Wednesday, October 23, 2019
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General Session 2

What Are We Fighting About This Year?
Recent Case Law Affecting Shopping Centers

Presented to

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By:

Connie Simmons Taylor
Baker Botts L.L.P.
910 Louisiana Street
Houston, Texas 77002
connie.simmons.taylor@bakerbotts.com

James Mayer
Holland & Knight
131 S. Dearborn Street,
Suite 3000
Chicago, Illinois 60603
james.mayer@hklaw.com

Lila Shapiro-Cyr
Ballard Spahr LLP
300 E. Lombard Street, 18th Floor
Baltimore, Maryland 21202
cyrl@ballardspahr.com

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MISCELLANEOUS

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FEDERAL CASES	
FIRST CIRCUIT	
In re Bos. Language Inst., Inc., 593 B.R. 381 (Bankr. D. Mass. 2018)	
Issue(s):	1) Whether landlord had established that it intended to substantially rehabilitate all or any substantial portion of the building containing the tenant's leased premises pursuant to a portion of the lease entitled "Notice of Termination of Lease and Tenant's Right to Possession." 2) Whether the Motion for Relief from Stay to Proceed with Summary Process Eviction should be granted to the Landlord.
Facts:	RREF II Kenmore Lessor II, LLC ("Landlord") filed a Motion for Relief from Stay to Proceed with Summary Process Eviction. Boston Language Institute, Inc. ("Debtor Tenant") operated a business as a tenant under a written lease (the "Lease") for the entire third floor of One Kenmore Centre, 642-648 Beacon Street, Boston, Massachusetts (the "Building"). The Lease provided that "if Landlord determines to demolish or substantially rehabilitate all or any substantial portion of the Building (two or more floors), Landlord may elect to terminate the lease . . . ." On June 27, 2017, Landlord sent Debtor Tenant a "Notice of Termination of Lease and Tenant's Right to Possession" letter explaining that Landlord planned a substantial rehabilitation of the Building and gave the requisite notice to terminate the Lease. At trial, in response the letter stating that substantial rehabilitation was planned, Debtor Tenant provided documentation and testimony that the planned rehabilitation was only modest and did not meet the required threshold. Also, Debtor Tenant argued that Landlord wanted to terminate the lease to capitalize on the possibility of securing a higher lease payment from a new tenant. Furthermore, Debtor Tenant commenced Chapter 11 bankruptcy in June 2018. Debtor Tenant listed the Lease as one of its assets. Debtor Tenant argued that Landlord's Motion for Relief from Stay to Proceed with Summary Process Eviction should be denied because Debtor Tenant was paying post-petition rent at the contract rate; therefore, Landlord's interest in the Lease was adequately protected. The Court applied the *Football Weekly* test to determine whether the Landlord should be granted relief from the stay. Specifically, the *Football Weekly* factors are: "(a) [a]ny great prejudice to either the bankrupt estate or the debtor will result from continuation of the civil suit, (b) the hardship to the [non-bankrupt party] by maintenance of the stay considerably outweighs the hardship of the debtor, and (c) the creditor has a probability of prevailing on the merits." *In re Pro Football Weekly*, 60 B.R. 824, 826 (N.D. Ill. 1986).
Holding:	The Court held the following: 1) At the time of the ruling, Landlord intended a substantial rehabilitation of the Building. However, the Court concluded that substantial rehabilitation was not contemplated before Debtor Tenant filed its bankruptcy petition. 2) Applying the *Football Weekly* test, the Court concluded that Debtor Tenant would be greatly prejudiced if it were required to defend an eviction proceeding during the very early stages of its reorganization and the hardship to Debtor Tenant outweighs the hardship to Landlord at that juncture in the bankruptcy case. The Court held Debtor Tenant was

	affording Landlord adequate protection in the form of on-going monthly payments. Therefore, the Court denied Landlord's Stay Relief Motion without prejudice.
58 Swansea Mall Drive LLC v. Gator Swansea Prop., LLC, 2018 WL 6522899 (D. Mass. 2018). (Appeal pending).	
Issue(s):	1) Whether the landlord breached its contractual obligations under the lease by hesitating to execute required documentation. 2) Whether the landlord violated the implied covenant of good faith and fair dealing by insisting that maintenance and repairs be completed by the tenant. 3) Whether the landlord violated the implied covenant of good faith by inquiring about the tenant's consent to build a restaurant on an outparcel. 4) Whether the tenant was in material default of its maintenance obligations under the ground lease. 5) Whether the tenant was in default as the tenant was unaware of a gap in insurance coverage at the time certificates of insurance were provided.
Facts:	A dispute arose between tenant 58 Swansea Mall Drive, LLC ("Tenant") and landlord Gator Swansea Property, LLC ("Landlord") regarding a Ground Lease (the "Ground Lease") to a shopping center (the "Shopping Center") in Swansea, Massachusetts. Early in the parties' relationship, there was a dispute regarding repairs and maintenance that Tenant was required to perform under the Ground Lease. Landlord sent many notices and demand letters to Tenant requesting that Tenant perform various repairs. However, none of the notices used the words "breach" or "default" in connection with Tenant. Shortly after the dispute, Tenant sought to mortgage its leasehold interest. The Ground Lease permitted Tenant to mortgage its leasehold so long as Tenant was not in default. In applying for the mortgage, Tenant offered the leasehold as collateral and did not disclose the maintenance dispute with Landlord. United Bank (the "Bank") requested that Landlord fulfill the documentation obligations under the Ground Lease in order to secure the mortgage. Landlord, Tenant, and the Bank negotiated the terms of the required documentation for a few months. After prolonged negotiations, the Bank denied the mortgage loan because the parties failed to comply with the applicable sections of the Ground Lease to procure the mortgage. Landlord raised two additional concerns as the mortgage negotiations progressed. First, the Ground Lease required Tenant to maintain casualty insurance and to add Landlord as an additional named insured, together with Landlord's lender. However, Landlord was not added as an additional named insured until Tenant's mortgage negotiations were taking place. Tenant argued it was unaware of any lapse in fulfilling its insurance obligations. Also, Landlord was concerned about language in Tenant's proposed mortgage that insurance proceeds would be paid to the Bank. Second, Landlord desired to construct a Chick-Fil-A restaurant on the outparcel in the Shopping Center. Tenant believed Landlord's assent to the mortgage obligations was conditioned on Tenant's agreement to allow a Chick-Fil-A restaurant to be built in the Shopping Center.
Holding:	The Court held the following: 1) Landlord did not breach its contractual obligations under the Ground Lease by hesitating to execute an agreement acknowledging Tenant's

	mortgage. Specifically, it was reasonable for Landlord to hesitate due to concerns about future litigation over the distribution of insurance proceeds. 2) Landlord did not violate the implied covenant of good faith and fair dealing by sending maintenance and repair notices to Tenant because Landlord had a right to insist on good care of the premises. 3) Landlord did not violate the implied covenant of good faith by inquiring about Tenant's consent to build a Chick-Fil-A restaurant on the outparcel because Landlord had a good faith belief it could construct the restaurant on the outparcel. 4) Tenant was not in material default of its maintenance obligations under the Ground Lease because Landlord continued to accept Tenant's performance. 5) Tenant was not in default based on any lapse in fulfilling its insurance obligations because Tenant was unaware of the gap in insurance coverage at the time certificates of insurance were provided.
SECOND CIRCUIT	
None.	
THIRD CIRCUIT	
Century v. Roebuck & Co., 758 F. App'x 242 (3d Cir. 2018)	
Issue:	Whether an arbitration panel exceeded the scope of its authority by allegedly rewriting rather than interpreting the terms of a commercial lease.
Facts:	Century III Mall PA LLC ("Landlord") and Sears Roebuck & Co. ("Tenant") entered into a lease with a forty (40) year term pursuant to which Sears constructed and maintained an "anchor" store as part of the Century III Mall. The lease contained a provision that provided the Landlord with the right to terminate the lease and acquire Tenant's "Building and Improvements" if Tenant discontinued the operation of a department store in the leased space. The lease specified a method of calculating the value of the Tenant's Building and Improvements and included an arbitration provision prohibiting arbitrators from changing any terms of the lease, depriving any party of any rights provided for in the lease, or modifying or extinguishing any obligation contained in the lease. When Tenant decided to cease operations of its department store, Landlord elected to terminate the lease and acquire the Building and Improvements. The parties disagreed on the appraised value of the Building and Improvements, and Tenant sought arbitration. The arbitration panel ultimately awarded Tenant its book value calculation for the Building and Improvements. Landlord appealed the arbitration panel's decision, claiming that the arbitration panel departed dramatically from the unambiguous terms of the lease and exceeded its authority by (i) interpreting the term "leasehold improvements" to have the same meaning as "Building and Improvements" and (ii) rejecting the appraisals of the Landlord and Tenant and instead using Tenant's book value to determine the amount of the award. Tenant filed a motion to dismiss the appeal. The lower court granted Tenant's motion to dismiss and confirmed the arbitration award in Tenant's favor. Landlord appealed the decision of the lower court.

