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COMMENTARY

The Importance of 'Speaking Up' Regarding Lease Renewal Deadlines for Commercial Tenants and Landlords

While courts in South Florida sometimes agree with the commercial landlords and force the tenant to leave if the tenant was late in exercising the renewal option, it has been the law of our state for over 70 years that, in certain circumstances, a tenant that exercises its option late may nonetheless extend the terms of its lease.

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By Eddie L. Holiday III | July 08, 2024 at 11:37 AM



Imagine you are a small business owner, and you enter a five-year commercial lease that naturally expires at the end of the year. The lease grants you an option to renew the lease, but to exercise the renewal option you must mail the commercial landlord a written notice no later than Nov. 31, 2023. On Nov. 15, 2023, you tell your rock-star office administrator to send the landlord the written lease renewal notice. Unfortunately, your office administrator made a typographical error that resulted in the lease-renewal notice being mailed to the wrong location. On Nov. 18, 2023, (a week before the Thanksgiving holidays), you speak with the landlord over the phone and provide verbal notice of your intent to renew the lease; and the landlord tells you that, while he doesn't mind you staying on the property and doesn't have any plans on leasing or selling the property, he needs the written notice. As soon as you get off the phone you immediately follow up with your office administrator to confirm that the lease renewal letter was sent; and she swears that it was mailed to the correct location. Over the holidays you become ill and do not recover until Dec. 5, 2023.

When you get back into the office you see the return receipt and realize that your office administrator mailed the renewal notice to the wrong location. You send another renewal notice to the landlord via overnight mail and receive confirmation that it was received by the landlord. You believe everything is fine and look forward to continuing your business. However, on Jan. 1, 2024, you receive correspondence from the landlord stating that he is rejecting your renewal notice because it is untimely. Is there anything that can be done to ensure that you can keep your business at that location? Or can the landlord remove the tenant and now lease the property a higher amount that matches the market?

While courts in South Florida sometimes agree with the commercial landlords and force the tenant to leave if the tenant was late in exercising the renewal option, it has been the law of our state for over 70 years that, in certain circumstances, a tenant that exercises its option late may nonetheless extend the terms of its lease.

The 1951 Florida Supreme Court case of *Dugan v. Haige*, 54 So. 2d 201 (Fla. 1951), held that a trial court could, under certain circumstances, relieve a tenant of the consequences of failing to give notice to renew a lease. Specifically, the Florida Supreme Court required that the failure to renew the lease must result from "fraud, surprise, or mistake, and other special circumstances which would warrant a court of equity granting a lease." Nearly 40 years after *Dugan*, the First District Court of Appeal in *Friendship Park Property Corporation v. Shaw*, 505 So. 2d 456 (Fla. 1st DCA 1987), provided a three-part test to consider above and beyond whether the mistake is accompanied by special circumstances. Under the "Friendship Test" a trial court will determine whether equity should relieve a tenant from their mistake if: the tenant's delay in providing notice is slight; the tenant's delay in providing notice did not prejudice the landlord; and the court's failure to grant relief would cause the tenant unconscionable hardship.

Importantly, "mistakes" obviously can include some degree of negligence—otherwise there wouldn't be a mistake—but the court's equitable power will only attach so long as the mistake is not the result of an inexcusable lack of due care. See e.g., *Investment Builders of Florida v. S.U.S. Food Market Investments*, 753 So. 2d 759 (Fla. 4th DCA 2000). As for the "special circumstances" it must be shown the mistake was either the fault of the landlord, or at least, not the fault of the tenant. See e.g., *Dugan*, 54 So. 2d at 202 (explaining that the special circumstance was that the landlord kept the only copy of the lease); *Florida Cranes v. Florida East Coast Properties*, 324 So. 2d 721, 722 (Fla. 3d DCA 1976) (explaining that "equity can correct a unilateral mistake where said mistake is committed by an employee of the appellant, and constitutes a simple but honest mistake which could lead to an unconscionable mistake."). But what about the "Friendship Test"? Well, these factors are very fact intensive and while there is no bright-line rule, throughout the decades, patterns have emerged. For example, for the first factor—the slight delay in providing notice, Florida courts have found that a six-week delay was slight, see e.g., *Ledford v. Skinner*, 328 So. 2d 219, 220 (Fla. 1st DCA 1976), but a six-month delay was not slight. See *Friendship Park*, 505 So. 2d at 548. As for the second factor, the landlord's prejudice is generally seen as a lost business opportunity that is the sole fault of the tenant remaining on the property; and the third factor regarding unconscionable hardship is found based on the dissolution of the commercial tenant because they have nowhere to operate their business or lost a strategic location, goodwill within the community, etc.

The lesson for commercial tenants? Ensure all renewal dates are properly noted and calendared so that they may be timely exercised. Make sure to "speak up" and provide verbal notice, even when the lease agreement requires written notice because that may aid your ability to demonstrate lack of prejudice to the commercial landlord. If you, as a commercial tenant, do not feel comfortable executing any legal documents enforcing your rights under the commercial lease agreement, make sure that you have retained counsel to draft the appropriate documents.

As commercial landlords, it is critical to recognize this exception to the "time is of the essence" rule governing lease renewals and deal with the tenant in a fair and reasonable manner rather than taking a hard-nosed position that the tenant has forfeited its extension rights. Like with the commercial tenant, it is critical that you "speak up" and tell the tenant that you plan on leasing or selling the property to another entity or even that you plan to re-let the property, if you do not receive the notice in a timely manner as specified in the commercial lease agreement. This will make sure that you have placed your cards on the table; and put the commercial tenant on notice that any delay in the timely exercise of the tenant's renewal rights will cause you prejudice.

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