



LAWYERS WEEKLY

Monday, September 19, 2011

Successors of landlord demand tenants pay for fixtures

Governing lease terms argued as inadequately prepared; case settles

In a lawsuit filed in Midland County Circuit Court, plaintiffs/counter-defendants McKay Properties, Inc., William Hopkins, Connie Hopkins and Neil Hopkins sought contractual damages from defendant/counter-plaintiff McKay Press, Inc., in a dispute over three commercial leases for components of the space used for the operation of a printing business.

McKay Properties, the original landlord, was the owner of the business and, therefore, was effectively both landlord and tenant. The owner sold the capital stock of the corporate business to McKay Press, who inherited the existing leases in 1995.



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The leases contained language indicating the tenant's



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responsibility was absolute triple net, and made the tenant responsible for maintenance and repair. No provision was made for the landlord having any responsibility for maintenance or repair.

The leases were silent with respect to whose responsibility it was to replace any component that was no longer maintainable or repairable. The leases also provided that, upon expiration or termination of the leases, the premises were to be returned to the landlord in the original condition received. The leases also contained a clause relieving tenant of the responsibility for normal wear-and-tear.

The contiguous buildings comprising the premises were constructed at

different periods of time. Toward the end of the 15-year term, it was no longer commercially feasible to maintain or repair the roofs, air conditioning, building structure, parking lots and other features of the property; all needed to be replaced.

William Hopkins, Connie Hopkins and Neil Hopkins were the successors of the original landlord. They attempted, through the litigation, to force McKay Press to replace all that was no longer commercially reasonable to maintain or repair.

McKay Press rejected their demands, and filed a counterclaim to uphold the terms of the contract. It asserted that plaintiffs would have difficulty proving key elements of their claim, given inadequately prepared governing leases.

The matter settled for \$195,000 in favor of the plaintiffs/counter-defendants, \$16,842.50 of which stemmed from damage to one of the floors during the move from the premises.

Type of action: Contract involving commercial real estate lease
Type of injuries: Landlord claim of tenant obligation to restore premises to original condition
Name of case: *McKay Properties, Inc., et al. v. McKay Press, Inc.*
Court/Case no./Date: Midland County Circuit Court; 10-6497-CK-B; May 24, 2011
Name of judge: Michael J. Beale
Name of mediator: Karl J. Weyand Jr.
Demand: \$1.7 million
Settlement amount: \$195,000
Mediation awards: \$450,000 plaintiff/ counter-defendant, \$100,000 defendant/ counter-plaintiff
Most helpful experts: Greg Mertes, HVAC expert, Overland Park, Kan.; Geoff Brandle, roofing, Midland
Attorneys for plaintiff: Johanna L. Jozwiak, Peter A. Poznak
Attorneys for defendant: Richard J. Maddin, Jayson M. Macyda