Holding:	The Third Circuit affirmed the lower court's order confirming the arbitration award. The court found that the arbitrators adopted a reasonable interpretation of the terms "leasehold improvements" and "Buildings and Improvements" and that the panel reasonably applied the formula specified in the lease for determining book value to determine the award value to the Tenant. The court emphasized that while courts are neither entitled nor encouraged simply to "rubber stamp" the interpretations and decisions of arbitrators, they still apply a highly deferential standard of review. The arbitration panel was responsible for interpreting and enforcing the contract, and when the arbitrator makes a good faith attempt to do so, even serious errors of law or fact will not subject his award to vacatur.
Haggen Holdings, L.L.C. v. Antone Corp., 739 Fed. Appx. 153 (3rd Cir. 2018)	
Issue:	Whether during bankruptcy proceedings a tenant must abide by the terms of a profit-sharing provision in its lease that requires payment to the landlord of fifty percent of the net profits of an assignment.
Facts:	Haggen Holdings, L.L.C. ("Tenant") operated a grocery store on premises leased from Antone Corp. ("Landlord"). The lease included a profit-sharing provision that required "the [Tenant] provide[] for payment to Landlord of one-half of the net profit realized by the [Tenant] upon transfer and assignment of the Lease to a third party[.]" Tenant filed for Chapter 11 bankruptcy in 2015 and gave notice of assumption of the lease and, subsequently, notice of sale to the Landlord. Landlord objected to the notices, asking the Bankruptcy Court to enforce the profit-sharing provision. Landlord contended that the provision was "the product of a bargained-for exchange" and that as a creditor in the bankruptcy proceedings, it was entitled to the benefit of its bargain. Tenant argued that the provision violated the prohibition against anti-assignment clauses found in Section 365(f)(1) of the Bankruptcy Code. Following a hearing, the Bankruptcy Court overruled Landlord's objection and ordered the sale, finding that the provision at issue closely resembled provisions conditioning assignment that other courts had previously invalidated under Section 365(f)(1). Landlord appealed to the District Court, which affirmed the Bankruptcy Court's order. The District Court held that the profit-sharing provision conditioned assignment because it required Tenant to pay to Landlord fifty percent of net profits received through any assignment. Landlord further appealed.
Holding:	A three-judge panel of the Third Circuit found that the Bankruptcy Court and District Court properly determined that the profit-sharing provision was unenforceable and, accordingly, affirmed the District Court's order. Specifically, the Third Circuit confirmed the lower courts' finding that contract provisions that restrict or condition assignment are unenforceable under Section 365(f)(1) of the Bankruptcy Code. The court reiterated that Section 365(f)(1) "was designed to prevent anti-alienation or other clauses in leases . . . from defeating [the bankruptcy trustee's] ability to realize the full value of the debtor's assets in a bankruptcy case." The court found that in such cases the considerations of bankruptcy policy—to maximize the value of a debtor's estate for the benefit of all creditors—outweigh the benefits of a bargain, noting that "[p]rofit sharing provisions function only to extract value that would otherwise accrue to a debtor's estate, for the sole benefit of an individual landlord."
Revel AC, Inc. v. Revel Entm't Grp., LLC (In re Revel AC Inc.), 909 F.3d 597 (3d Cir. 2018)	
Issue:	Whether a tenant may deduct from its rent obligations amounts owed for recoupment payments that were included in its original lease after the original

	landlord has gone bankrupt, rejected the lease, and been bought by another.
Facts:	Revel Casino ("Original Landlord") entered into a lease with IDEA Boardwalk ("Tenant") that stated that Tenant would pay rent on a month-to-month and venue-by-venue basis. Additionally, the lease included a build-out section which provided that Original Landlord and Tenant would make capital contributions to build-out Tenant's venues before opening them and a provision which provided that if Tenant reached a certain threshold in gross sales but not a positive return in capital net of depreciation, then the landlord would refund the amount that was necessary for the venue to break even. Original Landlord subsequently went bankrupt and was purchased by Polo North Country Club ("New Landlord"). The 2015 purchase agreement provided that the only liability that New Landlord would take on was the lease with Tenant. Further, two carve-out provisions of the "free and clear" sale order preserved any rights of recoupment and any rights elected to be retained by Tenant pursuant to § 365(h) of the Bankruptcy Code. Later, the bankruptcy court granted a motion by Original Landlord to reject the lease retroactively to September 2, 2014, when Original Landlord closed its doors. In response, Tenant filed a notice of its election to retain its rights as a tenant under § 365(h) of the Bankruptcy Code as expressly allowed by the sale order. Although the bankruptcy court further clarified major aspects of the relationship between Tenant and New Landlord, it left open the question of whether Tenant was permitted to deduct from its outstanding rent obligations certain recoupments amounts owed to it under the lease. Tenant filed a motion for summary judgment seeking clarification on this point, and the bankruptcy court held Tenant had the right to offset the recoupment amounts due under the lease against its rent obligations. The District Court affirmed on appeal by New Landlord, and New Landlord further appealed to the Third Circuit.
Holding:	The Circuit Court affirmed the judgments of the bankruptcy court and the District Court on all grounds in favor of Tenant. The Court agreed with the lower courts that (i) Tenant retained its rights to the conditions of the contract under § 365(h) of the Bankruptcy Code and (ii) Tenant could deduct the amounts owed to it from its rent obligations based on the equitable doctrine of recoupment. The court referred back to its precedent in *Megafoods Stores, Inc. v. Flagstaff Realty Assocs.*, *60 F.3d 1031, 1034 (3d Cir. 1995)*, in which it explained that a tenant who elects to retain its rights under § 365 of the Bankruptcy Code can remain under the same rental terms of the original lease. Therefore, the Court determined that because there was no doubt that the original lease allowed for recoupment payments, the right to such payments was a retained right of Tenant after New Landlord took over. Next, the court stated that even if the rights granted by § 365(h) did not extend to recoupment payments, Tenant would still be entitled to them through the doctrine of equitable recoupment. The court noted as an initial matter that the doctrine of equitable recoupment, although not codified in the Bankruptcy Code, is decisional law. The Court went on to find that the doctrine of equitable recoupment was correctly applied in this instance because the rental obligations and recoupment payments arose from the same transaction. Furthermore, the court held that it would be inequitable for Tenant to pay the full amount of rent without the recoupment payments stipulated in its original lease. The Court further solidified its position by restating that the sale order allowed for Tenant to retain its rights to recoupment in adversary proceedings. Moreover, the court pointed out that the phrase "free and clear of liens encumbrances and interests" did not extinguish Tenant's right to equitable recoupment because the doctrine is an affirmative defense. Finally, the court stated that the doctrine of equitable recoupment would apply to rent and recoupment amounts under the lease regardless of whether they

	arose before or after Original Landlord had filed for bankruptcy or before or after they rejected the lease. Therefore, the court affirmed the decision of the lower courts granting Tenant the right to reduce its rent obligations by the recoupment amounts provided under its lease.
rue21, Inc. v. Los Lunas Inv'rs, LLC, No. 18-CV-715, 2019 U.S. Dist. LEXIS 51765 (W.D. Pa. Mar. 27, 2019)	
Issue:	(1) Whether the burden of proof lies with the party seeking to invalidate a liquidated damages clause or the party seeking to enforce the liquidated damages clause; (2) Whether a liquidated damages clause is enforceable in its entirety.
Facts:	rue21, Inc. ("Tenant") and Los Lunas Investors, LLC ("Landlord") entered into a lease agreement ("Lease") for a retail space in February 2016. The Lease included a liquidated damages clause, which provided that the "Tenant shall receive five (5) days of abatement of Minimum Rent and Other Charges . . . for each day that the Actual Delivery Date is delayed past the Target Delivery Date. If the Actual Delivery Date is not delivered to Tenant within fifteen (15) days after the Target Delivery Date, then beginning with the sixteenth (16) day . . . the Late Delivery Credit shall increase to ten (10) days of abatement . . . for each day of delay." The Landlord delivered sole and exclusive possession of the space 84 days after the Target Delivery Date. Due to the delay, the Tenant applied 755 days of credits totaling $191,415.41 towards the first payments of minimum rent and other charges. Upon the Tenant's subsequent filing for bankruptcy and filing of a notice of intent to assume the Lease, the parties disagreed about the cure amount for satisfaction of defaults under the Lease because the Landlord argued that the liquidated damages clause was unenforceable. The Bankruptcy Court found that Landlord had the burden of proof and that the liquidated damages clause was partially enforceable to the extent it afforded five days of abatement for each day of delay. However, the Bankruptcy Court found that any additional increase in the Late Delivery Credit was a penalty and thus unenforceable. Both parties appealed.
Holding:	The appellate court affirmed the Bankruptcy Court's finding that Landlord had the burden of proof because, under New Mexico law, the party seeking to invalidate the liquidated damages clause bears the burden of proof. Thus, Landlord had to demonstrate that the liquidated damages clause was "so extravagant or disproportionate as to show fraud, mistake, or oppression." The appellate court also affirmed the Bankruptcy Court's finding that Landlord did not establish that the liquidated damages clause was grossly disproportionate or extravagant because there was no proof to support such a conclusion. The liquidated damages were based on a predetermined per day credit that was in the Letter of Intent and the Lease. Additionally, the liquidated damages did not have to equal the actual damages of the Tenant because they were an estimate. Thus, the appellate court upheld that, under New Mexico law, liquidated damages clauses are generally enforceable. However, the appellate court disagreed with the Bankruptcy Court's finding that the increase in the Late Delivery Credit was unenforceable. The appellate court found that the additional inquiry into whether the increase was just compensation or a penalty was unsupported by New Mexico law. The appellate court decided that the Bankruptcy Court's inquiry should have ended upon finding that Landlord failed to meet its burden. Additionally, the appellate court found that the determination that an increase in the Late Delivery Credit was punitive was "speculative at best,

