park Place building overlooking Woodruff Park downtown, where it will pay more than \$60,000 a month in rent.

The lawyer for property owner Patrick L. "Pat" Swindall said the magistrate's order mandating the payment, issued in mid-February and honored the following month, falls some \$300,000 short of the contractually obligated rental rate, and he has appealed that order to the Fulton County Superior Court.

The order by Magistrate Judge pro hac Jaslovelin "Jessy" Lall also slashed a request for \$18,000 in attorney fees in half, but **RobbinsLaw** CEO and managing member **Richard L. Robbins** said he is not challenging that aspect of the order.

"It was really just the darndest thing I've ever seen," said Robbins, who represents Swindall's Trinity Pryor LLP, the owner of the three-story glass-and-brick building at the corner of Trinity and Pryor streets that, until two months ago, housed the PD offices.

"First, Fulton County refused to pay the rent, and refused to pay the taxes and utilities which they knew they owed. So there we are having a dispossessory trial against Fulton County in a Fulton County court: We get to trial, and the first thing the county does is admit it owes the back insurance, utilities and taxes and late payments, going back to 2007."

But the two sides clashed over the amount of rent the county owed. According to court filings, the county first entered into a lease for approximately 55,000 square feet of space in the building in 2006, with options for annual renewals and extensions through 2016.

In late 2008, the county notified Swindall that it was terminating the lease and entering "hold over" status, in which case the monthly rent would be equal to the amount paid for the last calendar month of the lease term, "including any adjustments as provided herein" and "including renewals or extensions," according to the lease.

Throughout 2009 both sides disagreed as to how much the rent should be, with the county arguing it should be \$39,033 per month, which was the 2008 rate. The landlord argued that the "Lease Term including

renewals or extensions" mandated a rate of \$61,903 — a difference of \$22,870 per month.

According to a proposed order Robbins entered in the case, the county's position that it should pay the same rate it paid when the lease was in effect in 2008 was nonsensical, and in contrast to the "plain language of the lease."

"[The county] argues in essence that the monthly rental should be for the prior year, but this interpretation disregards the phrase, 'Lease Term including renewals or extensions.' If [the county's] interpretation was correct, the latter phrase would never have any meaning."

"Of course it's a higher rental," said Robbins. "On any commercial lease or rent, the rate is higher for a hold-over; clearly, it's going to be higher on a month-to-month basis than a long-term rent."

Robbins sought a total of \$568,216 from the county, including \$307,710 in additional rent, late fees on that unpaid rent, and interest; \$214,971 in taxes, insurance, utilities and late fees for the period from 2007 through 2009; and \$18,091 in attorney fees. But in her Feb. 15 order, Lall denied the higher rent, and ordered the county to pay only the \$214,971 to which it had already agreed it owed. She cut the attorney fees to a "fair and reasonable" \$9,000.

Robbins said he is still bewildered by his negotiations with the county which, he said, seemed intent on not reaching any agreement with his client, and held out on paying the utilities and other fees despite knowing they were valid debts.

"It was like, 'Come on, guys, you know you owe this money.' I think they basically were trying to stall dispossessory long enough to move out. ... It was a sad situation; we tried to negotiate an extremely attractive arrangement to allow them to remain in the building, or even purchase it. I sat in a meeting with county officials where they asked for a lease or purchase price, and when we gave it to them, they said, 'We're not interested.'"

Rollins said there seemed to be some inexplicable "personal animosity" between the county and Swindall, which has in recent months terminated other leases with the landlord on other properties, he said.

Swindall and his wife own several downtown properties, and the landlord is no stranger to controversy. A one-time Georgia congressman and attorney, Swindall spent a year in a federal penitentiary for a 1992 perjury conviction, and in 2009 a Fulton County grand jury indicted him and two other men for allegedly funneling \$8,000 in illegal campaign contributions to Atlanta City Councilwoman Joyce Sheperd's campaign committee in 2005.

In April, a Fulton County judge declined to dismiss the charges on statute of limitations grounds, according to Superior Court records.

But Robbins said he still cannot understand the county's actions in this case.

"I'm confident it wasn't coming from the county attorney's office; they were doing what their client wanted," he said. "But there's some level of politics there that I don't understand: a tenant who wouldn't leave and wouldn't pay."

Even after the Feb. 15 order, he said, the county dragged its feet.

"We had to threaten garnishment of the Fulton County bank accounts," he said. "Finally, on March 3, we got the keys and the check."

As for the PD offices' new digs at 55 Park Place, according to minutes from the Fulton County Commission meeting of Feb. 3, the county negotiated a 40-month lease for 57,822 square feet of space at a yearly rate of \$730,080, or \$60,840 per month, "with no annual cost increases."

There was no response to a detailed e-mail query or followup telephone calls concerning the case sent to Fulton County Communications Director Erica Davis, and a staff member in the office of County Attorney R. David Ware said there would be no comment on the pending litigation.