

Recent Ruling Underscores the Importance of Damages Provisions in a Commercial Lease

A recent ruling by the Massachusetts Supreme Judicial Court (SJC) highlights the importance of negotiating appropriate damages provisions in commercial leases. Landlords should ensure that their leases contain a comprehensive liquidated damages provision allowing them to accelerate rent for the balance of the lease term in the event of a tenant default. Without one, the landlord must wait until the end of the lease term, possibly decades, to ascertain its actual damages.

In 275 Washington Street Corp. v. Hudson River International, LLC, 465 Mass. 16 (2013), the SJC ruled that a commercial landlord whose tenant broke a 12-year lease after only two (2) years could not seek damages until the 12-year lease term was up, even though the landlord quickly found a replacement tenant.

The lease contained an indemnification clause holding the tenant responsible for any losses as a result of the tenant's breach but did not include a liquidated damages provision or any other remedy aside from indemnification. A liquidated damages clause would have allowed the landlord to accelerate the balance of the unpaid rent owed by the tenant through the end of the term.

After the tenant's default only two years into the 12-year lease, the landlord re-entered the property and took possession of the commercial space. Shortly thereafter, the landlord filed a breach-of-contract suit against the tenant, seeking unpaid rent for the balance of the lease term and other damages. While the landlord's breach-of-contract suit against the former tenant was pending, the landlord entered into a 10-year lease with a new tenant for the same space. The new lease went beyond the original 12-year term but was for a reduced monthly rent.

The landlord argued that because the new tenant's lease extended past the former tenant's lease term, damages could be easily ascertained using the difference in rent that would have been collected from the original tenant and what would now be collected from the new tenant during that period. The SJC disagreed, however, citing future uncertainties such as possible destruction of the premises by fire, a default by

the new tenant or a sale of the premises that could affect the actual amount of the loss sustained by the landlord. Consequently, the SJC ruled that the landlord must wait until the original 12-year term had expired to ascertain the full scope of its actual damages. Of course by that time, the chances of the landlord recovering anything from a defunct business would be highly unlikely.

The 275 Washington Street Corp. decision highlights the importance of incorporating a clear provision into leases that explicitly sets forth a landlord's remedies in the event of a default. If the landlord's commercial lease had contained a liquidated damages provision providing for the landlord's ability to accelerate rent through the balance of the lease term in the event of the tenant's default, the landlord would have been able to secure damages through the end of the lease term by filing suit immediately. Commercial landlords should insist upon a damages acceleration clause to prevent a fate similar to the one that befell the landlord in the 275 Washington Street Corp. case. Conversely, tenants will want to dilute such a clause to the extent possible.

In its decision, the SJC notably commented that "[a] landlord left without an adequate remedy following breach of the lease by a tenant has only itself to blame for entering into a lease that fails to provide such a remedy. We shall not disrupt the settled expectations of leasing parties in order to protect a landlord from the consequences of failing to insist on an adequate remedy in the negotiation of a commercial lease."

The 275 Washington Street Corp. decision underscores the importance of negotiating a rent acceleration and/or liquidated damages provision in any commercial lease, and it serves as a reminder that Massachusetts courts will not go out of their way to protect landlords who fail to protect themselves by negotiating an appropriate commercial lease. The attorneys at Fletcher Tilton PC endeavor to stay on top of developments that impact commercial lease drafting and lease negotiations, and the attorneys possess the experience to ensure that landlords and tenants alike are expertly represented in their leasing transactions.

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