	based on no evidence." Thus, the appellate court reversed the Bankruptcy Court on this point and held that the liquidated damages clause was enforceable in its entirety.
McDonald's Corp. v. E. Liberty Station Assocs., Civil Action No. 14-313, LEXIS 108931 (W.D. Pa. June 29, 2018)	
Issue:	Whether illegal activity in violation of a lease provision constitutes a material breach of the lease as a matter of law.
Facts:	McDonald's Corporation ("Tenant") leased property from East Liberty Station Association ("Landlord") to construct and operate a restaurant at Landlord's outdoor shopping center. The lease provided that (i) Tenant will comply with all governmental laws, rules and regulations and (ii) Tenant will only operate a "retail establishment normally found in the highest class of shopping centers." Tenant entered into a franchise agreement with a third party. The franchise agreement vested all liability and exclusive responsibility for the restaurant in the franchisee. After about 30 years of operation, one of the restaurant's employees was arrested for drug trafficking. Subsequent to this arrest, Landlord terminated the lease and required Tenant to surrender the premises. Tenant filed suit claiming that Landlord was using the incident as a pretext to get out of the lease. Both parties moved for summary judgment. Landlord claimed that Tenant materially breached the lease when it abandoned the lease by vesting all liability and oversight in the franchisee. Alternatively, Landlord argued that Tenant materially breached the lease when it violated a local trash ordinance. Tenant argued that its substantial performance under the lease—30 years of on-time payments—bars forfeiture.
Holding:	The court denied both motions for summary judgment. The court held that the isolated incident of criminal activity does not constitute material breach as a matter of law. Rather, the court reasoned, it is up to the finder of fact to weigh the illegal conduct, Tenant's lack of oversight and Tenant's substantial performance to determine whether termination of the lease was appropriate.
FOURTH CIRCUIT	
NCO Fin. Sys. v. Montgomery Park, LLC, 918 F.3d 388 (4th Cir. 2019)	
Issue:	(1) Whether the obligation to mitigate damages contained in a lease provision was a condition precedent to landlord's recovery of any damages, such that failure to satisfy the condition completely barred recovery; (2) Whether a landlord's contractual duty to mitigate damages required the landlord to devote special care and attention to the reletting of a specific tenant's space as opposed to engaging in generalized marketing efforts.
Facts:	NCO Financial Systems, Inc. ("Tenant") leased office space from Montgomery Park, LLC ("Landlord"). The lease had an initial twelve-year term, with a limited right for Tenant to terminate the lease after eight years provided that Tenant gave timely notice and paid a termination fee equal to ten months' rent. Eight years into the lease, Tenant notified Landlord that it was exercising its right of early termination and subsequently left the space. However, Landlord claimed that Tenant had failed to properly terminate the lease and continued to owe rent. Tenant filed suit against Landlord, alleging breach of contract, unjust enrichment and fraud and seeking a declaratory judgment that the lease had been effectively terminated. Landlord filed a counterclaim seeking a declaration that the lease remained in effect and seeking

	to recover damages for Tenant's failure to pay rent. On initial appeal, the Court held that Tenant failed to satisfy the lease conditions for exercise of its early termination right and therefore had a continuing obligation to pay rent even though it had vacated the premises. Consequently, the Court remanded the case to the district court for a determination of Landlord's damages. On remand, the district court denied Landlord *any* damages for Tenant's breach because it found that Landlord had not taken "reasonable commercial efforts" to mitigate its damages as required under the lease by finding a new tenant for Tenant's former space. Landlord appealed the court's determination. **Certain facts in this summary are taken from the preceding Fourth Circuit decision issued in 2016.*
Holding:	When the case was brought before the Fourth Circuit, the Court held that the district court's decision should be vacated. First, the Court found that the lease agreement "clearly d[id] not make the obligation to mitigate damages a condition precedent to recovery for breach of the agreement." The Court looked to the relevant lease provision, which stated, "Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished by reason of, any failure by Landlord to relet the Premises or any failure by Landlord to collect any rent due upon such reletting, but Landlord does agree to use reasonable commercial efforts to mitigate damages caused by any Event of Default…No action taken by the Landlord under the provisions of this section shall operate as a waiver of any right which the Landlord would otherwise have against the Tenant for the Rent hereby reserved or otherwise, and the Tenant shall at all times remain responsible to the Landlord for any loss and/or damage suffered by the Landlord by reason of any Event of Default…." The Court found that this provision made clear that Tenant would remain responsible for any losses suffered as a result of its breach of the lease and that no action taken by Landlord would waive any right of Landlord against Tenant. Second, the Court concluded that the parties' lease agreement "must be read as incorporating the mitigation-of-damages doctrine", under which, "[although] a failure to mitigate damages may decrease the amount of recoverable damages . . . [it did] not *necessarily* preclude recovery of damages altogether." Thus, the Court found that rather than completely barring Landlord from any damages, the district court should have calculated Landlord's damages by determining how much additional rent, if any, Landlord could have received from exercising reasonable commercial efforts to re-let Tenant's space, and then decreasing Landlord's contract damages by that amount. Third, the Court found that the district court was incorrect to conclude that Landlord was under a contractual duty to give special care and attention to Tenant's space, and that Landlord's obligation to mitigate damages did not require that it favor a vacated space or otherwise drastically alter its business plan. All that Landlord was required to show was that it had "acted reasonably to market [Tenant's] space on an equal footing with its other vacant spaces." Thus, the Court found that the district court should have considered the reasonableness of Landlord's "generalized marketing efforts" rather than the reasonableness of those marketing efforts directed specifically at Tenant's space. For these reasons, the Court vacated the district court's judgment and remanded the case for further proceedings.
Rockledge Assocs. v. Transamerica Life Ins. Co., 717 F. App'x 222 (4th Cir. 2018)	
Issue:	(1) Whether a landlord who accepts unpaid rent and re-enters property

	pursuant to a district court judgment waives its right to appeal the judgment; (2) Whether the filing of a complaint in district court constitutes a landlord's "written notice" to terminate a lease; (3) Whether a tenant can unilaterally waive a notice provision in a lease requiring notice of default prior to termination of the lease.
Facts:	Rockledge Associates, LLC ("Landlord"), entered into a ground lease with Two Rockledge Associates, whose interest in the lease was later foreclosed upon and acquired by Transamerica Life Insurance Company ("Tenant"). After Landlord raised the ground rent, Tenant chose to "walk away from its leasehold interest" and stopped paying rent. Instead of sending a notice of default to Tenant, Landlord filed a claim for breach of covenant to collect unpaid rent. Tenant responded, claiming that according to the lease, its defaulted payments should have resulted in termination of the ground lease and noting that it had expressly waived its right to notice of default prior to termination. Both parties then filed motions for summary judgment seeking a determination as to whether Landlord could collect unpaid rent or whether Landlord's sole remedy was to repossess the property. The district court concluded that Landlord could recover for unpaid rent. The district court also concluded that the lease had been terminated because the filing of Landlord's complaint constituted written notice and therefore triggered the default provision, which stated that the lease would terminate thirty days after written notice of default had been given. The district court determined that because the complaint constituted notice, the lease was terminated thirty days after the complaint was filed. Thus, the district court concluded that while Landlord could recover for unpaid rent, it could only recover unpaid rent until the termination date.[*] Both parties appealed the district court's determination. Landlord argued that filing the complaint was not notice and that, as such, the lease had never been terminated. Landlord also argued that in accepting the complaint as written notice, the district court's ruling interfered with Landlord's ability to recover for unpaid rent since recovery required filing a complaint. Tenant cross-appealed, arguing that it had waived the notice of default written in the lease. Furthermore, Tenant sought to dismiss Landlord's appeal, claiming that by re-entering the property, Landlord acquiesced to the district court's judgment and therefore waived its right to appeal the district court's decision entirely.
Holding:	On appellate review, the court denied Tenant's motion to dismiss and affirmed the district court's ruling. First, the court concluded that Landlord had not waived its right to appeal the district court's judgment under state and federal law. Under Maryland's doctrine of acquiescence, "a voluntary act of a party which is inconsistent with the assignment of error on appeal normally precludes that party from obtaining appellate review." However, Landlord's acceptance of payment for unpaid rent on the judgment was not inconsistent with Landlord's claimed "errors on appeal"—namely, that the ground lease had not terminated. Further, under federal procedural law, Landlord had not acquiesced to the district court's judgment because, despite Landlord's acceptance of payment on the judgment, the record did not show that Landlord had indicated to Tenant any intention to compromise or "bring the litigation to a definite conclusion." The court did not address Landlord's re-entry onto the property. Second, the court held that Landlord's judicial complaint constituted notice and triggered the contractual provision which stated, in relevant part, that in the event of a default and after thirty days of written notice, the lease would terminate. The court

	acknowledged that the district court ruling was contradictory since common law indeed required Landlord to file a complaint to receive damages for unpaid rent, but when the appellate court analyzed the language of the lease, it determined that two provisions in the lease contradicted each other and therefore limited Landlord's appeal. Section 10.1 stated that the lease "shall terminate without further action from the landlord" while Section 12.3 stated Landlord "could pursue common-law remedies" which, by nature, required Landlord to file a complaint. These sections made it such that Landlord's pursuit of common-law remedies would, by default, terminate the lease because in seeking relief, Landlord would be providing written notice and triggering the termination provision. Due to the specificity of Section 10.1, it took precedent over Section 12.3 and thus affirmed the court's conclusion that the lease terminated after thirty days of written notice. Finally, on Tenant's cross-appeal, the court held that Tenant could not unilaterally waive the notice provision because the provision benefitted both parties. Although a party may waive a provision when it benefits solely that party, it cannot do so if the court determines, as it did here, that the provision is beneficial to the other party as well.
In re Collins, 2019 Bankr. Ct. Dec. 184 (Bankr. E.D.N.C. Jan. 3, 2019)	
Issue:	Whether the failure by tenants to file a motion to affirmatively assume their unexpired lease by the deadline imposed by their Chapter 11 Bankruptcy Plan caused the lease to be deemed effectively rejected.
Facts:	Jeffrey and Teresa Collins ("Tenants") had an unexpired lease for 222 acres of non-residential farmland from the Morton Estate ("Landlord") when, in April of 2018, Tenants voluntarily petitioned for Chapter 11 Bankruptcy relief. Tenants had 120 days following the petition to affirmatively assume or reject the unexpired lease, pursuant to 11 U.S.C. § 365(d)(4). On August 14, 2018, Tenants filed an application for extension of time for assuming or rejecting the lease. The court granted an extension through November 19, 2018. On November 19, 2018, Tenants filed a second application for extension of time, in response to which Landlord filed an objection. Tenants withdrew their application for extension, and, on December 18, 2018, Tenants paid Landlord the $21,000 owed under the lease for the 2018 crop year. Thereafter, Landlord requested the court adjudicate that Tenants' failure to affirmatively assume or reject the lease prior to the November 19, 2018 deadline effectively deemed the lease rejected, requiring Tenants to surrender the property.
Holding:	The court held that Tenants' failure to move to affirmatively assume the lease in a timely manner, or to obtain written consent from Landlord for an additional extension of time within which to do so, resulted in the lease being effectively rejected and terminated. The court declined to recognize Tenants' payment for the 2018 crop year as an effective assumption of the lease. The court also declined to recognize the Tenants' failure to give Landlord the requisite 30-day notice of an intention to quit the lease as means of effectively assuming the lease. Rather, the court stated that the only method of declaring an intention to assume an unexpired lease is by filing a formal motion to assume within the requisite time period. As a result, the court deemed the lease rejected as of November 19, 2018 and ordered Tenants to surrender the property to Landlord. The court also found that 11 U.S.C. § 365(d)(4) requiring the immediate turnover of non-residential real property preempted state law regulating landlord-tenant eviction relief.
Lowes Foods, LLC v. Burroughs & Chapin Co., No. 4:16-cv-00354-RBH, 2019 U.S. Dist. LEXIS 12056 (D.S.C. Jan. 25, 2019)	

