

# Court decides two St. Paul developers' legal dispute

## Case has delayed plans for Lowry Hotel restaurant

By Frederick Melo  
fmelo@pioneerpress.com

A piece of prime street-corner real estate remains empty in St. Paul's historic Lowry Hotel building because of a legal imbroglio between two of the city's biggest property owners.

The disagreement has delayed plans for a restaurant by a developer behind such popular eateries as the Ox Cart Ale House, Public Kitchen and Bar, and the Handsome Hog.

The Minnesota Court of Appeals recently found developer John Rupp liable for breach of contract to a legal entity formed by Jim Crockarell and Crockarell's wife, Rosemary Kortgard. Rupp says he intends to appeal, which could draw the matter out even longer.

DEVELOPERS' DISPUTE, 8A >

CONTINUED FROM 1A

## > Developers' dispute

The developers took each other to court last year over a 2012-13 restaurant deal gone bad in the Lowry Building at 345 Wabasha St. Built in 1928, the 12-story hotel and apartment building was once one of downtown's most popular bar and dance hangouts, but it has sat partially vacant since the disco-era Oz nightclub closed in the 1980s.

Crockarell, whose Madison Restaurant Group oversees a number of St. Paul restaurants, said the legal dispute has delayed the full redevelopment of the nearly century-old building.

Since the deal with Rupp fell through, Crockarell teamed with other partners, and briefly worked with St. Paul chef Lenny Russo on

a new restaurant concept. However, Russo is no longer part of the partnership.

"We own eight restaurants in St. Paul," Crockarell said Tuesday. "This will be our ninth and 10th restaurant when we open it up in May. ... It's been something that we've been planning for some time, but I wanted to get this lawsuit out of the way, to make sure there's no claims on the space for one reason or another."

Rupp, however, said he will ask the Minnesota Supreme Court to review the appeals court opinion.

"I'm appealing it," Rupp said Tuesday. "That's all I'd like to say."

The unpublished Court of Appeals opinion states that in 2012, Rupp experienced financial problems and faced creditors who threatened to foreclose on the mortgage securing three of his properties — the St. Paul Building, the St. Paul Athletic Club and the Lowry Building. Rupp put

the three properties in bankruptcy and offered to sell the Lowry Building to Crockarell.

Kortgard formed the limited liability company Lowry Building LLC and named Crockarell as vice president.

In June 2012, the company bought a 51 percent interest from Rupp for \$5 million and retained an option to purchase the remainder after 2012.

The purchase price was more than double the Lowry's estimated market value, but Rupp, who also owns the popular W.A. Frost restaurant on Selby Avenue, agreed to lease space in the Lowry to establish restaurants in the first floor, basement and sub-basement, and on the 11th and 12th floor roofs.

Rupp signed the 10-year lease agreement on behalf of his own legal entity, WAF-2 LLC.

Under the lease, first rents were due June 1, 2013, around the time the restaurants were

expected to begin operation, and Rupp's legal entity was responsible for a proportionate share of the building's operating expenses.

The Crockarells agreed to pay for loosely defined "vanilla shell" building improvements, such as heating and cooling but not ductwork, and gave Rupp a \$250,000 credit for tenant improvements.

By December 2012, Rupp had sent Crockarell two emails indicating he was no longer interested in the restaurant project, which had yet to begin construction.

In November 2013, Rupp provided some bare-bones floor plans, "but the plans lacked details as to restaurant concept, equipment, mechanical, electrical, and restaurant layout," the opinion states. The two developers disagreed over square footage and other construction details.

Rupp told Crockarell "that he was unable to begin the improvements because he

had not been provided with the promised 'vanilla shell,'" and the two developers were soon in court with a suit and countersuit debating what, exactly, had been agreed to. The trial took place in Ramsey County District Court from March 9 to March 11, 2015.

"Crockarell testified that the 'vanilla shell' was in place the whole time because there were walls, floors, a ceiling, and gas, water, and electrical service; the only thing lacking was mechanical hookup of air handlers, which could not be done until the restaurant was laid out," the opinion states. Rupp noted "he had not read many of the closing documents he was asked to sign."

The district court found that Rupp's WAF company was not a legal entity when the lease was signed, Rupp was personally liable under the lease for breach of contract, and Crockarell's legal entity (Lowry) was entitled to

\$131,000 in unpaid rent, as well as \$114,000 in unpaid operating expenses, on top of attorney's fees.

Calling the award of damages excessive, Rupp appealed the various findings on March 31, 2016.

In reviewing the case, the three-judge Court of Appeals panel agreed with the district court's assessment that the partnership's failure to complete the restaurant project was largely Rupp's doing.

The judges also agreed that Rupp's legal entity (WAF) and Rupp were interchangeable, and that Rupp was personally liable for the lease.

Crockarell's efforts to install a restaurant in the Lowry continue.

He recently contracted TDB Builders of White Bear Lake to complete \$1.25 million in interior renovations to the building.

In St. Paul, the company's recent construction has included the Salt Cellar/Fitzgerald's on Selby Avenue.