

# Lincoln Road Food Fight: Yuca v. Its Landlord

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Yuca restaurant at 501 Lincoln Rd. *J. Albert Diaz*

No one disputes that property values have soared on Lincoln Road, rents are skyrocketing and longtime tenants have been displaced to make way for glitzy newcomers.

But is Janet Suarez, owner of the well-known Yuca restaurant in Miami Beach, being wrongfully pushed out by a landlord who wants to sell the property for upwards of \$33 million?

That question may be headed to a jury to decide after Miami-Dade Circuit Judge Victoria Sigler on Thursday denied a motion for partial summary judgment by landlord J. Berens & Sons Development Corp.

The dispute has been hard-fought and contentious. Suarez contends her rights have been trampled by a greedy landlord. J. Berens & Sons insists her claims are a fiction and she has interfered with a deal to sell the building to extract \$2 million for herself.

Suarez's attorney, Robert Zarco of Zarco Einhorn Salkowski & Brito, styles the litigation as a wake-up call for profiteering landlords.

"The impact of this case on landlord-tenant relationships on Lincoln Road and other commercial properties is that landlords must take into consideration the impact on existing tenants and their legal rights before they unilaterally agree to enter into these highly lucrative sales transactions," Zarco said.

J. Berens & Sons' attorney, Andrew Hall and Adam Lamb of Hall, Lamb and Hall, said that's nonsense.

"What the case is really about is a tenant, who we had treated well for 15-20 years, who tried to shake us down for \$2 million when (J. Berens) was interested in selling the building," Lamb said. "They are in court telling a story we believe is absolutely untrue."

While the issues are sorted out in court, the sale of the building is on hold.

Yuca, which calls itself South Florida's original upscale Cuban restaurant, was launched by Suarez's father, former Radio Mambi owner Amancio Suarez, and relocated to 501 Lincoln Road in 1995. When her father became ill, she took over in 2004. In court pleadings, she said her family had a very close personal and business relationship with the Berens family, including her principal landlord Israel Berens.

With more than three years to go on her lease, Janet Suarez wanted to spend \$500,000 on upgrades to increase the restaurant's revenues and profits. She asked Israel Berens if she could extend the lease for another five years on the same terms so she could recoup her investment and claims he gave her verbal assurances.

Suarez was told last year that J. Berens received a \$33 million offer from South Beach TriStar Capital LLC for the property that "we simply can't refuse," her complaint said. Since then, other companies have expressed interest, and TriStar's offer has jumped to \$41 million, according to her pleadings.

## Lease Extension?

Suarez maintains J. Berens informed her they would not honor the verbal lease extension and violated a lease provision that gave her a right of first opportunity to buy the building if the landlord decided to sell—provided she was not in default on the lease.

Suarez told J. Berens she wanted to buy the building and would find investors. The landlord then "attempted to manufacture a default" of the lease by invoking a provision—never before enforced, according to Suarez—that she provide financial statements and income tax returns. She could not do so in the short time she had to comply, and J. Berens' refusal to disclose the terms of purchase offers it received left her unable to seek investors, according to her pleadings.

She is seeking actual and compensatory damages, lost profits and extension of the lease, which expires Thursday, through April 30, 2020.

In its amended motion for partial summary judgment, J. Berens contends Suarez's conversations about a lease extension did not amount to a contract and at best were an unenforceable "agreement to agree." On the right of first opportunity, the landlord said Suarez never made an offer to buy the property, did not have the funds or financing to buy it, and had only offered vague statements about possible investors.

Suarez was likely unable to secure financing because Ocean Bank had obtained a judgment in 2006 against Yuca and Amancio Suarez for \$562,388 that was not satisfied until Feb. 11, 2014. The Internal Revenue Service also asserted a tax levy claim against Yuca and Amancio Suarez in 2013 for \$392,219 for failing to pay payroll taxes dating back to 2003, a matter that was ultimately resolved.

In a counterclaim, J. Berens is seeking to evict Yuca from the property for being in default on the lease because Suarez did not provide the financial statements and tax returns. Beyond that, it alleges tortious interference in J. Berens' relationship with TriStar because Suarez negotiated a \$2 million payment from TriStar based on the oral lease extension—money that should have gone to J. Berens.

Zarco said the Ocean Bank judgment and IRS claim are a "smokescreen" because no tax lien was ever placed on Yuca and the judgment has been satisfied.

He denied a shakedown of TriStar, saying the company was willing to compensate Suarez to shorten the lease extension so it could take possession of the property.

The two sides also disagree about what happens next. Zarco said since a jury would weigh whether Suarez has a lease extension, eviction is off the table for now.

But Lamb contends the eviction case takes precedence. "It is not unusual for a tenant that is being evicted to try to delay," he said.

Read more: <http://www.dailybusinessreview.com/id=1202724672682/Lincoln-Road-Food-Fight-Yuca-v-Its-Landlord#ixzz3YXjxyVQn>