Issue:	Whether a breach of contract occurred when a commercial landlord's parent company failed to abide by an exclusive in the commercial landlord's lease and sold property that was later used for a retailer that competed with the tenant.
Facts:	In 2006, Lowes Foods, LLC ("Tenant") and Grand Dunes Development Company ("Landlord") entered into a lease agreement for a property that would be used for a high-quality Lowes Foods grocery store. The lease included a restriction prohibiting the Landlord and any of its related entities from developing a competing grocery store within a two-mile radius of the Tenant's grocery store. The Tenant signed the lease in reliance on the understanding that the exclusive would be effective throughout the term of the lease. In 2013, the Landlord's parent company, Burroughs & Chapin Company ("B&C"), sold a large portion of property that was within the two-mile radius to a separate developer. Prior to the sale, the property was owned by one of B&C's subsidiaries, Myrtle Beach Farms Company ("MBF"). The developer used this property to build a 45,000 square-foot Publix grocery store. The sale of this property did not include a restriction similar to the one between the Landlord and Tenant. After the Publix grocery store began operating, the Tenant sued B&C, the Landlord, and MBF ("Landlord Defendants"), asserting three causes of action: (i) breach of contract, (ii) breach of contract accompanied by a fraudulent act, and (iii) violation of South Carolina's Unfair Trade Practices Act. For the purpose of discussing the relevant landlord-tenant issues, only the first two claims are addressed below.
Holding:	Tenant argued that the Landlord Defendants breached the terms of the lease and the implied covenant of good faith and fair dealing when they sold land to another developer without attempting to preserve the restriction on competing grocery stores in the lease. The court determined that the exclusive language created an ambiguity as to whether it applied to property within the radius that is sold by a Landlord entity. Because the Landlord Defendants sold a separate, unrelated property to a different developer in 2010 with an exclusive restriction in the deed, the court held that the Landlord Defendants arguably believed the lease's restriction applied to them. Thus, the court found that a question of fact existed as to whether they breached the restriction in the lease with Tenant. As a result, the court denied both the Tenant's and Landlord Defendants' motions for summary judgment on the breach of contract claim. The court also denied the Landlord Defendants' motion for summary judgment on the Tenant's breach of contract accompanied by a fraudulent act claim. The court reasoned that the Landlord Defendants' silence upon learning of the developer's plan to develop a competing grocery store could constitute a fraudulent act that was separate from the breach of the lease.
DCHG Invs. LLC v. IAC Greenville LLC, No. 6:15-cv-02013-DCC, 2018 U.S. Dist. LEXIS 74041 (D.S.C. May 2, 2018)	
Issue:	Whether the current tenant had an obligation to return the leased premises in the same condition it was in when the landlord and a prior defaulting tenant entered into the lease.
Facts:	JPS Automotive, Inc., entered into a lease with DCHG Investments LLC ("Landlord") on December 23, 2002 for the subject facility. JPS's parent company filed for bankruptcy, and among various other defaults under the lease, JPS breached the lease because it failed to repair or maintain the facility as required. On July 11, 2007, the Bankruptcy Court for the Eastern District of Michigan issued

	a sale order authorizing the sale and transfer of the JPS's interest in the lease to IAC 199 Blackhawk Road, LLC ("Tenant"). The principal dispute concerned the effect of the sale order on Tenant's duties to return the facility to the same condition it was in on December 23, 2002, the date that Landlord and JPS first entered into the lease. Tenant argued that its interest in the facility was subject to the sale order and assignment, which expressly prohibited JPS's liabilities from being transferred to Tenant. Tenant asserted that the reason the facility was not in its 2002 condition was because JPS breached its duty to maintain the premises. Requiring Tenant to return the facility to its 2002 condition would be holding Tenant liable for JPS's breach. Tenant further argued that because other provisions of the lease used the language "at the time of lease," the term "possession" indicated that Tenant was only responsible for any damage that occurred since it took possession.
Holding:	The South Carolina District Court rejected Tenant's motion for summary judgment in favor of Landlord, concluding that Tenant had an obligation to return the leased premises in its 2002 condition. The district court reasoned that while JPS may have breached its duty to maintain the facility, the duty to return the facility in as good of condition and repair as when possession was first taken could not arise until the facility was surrendered to Tenant upon expiration of the lease. Here, when Tenant assumed the lease, it expressly covenanted to perform the obligations that arose after October 11, 2007. The sale order did not extinguish any *future* duties owed to Landlord under the lease. Therefore, the sale order did not operate to extinguish obligations that were not yet due under the lease, including the duty to return the facility in as good of condition (less normal wear and tear) as it was in when JPS took possession in 2002.
In re Toys "R" Us Prop. Co. I, LLC, No. 18-31429-KLP, 2019 Bankr. LEXIS 700 (Bankr. E.D. Va. Mar. 5, 2019)	
Issue:	Whether the exclusive in another tenant's lease prohibits a bankrupt tenant from assigning its lease, despite the landlord's objection.
Facts:	In 1996, Toys "R" Us NY Limited Partnership ("Tenant") entered into a lease for premises in a shopping center in Queensbury, New York (the "Toys Parcel"). In 2002, PRRC, Inc. ("Price Rite") entered into a lease agreement to operate a discount grocery store on an immediately adjacent and contiguous parcel of land owned by the predecessor-in-interest to Upper Glen Street Associates, L.L.C ("Landlord"). Price Rite's lease contained an exclusive stating that Landlord would not rent to another grocery store within one mile of Price Rite's location. In 2012, Landlord purchased the Toys Parcel, subject to Tenant's lease. Landlord and Tenant subsequently entered into an amendment of Tenant's lease in 2015. Neither the original lease nor the 2015 made any reference to the Price Rite lease or exclusive. In 2018, Tenant filed for bankruptcy and sought to assign its lease to Aldi, Inc., a discount grocery store. Landlord sought to prevent the proposed assignment on the grounds that it would violate the exclusive in Price Rite's lease. In support of its position, Landlord argued that its two parcels, which shared common parking and ingress/egress, constituted a shopping center and would be subject to § 365(b)(3)(C) of the Bankruptcy Code, which limits the rights of a debtor to assign unexpired leases if there is "a provision . . . that prohibits, restricts, or conditions the assignment of such contract or lease." Landlord also raised a tenant mix disruption argument under § 365(b)(3)(D).

Holding:	The bankruptcy court overruled Landlord's objection to Tenant's assignment, stating the Landlord's premises were not a shopping center. The Court noted that the Bankruptcy Code does not define "shopping center." Looking instead to the *Joshua Slocum* multi-factor test for the determination of whether the premises constituted a shopping center, the bankruptcy court was unable to find that there had been purposeful development of the premises as a shopping center, emphasizing that the leases were not held by the same entity until 2012 and that Landlord did not develop the parcels to create a cohesive single unit. The bankruptcy court further held that a tenant mix argument could not succeed outside a shopping center because it would give a landlord absolute veto power over a debtor tenant's assignment. Finally, the bankruptcy court held that "there is no evidence that the Exclusivity Provision has been incorporated into the [Tenant's] lease in any way or that the assignment to Aldi would actually be a breach of that provision."
In re Toys "R" Us, Inc., No. 17-34665-KLP, 2018 Bankr. LEXIS 1535 (Bankr. E.D. Va. May 24, 2018)	
Issue:	Whether a debtor-tenant, filing for bankruptcy, can assign its unexpired lease to an assignee, where such assignee would violate the exclusivity and tenant mix provisions of another lease within the shopping center, and where the underlying debtor-tenant's lease does not contain any anti-assignment provisions or prohibited uses.
Facts:	Toys "R" Us, Inc. ("Debtor Tenant") operated a Babies "R" Us from Brea Union Plaza I ("Landlord"). After Debtor Tenant filed for bankruptcy, the court approved the auction of certain real property, including Debtor Tenant's lease with Landlord. Debtor Tenant sought final approval of the assignment of its lease to Burlington Coat Factory ("Assignee"), which sells "off-price" apparel. Landlord objected to Assignee on the grounds that Assignee's use would violate another tenant's lease by disrupting the shopping center's tenant mix. The shopping center had 43 tenants, with two existing tenants selling "off-price" apparel. The Debtor Tenant's lease predates the other tenant's lease. Debtor Tenant's lease did not contain any provisions restricting the use of Debtor Tenant's premises, including by any of Debtor Tenant's assignees. The Bankruptcy Code Section 365(b)(3)(C) "preserve[s] the landlord's bargained for protections with respect to the premises of use and other matters that are spelled out in the lease with the debtor-tenant." The Landlord contended that assigning Debtor Tenant's lease to Assignee would breach the other tenant's lease. Landlord further argued that Debtor Tenant's assignment would violate Bankruptcy Code Section 365(b)(3)(D), which has been applied only to enforce defined contractual protections but not undefined notions, such as tenant mix.
Holding:	The bankruptcy court overruled the Landlord's objections to the proposed assignment of Debtor Tenant's lease. The court held that Debtor Tenant's lease did not require any compliance with the use restrictions contained in another tenant's lease. The court further found that the assignment would not breach the exclusivity provision in the other lease because it applied to the Landlord only if Landlord had "the capacity to do so" and the court's order renders the Landlord unable to comply with the restriction in the other lease. The court also indicated that adding a third "off-price" apparel retailer to a shopping center with 43 stores would not upset the tenant mix and balance. The Court also rejected the Landlord's claims under 365(b)(3)(C) and 365(b)(3)(D) based on legal precedent, which made the sections inapplicable.

