REAL ESTATE

Lease Contracts - Know Your Terms

By Andrew Lieb

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The best part of a landlord / tenant practice is having the opportunity to see the leases that our clients use when renting their property. The things that exist in these leases sometimes challenge our imagination. It's clear that the client once Googled a lease, used a form from another state or country and thought nothing of its validity or implications. No time was spent protecting their valuable asset. No thought ever passed their mind to have their lease tailored to their property by an attorney, much less, to ask the attorney to explain how to abide by the lease's provisions during its term. In fact, real estate clients are renowned to only want to spend money when the problems arise, if at all.

Our Court of Appeals has recently taught us another lesson on leases and the concept of freedom of contract in the creation of leases by way of the case of Eujoy Realty Corp. v. Van Wagner Communications, LLC. Therein, the court stated "although it may seem harsh for tenants, the courts assume that the parties have knowingly bargained for the provisions of their agreement." Next, the court quoted from its previous case of Maxton Builders, Inc. v. Lo Galbo wherein it stated "[i]f they are dissatisfied …, the time to say so [is] at the bargaining table". So, issues should be fleshed out at the bargaining table, not in the court room. Further, care needs to be taken when fleshing out these issues even when utilizing the standard form lease copyrighted by the Real Estate Board of New York, Inc., as was done in the Eujoy Realty Corp. case. Just because you start with a form, each paragraph must be fully understood by the parties so that they can be aware of the precise requirements in their dealings into the future. In Eujoy Realty Corp., the court made a point that the dealings between the parties are irrelevant when they contradict the terms and there is a "no oral modification" clause in the lease, which prevents an informal / casual side-agreement while the parties are happy with each other and before litigation ensues. So, clients must understand that the lease is the hard and fast rulebook for the parties, which they are charged with understanding and following.

The main issue before the court in Eujoy Realty Corp. was "whether [tenant] is indebted to [landlord] for the annual basic rent for 2007 under the terms of the lease and, relatedly, whether the lease's payment terms were modified by an oral agreement." In cold hard cash, at issue was $94,133.57, plus reasonable attorneys' fees and costs.

The facts before the court in Eujoy Realty Corp. were that the tenant terminated the lease a week after the commencement of a new annual term, which began on January 1, 2007. Prior thereto, the tenant had issued a check for the full 2007 year, but immediately thereafter issued a stop payment thereon claiming it was "accidentally" issued. In the case, as in many other non-residential rentals, rent was to be prepaid for each term, which is not the default rule applicable when no provision addresses the timing of payments.

In the ensuing litigation, the tenant wanted to only pay a pro-rated rental for the week that they occupied the premises with their billboard sign, which rental payment would have been the total sum of $2,109.43, and landlord instead wanted payment for the entire year or $96,243.00. Operatively, "the parties did not agree in the lease to apportion rent post termination."

In deciding this case, the court addressed the default rules for the prepayment of rent by stating "Rent paid 'in advance' (i.e. at the beginning of the term) is unrecoverable if the lease is terminated before the completion of the term, unless the language of the lease directs otherwise." Here, the court acknowledged that the check was stopped and therefore rent was not paid. However, the court held that it is irrelevant if the rent was actually paid, but instead what is operative is if the "tenant's debt accrues." In such a situation, where the debt accrues, the entire rent is due if a prepayment clause exists in the lease without an apportionment clause. So, if a party expected to apportion rent for an incomplete term, it was incumbent upon that party to write that provision into the lease.

The lesson here is that in leases, both attorneys and their clients must think about what they expect to occur in every situation and flesh those thoughts out before transferring possession. At my firm, we recommend that our clients write-out their expectations in English without legal terms and thereafter we explain to them the implications of their expectations. If our client is satisfied, we translate their expectations into legal terms. However, many times a client does not want to pay for a sophisticated lease that includes each of their expectations. Now, we have another tool in our arsenal to counsel our clients, we can remind these clients that it cost the defendant in Eujoy Realty Corp. approximately $100,000.00 to not understand each aspect of its agreement. A lease must be written and understood before possession passes.

Note: Andrew M. Lieb is Managing Attorney of Lieb at Law. P.C. and a frequent contributor to this publication. Additionally he has served several times as a Special Section Editor for The Suffolk Lawyer.