

Swindall wins \$327,000 from Fulton County in case over unpaid rent

A jury has found that Fulton County owes more than \$327,000 in unpaid rent to the former landlord of the Fulton County Public Defender office at the corner of Trinity and Pryor.

Now the county is fighting off a move to collect nearly \$76,000 in attorney fees that the landlord, former U.S. Representative Pat Swindall, ran up as he fought to first have the PD's office evicted, then to collect his money.

"It's your taxpayer dollars at work," said Swindall's attorney, **Richard Robbins of Robbins Ross Alloy Belinfante & Littlefield**. "We were forced to take the amazing, unprecedented step of having to evict Fulton County for refusing to leave the premises, and then take them to court for refusing to pay what they owed."

There was no response to queries from Fulton County Attorney David Ware or the staff attorneys who handled the case, Kaye Burwell and Marvin Hankins.

The dispute began in 2008, when Swindall and the county were discussing their arrangement. The county wanted some improvements made to the building, and Swindall wanted to raise the rent. In February of that year, Swindall told the county that, unless they could come to terms, he would terminate the lease.

"Pat terminated the lease on the advice of a Fulton County official who told him that it would be the only way the county would renegotiate terms to achieve the county's desire for a new HVAC system and Pat's goal of having a sustainable rate that was already well below market," explained Robbins' law partner **Josh Belinfante** in an email.

The termination led to months of fruitless negotiation, he said, and in October 2008 the county said it would vacate by year's end. Instead, "on New Year's Eve, it informed Pat that it changed its mind and would proceed on a holdover basis."

Under the terms of the lease the county signed with Swindall's company in 2006, The Trinity Pryor LLC, the PD office could remain in the building through at least 2016, but if the county opted to enter holdover status, it would be considered a "tenant at sufferance" and pay a much higher rental rate based on "the last full calendar month of the Lease term including rentals or extensions."

According to court filings, the PD office stayed in the building for another 13 months, during which time it paid a monthly rate of \$39,033, the 2008 rate. But Swindall argued that the lease terms meant the PD office should have paid a monthly rate of \$61,903 – a difference of \$22,869, or \$297,304 for the 13-month period.

In a 2010 filing, Robbins wrote that the county's assertion that it should pay the same holdover rate as it did under the lease was nonsensical.

"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,'" Robbins wrote. "If the county's interpretation was correct, the latter phrase would never have any meaning."

In December 2009, Swindall filed a dispossessory action against the county in Fulton County Magistrate Court seeking the unpaid rent and late fees, as well as payment for utilities, taxes, and insurance dating to 2007.

The PD office moved to new digs at the Georgia-Pacific building near Woodruff Park in January 2010.

In February 2010, the Magistrate Court ordered Fulton County to pay \$214,971 in unpaid utilities, taxes, insurance and late fees but denied Swindall's claim for nearly \$300,000 in unpaid rent.

Swindall appealed that portion of the ruling, and the case moved to the Superior Court.

Prior to trial, Robbins said, his client offered a "significant discount" to settle the case, "but we were just talking to ourselves. Their highest offer was \$25,000, although they indicated they might go a little higher."

The case went to trial before Fulton County Superior Court Judge Shawn LaGrua on June 25, with Robbins and Belinfante representing Swindall and Burwell and Harkins at the defense table.

"Pat was our only witness," said Robbins, testifying about the intent of the hold over provision and calculating what was owed under the hold over provision.

"The county did not call a single witness to contradict his testimony or calculations," he said.

The county's witnesses included D'Andre Berry, a supervisor with the Fulton County PD's office, and the county land administrator, Michael Yeargin, said Belinfante.

"They're all very nice people," Robbins said, "but they had nothing to do with the lease. They kept saying the county commissioners were the only ones who can enter into an agreement, and we'd ask, 'Why aren't they here? They're right across the street.'"

On June 26, after two days of trial, the jury took about two hours to award Swindall \$327,034.71 — "everything we asked for, right down to the penny," Robbins said.

The county attorneys "did the best with what they had," said Robbins.

"They just didn't have much to work with."

On July 3, Swindall's attorneys filed a motion seeking \$75,972 in attorney fees and expenses, and \$22,543 in prejudgment interest, which — if successful — would bring the total amount due from the county to \$425,551.

The county has filed a motion opposing both requests and seeking a hearing on the matter.

"That upset me," said Robbins. "The judge asked us to work the fees out, and I can't even get a response [from the county]. I'm asking for less than 25 percent of the award. That's more than reasonable."

Robbins said the county's intransigence on the matter is frustrating, but he suspects it has something to do with his client's checkered past.

Swindall, a one-time Georgia congressman and attorney, spent a year in a federal penitentiary for a 1992 perjury conviction, and last year he was sentenced to serve one year's probation after pleading guilty to three misdemeanor counts of making illegal campaign contributions to an Atlanta City councilwoman.

"Even now, I've reached out multiple times to them, and I can't get a response," he said. "It's a personal vendetta the county has against Pat, a vendetta they're funding with our money."

The case is *The Trinity Pryor LLC v. Fulton County*, No. 2010CV186331.