Morrison v. Hobby Lobby Stores, Inc, No. 16-3813, 2018 D. W. Va. LEXIS 9455 (D. W. Va. Jan. 22, 2018)	
Issue:	Whether a tenant is liable to its patrons for injuries incurred in the common area that are maintained by a landlord.
Facts:	Plaintiff Saundra Kay Morrison ("Morrison") slipped on ice and fell in a shopping center parking lot outside of Hobby Lobby ("Tenant"). Tenant was a party to a lease agreement with SSC Barboursville, LLC ("Landlord"). The lease expressly provided that the "Common Area" includes "parking areas" and that "the Landlord agrees to maintain in good condition the Common Area of the Landlord's Center…including snow and ice removal." Tenant argued that it is entitled to summary judgment based on the West Virginia Supreme Court's holding in *Durm v. Heck*, which held that when a lease agreement clearly sets forth that the landlord has a duty to maintain non-leased common areas, the tenant in the shopping center is not liable when a patron sustains injuries as a result of an accident which occurs in such common area. Morrison argued that, despite *Durm*, Tenant still owed a duty to her based on the ruling in *Andrick v. Town of Buckhannon*, in which a tenant was held liable to one of its patrons for an injury sustained in a parking lot that was part of the non-leased premises.
Holding:	The court granted Tenant's motion for summary judgment. In *Andrick*, the West Virginia Supreme Court distinguished the case from *Durm* by holding that the lease in *Andrick* did not designate the parking lot at issue as a "common area," nor did the lease establish that the landlord had a duty to maintain it. The court held that the facts in the instant case are directly in line with *Durm*, as the lease created an express duty on the Landlord to maintain the parking lot. Therefore, the court granted Tenant's motion for summary judgment.
FIFTH CIRCUIT	
Malik & Sons, LLC v. Circle K Stores, Inc. 738 F. App'x 808 (5th Cir. 2018)	
Issue:	(1) Whether Tenant's feasibility window began on: (a) the date of the initial Lease execution or (b) the date recorded by the escrow agent for reference in the Lease; and (2) Whether Tenant may introduce evidence that Landlord failed to mitigate damages when the terms of the contract do not require the Landlord to mitigate damages.
Facts:	Malik and Sons, LLC ("Landlord") signed and sent a lease agreement (the "Lease") to Circle K Stores, Inc. ("Tenant") for signature on July 29, 2014. The Lease had a ninety (90) day feasibility period. Tenant signed the Lease agreement on August 28, 2014, and then deposited it in escrow. The escrow agent wrote "October 7" as the reference date on the first page of the Lease. Tenant terminated the Lease within the feasibility window. On November 24, 2014, Tenant wrote to rescind the termination, noting that the Lease, timing, and dates from the Lease dated October 7, 2014, were still valid. Tenant sought to terminate the Lease again on December 27, 2014. This time, however, Landlord notified Tenant that termination was untimely, as it was outside the feasibility period. Landlord alleged that the Lease was executed on August 28, 2014, and thus, the feasibility period expired November 26.

	Tenant claimed that the November 24th letter, which stated that October 7, 2014 was the Lease date, formed a new contract and thus made October 7, 2014 the applicable execution date. The jury found, based on testimony, that "execution" indicates the signing by both parties and that the parties had intended the singing date of August 28, 2014, to be the date of execution, not the date chosen by the escrow agent. Tenant appealed the jury's verdict.
Holding:	The court found that the district court did not err in its judgement. If one party intends to change the execution date of an agreement, they would not write a letter reiterating that the dates and timing of the initial agreement were still valid. Further, if the terms of the contract do not require the Landlord to mitigate damages by re-letting the premises, the Tenant may not introduce evidence to show that the Landlord did not mitigate damages.
Hiram Invs., LLC v. Howmedica Osteonics Corp., 2018 WL 1911817 (E.D. La. Apr. 23, 2018)	
Issue:	Whether a subrogation provision within a lease, providing for indemnification of negligence, waives Tenant's claim for losses resulting from Landlord's failure to repair a leaking roof following notice.
Facts:	Under a retail lease agreement (the "Lease"), Hiram Investments, LLC ("Landlord") was responsible for maintaining the roof and outside walls of the leased property ("the Property"). Upon taking possession of the Property, Howmedica Osteonics Corporation ("Tenant") noticed significant roof leakage and notified Landlord. Landlord's repairmen erroneously determined the source of leakage was the air conditioning unit instead of the roof, and thus, failed to fix the roof. With each severe storm, there was more leakage and water damage. Tenant continued to notify Landlord of the leaks, but Landlord failed to make repairs In April, 2017, a rain storm flooded the Tenant's offices, damaging equipment, furniture, interior walls, and medical inventory. As a result of such damage, Tenant was forced to dispose of its equipment, which was valued at approximately $1,057,199. Tenant filed suit against Landlord for $1,057,199, plus other damages, for losses which resulted from Landlord's failure to make repairs within a reasonable time following written notice Landlord moved to dismiss on the ground that any claim, against Landlord by Tenant, for property damage, was waived under the subrogation provision of the Lease.
Holding:	Landlord's motion to dismiss was denied on the ground that there was a genuine issue of fact as to whether the deficiency in the roof resulted from Landlord's negligence or was caused by Landlord's deliberate failure to repair the roof after being put on notice that the roof was faulty. If found to be the latter, the Landlord may not be indemnified from its liability to Tenant.
SIXTH CIRCUIT	
None.	

SEVENTH CIRCUIT	
None.	
EIGHTH CIRCUIT	
Ames Development, LLC v. Grand Forks Associates Limited Partnership, No. 3:16-CV-257, 2018 WL 3309657 (D. N.D. May 10, 2018)	
Issue:	Whether Landlord violated its lease with Tenant by failing to gain the consent of other tenants in a shopping center, whose contractual rights were impacted, before allowing Tenant to begin construction on a restaurant.
Facts:	Grand Forks Associates Limited Partnership ("Landlord") owned a large parcel of real estate in Grand Forks, North Dakota, including a shopping center leased to multiple commercial tenants. Landlord executed an agreement that leased the grocery store space to Gateway Foods, Inc. The lease was assigned to Miner's, Inc., who later ssigned its their lease to Hornbacher's, Inc. Landlord subsequently entered into a ground lease with Ames Development, LLC ("Tenant"). Tenant intended to lease a portion of the northeast corner of the shopping center's parking lot for the purpose of constructing a restaurant. Tenant began construction of the restaurant, but Hornbacher's, Inc. successfully petitioned the Grand Forks County District Court for injunctive relief to halt construction of the restaurant. Hornbacher's, Inc. argued it had not approved the construction of the restaurant and that such consent was required under Hornbacher's, Inc.'s lease with Landlord. The ground lease between Landlord and Tenant provides that Tenant shall indemnify Landlord from any damages or costs that arise out of Tenant's possession of the area described in the ground lease (the "Premises"). Landlord attempted to tender the defense of the state court action to Tenant. Tenant denied the tender of defense, citing a number of alleged deficiencies in the tender, including Landlord's failure to identify provisions of the ground lease under which it tendered the defense of the action in a state court proceeding, as well as alleged breaches of the ground lease by Landlord. Landlord and Hornbacher's, Inc. then entered into a settlement agreement that required Landlord to restore the portion of the shopping center affected by construction of the restaurant. Following the settlement, Tenant filed a complaint in federal court to determine responsibility for the costs related to the partial construction of the restaurant site, the costs related to putting the site back to its original state, and the costs related to the state court litigation. Tenant's complaint claimed that Landlord breached its obligations under the ground lease by: (1) failing to secure proper consent from existing tenants with respect to the lease and the construction of Tenant's restaurant; (2) failing to deliver the property to Tenant free of any interfering rights and claims of third parties; and (3) failing to indemnify Tenant for its losses arising therefrom. Landlord's counterclaim alleged Tenant violated the ground lease by failing to gain consent before removing and destroying improvements, including existing pavement, as well as beginning construction in a location and layout inconsistent with the lease.

Holding:	The court found that because the Tenant commenced construction outside of the area detailed in the ground lease (the Premises), the broad indemnity clause in the lease meant that Tenant had adequate notice of its duty to indemnify Landlord of harm resulting from such construction and failed to perform.

NINTH CIRCUIT

Adamson v. Port of Bellingham, 899 F.3d 1047, 1049 (9th Cir. 2018), certified question answered, 438 P.3d 522 (Wash. 2019)
Adamson v. Port of Bellingham, 438 P.3d 522 (Wash. 2019)
Adamson v. Port of Bellingham, 923 F.3d 728 (9th Cir. 2019)

Issue:	(1) Whether a part of property, given to a tenant for exclusive use for intermittent periods of time, is under the tenant's control; (2) Whether possession at the time of the accident is sufficient to absolve a lessor of liability when the lease indicates that the tenant has only priority use where the injury occurred and that the lessor contractually obligated itself to maintain and repair the premises, and reserved the right to lease the property to others.
Facts:	The Alaska Marine Highway System ("Tenant") employed Sharon Adamson ("Employee"). Employee was operating at a passenger ramp at the Port of Bellingham ("Lessor") when the passenger ramp fell about 15 feet. The cables supporting the ramp snapped and caused Employee severe injuries. Evidence shows that a low-cost modification could have prevented the serious injuries and that Lessor was aware of the potential risk involved. The district court held as a matter of law that based on the agreement between Tenant and Lessor, Lessor had not conveyed exclusive possession to Tenant. Thus, the district court held that Lessor faced liability. The district court instructed the jury in accordance with this holding, and the jury returned a verdict in favor of Tenant. However, on appeal, Lessor claimed it was not liable for Employee's injuries because whenever the Tenant was in port, exclusive control of the ramp was passed to Tenant. As a practical matter, only Tenant used the passenger ramp, and the priority use provision in the agreement between Tenant and Lessor effectively gave Tenant exclusive control of the ramp when it was in Port. However, the agreement also gave Lessor control over the ramp when Tenant was not in port, so Lessor could allow third parties to use the ramp when Tenant was not there. Lessor also had responsibilities for maintenance and repair of the ramp and could have had access to the ramp to make such repairs at any time throughout the lease term when Tenant was not docked. Furthermore, Tenant could not unilaterally alter the ramp without the Lessor's consent.
Holding:	Generally, property that is conveyed to a tenant becomes the responsibility of the tenant and the landlord is no longer treated as a possessor of land. But where property is given over to the use of a tenant, some parts of the property can be the responsibility of the tenant while other parts of the property remain the responsibility of the landlord. Further, generally, the landlord has a responsibility to exercise reasonable care to maintain common areas in a safe condition. The Ninth Circuit Court found there was an important, unanswered question of Washington law as to the apportionment of responsibility where the tenant, as a practical matter, has exclusive use of part of the property for intermittent periods of

	time. The Ninth Circuit Court found this question of law would be best left to resolution by the Washington State Supreme Court, and the Ninth Circuit Court planned to affirm or deny accordingly. The Washington State Supreme Court considered the contractual obligations of Lessor and Tenant, especially the factor that Tenant could not repair the passenger ramp without the authority and approval of Lessor. The Washington State Supreme Court thus held that Lessor was liable for Employee's injuries and was liable for injuries that occur due to a defect on leased property that is in exclusive possession of Tenant, where lease provisions provide that Tenant has only priority use. The Washington Supreme Court declined to answer the question of whether priority use can be considered to give exclusive control as the question was too abstract. Afterward, the Ninth Circuit Court affirmed the district court's holding that Lessor faced liability as a possessor of property.
*In re J & M Food Services, LLC, 2:17-BK-01466-DPC, 2018 WL 1354335, at *5 (Bankr. App. 9th Cir. Mar. 14, 2018), aff'd sub nom. In re J&M Food Services, Inc., 18-60021, 2019 WL 2246191 (9th Cir. May 24, 2019)*	
Issue:	(1) Whether the bankruptcy court abused its discretion in denying the tenant's request to order the landlord to produce emails; (2) Whether the bankruptcy court erred in denying the tenant's assumption motion.
Facts:	In 2014, Debtor J & M Services, LLC ("Debtor") leased from Appellee Camel Investment L.L.C. ("Landlord") commercial real property at Camelback-Miller Plaza in Scottsdale, Arizona ("Premises"). Jay Ji-Hoon Chung and Maggie Liao were the original members of the Debtor, and now Ms. Liao is the sole member of the Debtor. Debtor leased the Premises to operate a restaurant called Sushi J. A year later, Landlord approached Tenant about relocating Sushi J to a nearby premises in the Camelback-Miller Plaza (the "Replacement Premises"). Both Ms. Liao and Mr. Chung were willing to relocate, but even if they had been unwilling, the Lease gave Landlord the right to relocate Debtor's operation to another location in the shopping center. Landlord executed a letter of intent providing for an entity called D'Lite to occupy the Premises beginning April 1, 2017. However, instead of relocating Debtor to the Replacement Premises, Landlord entered a lease for the Replacement Premises with P & J Food Services, LLC ("P & J"). Ms. Liao claimed that Mr. Chung was a silent partner in P & J, which opened a restaurant called J's Kaiyo Sushi & Bar in the Replacement Premises. Ms. Liao testified that Mr. Chung, her ex-boyfriend, began diverting funds from Debtor and became physically abusive toward Ms. Liao. In the summer of 2016, she asked him to move out of the apartment they shared, and Mr. Chung obtained a protective order against Ms. Liao to keep her from the restaurant. In January 2017, Ms. Liao commenced litigation in Arizona Superior Court against Mr. Chung, Landlord, and others, alleging, among other things, that money was being diverted from the Debtor by Mr. Chung and that Mr. Chung had colluded with Landlord to enable Mr. Chung to usurp the Debtor's opportunity to lease the Replacement Premises. The state court appointed a receiver for the Debtor. One month later, Landlord sent a letter to the Debtor and to Ms. Liao's attorney declaring a default under the Lease due to the state court's appointment of a

	receiver and declaring the Lease immediately terminated. That night, Ms. Liao slept in the Premises in hopes of staving off any attempts by the Landlord to shutter the Premises. The next day, fearing a lockout of the Premises by Landlord, Ms. Liao caused the Debtor to file a chapter 11 bankruptcy petition. Landlord filed its motion for stay relief ("First Stay Lift Motion"), claiming the Lease was not property of the bankruptcy estate based on its notice of termination. Debtor opposed the First Stay Lift Motion. The court denied the motion after a hearing, finding that the notice of termination violated the receivership order and was thus ineffective to terminate the Lease. It is undisputed that the 120–day deadline under §365(d)(4) for the Debtor to assume or reject the Lease expired on June 18, 2017, and that Debtor neither moved to assume the Lease nor requested an extension of the deadline. On June 23, 2017, the Landlord filed another motion to lift the automatic stay (the "Second Stay Lift Motion"), seeking relief because Debtor failed to file a timely motion to assume the Lease, the Lease was deemed rejected and the Premises must be surrendered to the Landlord. One week later, Debtor filed a motion to assume the Lease nunc pro tunc ("Assumption Motion"). In the Assumption Motion, counsel explained that the assumption deadline had been missed due to "chaos" at Debtor's counsel's law firm following the sudden death of one of its partners on April 14, 2017. Debtor requested the court use its equitable powers under §105(a) to allow assumption of the Lease nunc pro tunc. Debtor argued that Landlord knew Debtor intended to assume the Lease based on discussions between its counsel and Debtor's counsel, statements made by Debtor's counsel at the hearing on the First Stay Lift Motion, and the fact that Debtor had paid pre- and post-petition rent. Landlord opposed the Assumption Motion, and the bankruptcy court held a hearing on both motions. After hearing arguments, the bankruptcy court set the matters for an evidentiary hearing on whether an oral motion to assume had been made or whether there had been a de facto assumption of the Lease. At the evidentiary hearing, Debtor testified that since the petition date, Debtor had brought current post-petition rent and common area maintenance ("CAM") charges, continued to operate the restaurant, performed repairs to the Premises, and protested Jay's Kaiyo Sushi & Bar's liquor license application. Debtor also testified that Debtor had been notified by the City of Scottsdale that the restaurant's grease traps needed to be replaced, and that she or her attorneys had notified Landlord of this issue. Landlord testified that Landlord was unaware of any of these actions until shortly before the evidentiary hearing. At closing arguments, Debtor's counsel requested production of certain emails between Landlord and D'Lite which Landlord had referred to during cross-examination. The bankruptcy court stated that the emails were irrelevant to the question before it and denied the request. The bankruptcy court found that the Lease with Landlord was deemed rejected on June 19, 2017, that Debtor had not made either an oral or written motion to assume the Lease, that Landlord had not waived its §365(d)(4) rights, and that Landlord's conduct had not estopped it from enforcing those rights. The bankruptcy court also declined to invoke its §105(a) powers to permit a nunc pro tunc assumption of the Lease. Thereafter the court entered its order granting Landlord's Second Stay Lift Motion and denying Debtor's Assumption Motion. Debtor timely appealed.

Holding:	The Court affirmed the bankruptcy court's holding for the following reasons. The bankruptcy court did not abuse its discretion in denying Debtor's oral motion to produce emails because only "negotiation emails" had been requested, which Landlord understood to mean emails transmitted before the lease terms were finalized. Further, Debtor provided no authority for the assertion that this ruling was an abuse of discretion. The bankruptcy court did not err in concluding that the parties' conduct did not constitute an implicit, de facto, or oral motion to assume because the evidence supported this finding. Furthermore, regardless of its finding that Debtor intended to assume the Lease and Landlord knew or should have known this fact, the bankruptcy court could validly find that there was not a de facto or implicit assumption of the Lease in the absence of a timely motion to assume that complied with applicable bankruptcy rules. The bankruptcy court did not err in concluding that the Landlord's position was not barred by the doctrines of waiver and estoppel. The Court found it unnecessary to determine whether, as a matter of law, waiver or estoppel may be applied in the context of §365(d)(4) because the Court agreed with the bankruptcy court that even if those doctrines are available, they do not apply in this instance.
*Ross Dress for Less, Inc. v. Makarios-Oregon, LLC, 3:14-CV-1971-SI, 2019 WL 99263, at *1 (D. Or. Jan. 3, 2019)*	
Issue:	(1) Whether a cause of action arising from a breach of a covenant that runs with the land is freely assignable after the breach occurred.
Facts:	Plaintiff Ross Dress-for-Less, Inc. ("Tenant") held a lease of commercial space in the Richmond Building in downtown Portland, Oregon with Defendant Makarios-Oregon, LLC ("Landlord"). The lease expired on September 30, 2016. Tenant vacated the Richmond Building on or about that date. For the first supplemental counterclaim, Landlord alleged that Tenant vacated the Richmond Building on September 30, 2016, but failed to return the premises in the condition required under Section 16 of the Richmond Lease. For the second supplemental counterclaim, Landlord alleged breach of the implied covenant of good faith and fair dealing. Tenant moved for partial summary judgment against the first and second supplemental counterclaims asserted by Landlord. Tenant asserted that it first learned in 2017 that Landlord is not, and never has been, the owner of the Richmond Building. Based on the record of ownership, Landlord never owned the Richmond Building including when Tenant vacated the Richmond building. Instead, the legal owners of the Richmond Building have been Charles W. Calomiris, Katherine Calomiris Tompros, and Jenifer Calomiris (collectively, the "Calomiris Siblings"), as tenants in common. Among other things, Tenant also argued that only the actual landowners, the Calomiris Siblings, may assert the claims at issue in the pending motion because the covenants on which those claims are based "run with the land" and the Calomiris Siblings never transferred ownership of the Richmond Building to Landlord. Tenant argued that the covenants cannot be transferred independent of the land. In 2011, Landlord received an assignment of the lease and its related security

	deposits from the Calomiris Siblings. Then in 2018, Landlord received another assignment from the Calomiris Siblings that confirmed the Calomiris Siblings' intent to allow Landlord to have a cause of action based on the assigned lease. The assignment also specified that if a court were to determine the assignment ineffective, then the unassignable portions would revert to the Calomiris Siblings. Tenant maintained that even if the Calomiris Siblings' assignment of the covenant to repair is valid, Landlord still cannot recover for any breach that occurred before 2018 because the assignee of a covenant cannot proceed against a tenant for a breach prior to the assignment of the covenant. Tenant also asserted that the 2018 Assignment did not meet the requirements imposed by the Court because the assignment is not "unconditional," as it allows for a reversion to the Calomiris Siblings. Finally, Tenant asserts that Makarios-Oregon, LLC cannot recover damages suffered by the owners of the Richmond Building. Tenant argued that because Landlord never owned the Richmond Building, Landlord could not have suffered any damages caused by Tenant's alleged failure to return the Richmond Building at the expiration of the lease in the condition demanded by the lease. In the alternative, Tenant requested leave to add the Calomiris Siblings as parties in this action to avoid the possibility of Tenant incurring double or multiple liability. Meanwhile, Landlord argued that after a covenant that runs with the land is breached, the cause of action arising from that breach may freely be assigned separate from the land itself and that Landlord received at least one valid assignment of the lease from the Calomiris Siblings. Thus, Landlord claimed it may properly assert its supplemental counterclaims against Tenant.
Holding:	The Court noted that the argument about real property law that Tenant argued—that when a covenant runs with the land, the covenant cannot be assigned without also assigning an ownership interest in the land itself—does not necessarily conflict with Landlord's argument that after a breach of that covenant has occurred, the cause of action based on that breach may be assigned. The Court agreed with Landlord and held that under modern real property law, causes of action arising from a breach of a covenant that runs with the land are freely assignable post-breach. When the Calomiris Siblings signed the 2018 Assignment in favor of Landlord, the Calomiris Siblings no longer owned the Richmond Building. As long as the Calomiris Siblings did not transfer their cause of action against Tenant for the alleged breach to the new property owner when they transferred the Richmond Building, the Calomiris Siblings would have still held that cause of action. Therefore, the Calomiris Siblings' 2018 assignment allows Landlord to maintain a cause of action against Tenant for a breach of the lease. Therefore, the Court denied Tenant's motion for partial summary judgment as to the first two supplemental counterclaims asserted by Landlord.

TENTH CIRCUIT

None.

ELEVENTH CIRCUIT

Gomez v. General Nutrition Corp., 323 F.Supp.3d 1368 (S.D. Fla. 2018)	
Issue:	Whether a retailer's website is a place of public accommodation under the Americans with Disabilities Act ("**ADA**").
Facts:	Gomez ("**Plaintiff**") is legally blind and uses computer software that reads screen content to him to access the internet. Websites have varying degrees of compatibility with screen-reading software, depending on site design and content labeling. General Nutrition Corp. ("**Defendant**") operates stores across the country that sell nutritional products. Defendant's stores are places of public accommodation for the purposes of the Americans with Disabilities Act. Plaintiff visited Defendant's website, which allows consumers to view the stores' inventory, purchase goods and services, learn about current and ongoing promotions, and locate physical store sites. Plaintiff was unable to use many of the site's features.
Holding:	Discrimination under Title III of the ADA covers both tangible and intangible barriers to disabled people's capacity to access places of public accommodation. At bottom, the ADA "prohibits a retailer's website from 'impeding a disabled person's full use and enjoyment of the brick and mortar store." (quoting *Gomez v. Bang & Olufsen Am. Inc.*, 2017 WL 1957182 (S.D. Fla. Feb. 2. 2017)). A store's website, therefore, can be a place of public accommodation if a plaintiff can establish a nexus between the website and a place of public accommodation. In evaluating whether a nexus existed in this case, the court considered (1) whether the website provided a service of the public accommodation, like the ability to preorder or purchase products; (2) whether the alleged barrier to access prevents the full use and enjoyment of services of the place of public accommodation; (3) whether the website provides more than just information about the store; (4) whether the website impedes access to the physical location; and (5) whether the website facilitates the use of the physical stores. Because the website provided a store locator in tandem with an e-commerce hub and information about ongoing promotions, the court found that a nexus existed in this case.

STATE CASES	
ARIZONA	
Dig Agave Ctr. LLC v. Pac. Fin. Grp. LLC, 2018 WL 1417422 (Ariz. App. Mar. 22, 2018)	
Issue:	Whether the late fee provision in the lease is enforceable against the Guarantors.
Facts:	Pacific Financial Group, LLC ("Tenant") entered into a commercial lease with Agave Property Center, LLC in 2012, who assigned the lease to Dig Agave Center, LLC ("Landlord") in 2014. The lease was personally guaranteed from 2012 to December 31, 2014, by Ken S. and Todd B. ("Guarantors"). When Tenant defaulted on the lease, Landlord sued Tenant and Guarantors (collectively, "Defendants"). The Superior Court entered summary judgment against the Guarantors in the amount of $57,726.44, which included $30,500 in late fees assessed under Article 25.6 of the lease. Article 25.6 of the lease stated that Landlord would receive liquidated damages in the form of a "late charge" if payment of rent was not received within three days of the due date. The late charge would be paid in addition to interest costs, as compensation to Landlord for injuries resulting from Tenant's delinquent payments. On appeal, Defendants contend summary judgment was improper because (1) Landlord presented no facts to determine what anticipated damages or actual administrative costs were; (2) the late fee provision was unreasonable because it may have compensated Landlord for costs that never materialized; and (3) the late fee provision was redundant because Landlord could recover costs, interest, and attorneys' fees under other lease provisions.
Holding:	The Superior Court did not err because (1) Defendants bore the burden of showing that the late fee provision imposed an unenforceable penalty and presented no such evidence; (2) for a liquidated damage provision to be reasonable, it is not necessary that the estimated costs actually materialize; and (3) the late fee provision expressly states that the late charge and interests are distinct and separate, and Tenant presented no evidence to refute this language. In furtherance of the second point above, the court noted that a liquidated damages provision is reasonable if "it approximates either the loss anticipated at the time of contract creation or the loss that actually resulted." The late fee provision was designed to compensate for costs not contemplated by the lease and it included the parties' agreement that the late fees were a fair and reasonable estimate.
YF Bethanny Inc. v. 16 Bethany Station LLC, 2019 WL 664732 (Ariz. App. Feb. 19, 2019)	
Issue:	(1) Whether the work Landlord performed on the property constitutes "repairing and maintaining" and thus falls under the category of "common area costs." (2) Whether the special provision contained in a tenant's lease excludes capitalized costs. (3) Whether YF Bethanny Inc. is a proper party to the lease, given that the lease was signed on behalf of "YF Bethany Inc., an Arizona corporation," yet the company was subsequently incorporated in Florida and converted into an LLC.
Facts:	Bethany Station LLC ("Landlord") owns a shopping center and leases certain commercial spaces to YF Bethanny Inc., et al. ("Tenants"). The lease agreements for the Tenants are in large part identical and provide that Tenants must reimburse Landlord for "common area costs." Common Area Costs are defined in the leases as follows:

	"all costs and expenses incurred by Landlord in (a) operating, managing, policing, insuring, repairing and maintaining the Common Area . . . (c) operating, insuring, repairing, replacing and maintaining all utility facilities and systems including . . . storm drainage lines and systems not exclusively serving the premises of any tenant or store . . . and (d) complying with local, state and federal laws relating to the Common Areas." The lease agreement for tenant Flip Dunk Sports LLC ("Flip Dunk") additionally provides that: "notwithstanding anything to the contrary, Common Area Costs shall not include . . . costs for any capital repairs, replacements or improvements or equipment leases which are to be capitalized under generally accepted accounting principles." Landlord performed significant work on the property, totaling approximately $560,000. The work included the following: (1) curbs were moved; (2) two loading docks were replaced with parking places; (3) the western wall was removed to increase parking space; (4) lampposts were replaced and some were moved to different locations; (5) parts of the parking lot were paved or resurfaced; (6) an enclosure was built around the dumpster area; and (7) the existing dry well for stormwater runoff was replaced with a retention tank. When Landlord billed Tenants for these costs, Tenants filed suit, claiming that Landlord breached the lease agreements and the implied covenant of good faith and fair dealing. Landlord counterclaimed, seeking a declaratory judgment that the expenses were Common Area Costs and that YF Bethanny Inc. is not the proper party to such tenants' lease agreements. The court entered judgment in favor of Tenants. Landlord appealed.
Holding:	<u>Issue (1) – Common Area Costs</u> The court held that the work described expanded the parking lot and went beyond "repairing and maintaining" and the dumpster area enclosure was a new feature that went beyond "repairing and maintaining." The new retention tank, however, was a common area cost because it was governed by a different provision in the lease, which included the term "replacing." Further, nothing in the lease agreements mandated that the replacement system had to be exactly the same as the old one. <u>Issue (2) – Flip Dunk's Special Provision</u> The court held that capitalized costs were excluded from Common Area Costs under the lease agreement. The court reasoned that the lease agreement unambiguously states that "Common Area Costs shall not include … costs … which are to be capitalized…". Further, even though Flip Dunk agreed to pay roof repair costs, it did not implicitly waive its rights under the entire lease agreement because the lease agreement states that "any waiver by either party of a breach by the other party of a covenant of this Lease shall not be construed as a waiver of a subsequent breach of the same covenant…". <u>Issue (3) – Proper Party</u> The court held that YF Bethanny Inc. was a proper party to the lease agreement. The court reasoned that YF Bethanny Inc. did come into existence, even though it was incorporated in a different state than the one indicated in the lease agreement.

	The description is immaterial to the transaction, especially since the entity's proper name was used. Further, under both Florida and Arizona law, an entity that converts from a corporation to an LLC remains the same entity with the same rights and obligations prior to the conversion.
Target Corp. v. Sprint Spectrum, L.P., 2018 WL 4145068 (Ariz. App. Aug. 28, 2018)	
Issue:	Whether the trial court erred in dismissing a Forcible Entry and Detainer action because the tenant was willing to vacate the premises.
Facts:	In October 1993, RadioShack (formerly known as Tandy Corporation) entered into a commercial lease with landlords Charles and Helga Schonfeld. The lease contained a minimum gross sales clause, which provides as follows: "If in any Fiscal Year during the Lease Term, Gross Sales are less than . . . $500,000.00 . . ., Tenant shall have the option of: (a) terminating this Lease by giving Landlord sixty (60) days prior notice thereof, and all rights and obligations of both parties shall cease upon the expiration of the aforesaid sixty (60) day period; or (b) paying three percent (3%) of Tenant's annual Gross Sales monthly." Later, Target Corporation ("Landlord") assumed the lease as landlord and RadioShack assigned its obligations under the lease to Sprint Spectrum Limited Partnership (Tenant). In February 2016, Tenant gave Landlord notice that it was electing to pay three percent of its annual gross sales in lieu of rent because gross sales fell below $500,000. In April 2016, Tenant sent Landlord written notice that it was terminating the lease because annual gross sales fell below $500,000. In June 2016, Landlord filed a Forcible Entry and Detainer (FED) action. In May 2017, Tenant filed a motion to dismiss Landlord's FED action, arguing that "Sprint has offered to turn over possession of the premises to Target by May 31, 2017, if Target agrees to waive the sixty-day notice." Tenant argued that because it was willing to vacate the premises and turn over possession to Landlord, the FED action was negated. Further, Tenant argued that "there is no need … to determine whether Target should be awarded possession of the property because Sprint has already relinquished *its right to possession*." At trial, the court granted Tenant's motion to dismiss the FED action because possession was not an issue. Landlord appealed.
Holding:	The court held that there is a difference between a "right *to* possession" and a "right *of* possession." A right to possession occurs when a person holds a deed conveying title or a lease on real estate. In comparison, the right of possession occurs when a person actually has physical possession of property. Here, although Tenant relinquished its right to possession, it maintained the right of possession until it surrendered physical possession by vacating the premises. Because Tenant had physical possession of the premises as of the date of trial, the court still had a matter to adjudicate—whether Tenant wrongfully retained possession of the premises. As such, the trial court erred in dismissing the FED action, on the grounds that possession was not an issue.

Cold Fusion Lighting LLC v. Verde Wellness Center Inc., 2018 WL 5269740 (Ariz. App. Oct. 23, 2018)	
Issue:	(1) Whether the superior court erred in awarding attorneys' fees to the defendants, given that the fee statute provides a fee award to a defendant found "not guilty," of forcible detainer, yet the case was dismissed because ownership needed to be resolved first. (2) Whether the existence of a landlord-tenant relationship can be litigated in a forcible detainer action.
Facts:	Cold Fusion Lighting, LLC (Landlord) brought a forcible detainer action against Verde Wellness Center, Inc. (Verde Wellness) and 46 Long, LLC (46 Long) (collectively, Defendants). Landlord alleged that the parties had an oral lease that required Defendants to pay $19,000 per month and Defendants failed to pay two months of rent. Verde Wellness initially denied possessing the property. 46 Long alleged it was a mortgagee-in-possession of the property, since it acquired the promissory note that Landlord executed to finance its purchase of the property. The superior court dismissed the forcible detainer action without prejudice, because the issue of ownership between 46 Long and Landlord (which was the subject of a then-pending foreclosure action) needed to be resolved before the eviction action could proceed. At Defendants' request, the superior court granted it attorneys' fees under a statute, which provides that attorneys' fees "shall be given" to a defendant who is found "not guilty" of forcible detainer. Landlord appealed. Landlord subsequently paid off the promissory note owned by 46 Long and brought a second forcible detainer action. In the second action, Verde Wellness admitted to possessing the property, but claimed there was no oral lease. Instead, Verde Wellness alleged Landlord allowed it to be on the property pursuant to an expired Grower Services Agreement. The superior court held in favor of Landlord. Defendants appealed. On appeal, the actions were consolidated.
Holding:	<u>Landlord's Appeal – Attorneys' Fees Award</u> (1) The court reversed the superior court's award of attorneys' fees on the grounds that the plain language of the fee statute provides that Defendants were not entitled to fees. The superior court did not decide on the issue of guilt, instead it entered an interim dismissal. As such, Defendants were not found "not guilty" of forcible detainer. Further, the legislature has specified in preceding statutes that a decision on the merits is a condition precedent to awarding fees under the fee statute. In this case, the action was dismissed over a question of title. However, a forcible detainer action decides the right to possession, not ownership. Therefore, Defendants were not entitled to attorneys' fees and Landlord was granted relief. <u>Defendants' Appeal – Detainer Action</u> (2) The court vacated the judgment and remanded the matter to the superior court with directions to dismiss the complaint. The court reasoned that the determination of a landlord-tenant relationship is a prerequisite to determining which party is entitled to possession. As such, the dispute as to whether a lease existed must be addressed first, in an ordinary civil action.
CALIFORNIA	

D. Wong & Associates LLC v. U.S. Security Associates., 2018 WL 6074492 (Cal. Ct. App. Nov. 21, 2018)	
Issue:	(1) Whether the trial court erred in finding that the tenant breached the lease and that it owed no rent to landlord; and (2) Whether the "no holdover" provision established the amount of the monthly rent, rather than the provisions obliging tenant to pay base rent.
Facts:	In February 2011, DWA and U.S. Security entered into a commercial lease regarding office space. The original lease was for a three-year period from March 1, 2011 to February 28, 2014. The lease contained a term doubling the base monthly rent were U.S. Security to hold over under specified conditions, and a term authorizing an award of attorney fees to DWA in the event that DWA commenced an action against U.S. Security. In May 2014, the parties agreed upon an amendment to the original lease, extending the term to April 30, 2016. The amendment contained a new provision entitled "Early Termination Option" permitting U.S. Security to terminate the lease during the first year of the extended lease, subject to enumerated conditions. In March 2015, U.S. Security notified DWA that it was exercising its early termination option. When U.S. Security continued to occupy the property while paying the base monthly rent, a dispute arose over whether U.S. Security was obliged to pay rent at the doubled rate. In March 2016, DWA commenced the underlying action as one for unlawful detainer, seeking possession of the property, $42,752 in unpaid rent, additional damages, and an award of attorney fees. After U.S. Security vacated the property in April 2016, the action was converted to an unlimited civil action. When the parties appeared for trial, the court ruled that it would decide the matter on the basis of the trial briefs and their accompanying exhibits. On September 18, 2017, the trial court issued a minute order stating: "The [c]ourt finds that there was not a breach of the lease agreement and that all rents have been paid in full." On the same date, judgment was entered in favor of U.S. Security and against DWA. Later, relying on the lease's attorney fee provision and Civil Code section 1717, the court awarded U.S. Security fees totaling $32,702.50.
Holding:	The California Court of Appeal affirmed the decision of the trial court. (1) The court held that the trial court could reasonably have concluded that the notice created a month-to-month tenancy regulated by the applicable terms of the terminated lease. (2) The court concluded that the "no holdover" provision was inapplicable to the month-to-month tenancy created by tenant's termination notice because the tenancy following tenant's early termination notice resulted from the early termination of the extended lease, rather than the expiration of its term. Accordingly, the tenant was obliged to pay only the base monthly rent during the month-to-month tenancy.
Hong Sang Market, Inc. v. Peng, 20 Cal. App. 5th 474 (2018)	
Issue:	Whether an unlawful detainer judgment has a res judicata or collateral estoppel effect that precludes a landlord from bringing a subsequent civil action for back-due rent, after being awarded back-due rent in the unlawful detainer action.

Facts:	Hong Sang Market, Inc. (Landlord) owned a two-unit commercial building. Ming Kee Games Birds, Inc. (Ming Kee) leased the entire building and sublet one of those units to Vivien Peng (Tenant). In 2004, Ming Kee sued Tenant for breach of the sublease and Tenant cross-complained against Ming Kee. The court entered judgement against Ming Kee. In 2009, while Tenant was still attempting to collect judgment against Ming Kee, Tenant was informed that Landlord and Ming Kee agreed to terminate the master lease. A new tenant, Ming's Poultry, LLC, took possession of the property formerly leased to Ming Kee. Tenant rejected Landlord's offer of a lease and demand for rent, on the grounds that the change in ownership was a fraudulent conveyance designed to prevent Tenant from collecting the judgment against Ming Kee through a setoff of rent owed under the sublease. Tenant remained in possession of the property but did not pay rent from September 2009 through February 2011. In January 2011, in accordance with Civil Code Section 827, Landlord provided Tenant with written notice that the terms of the tenancy were changing. Following this notice, Tenant paid Landlord rent in March and April 2011, but became delinquent in May 2011. As a result, Landlord served a three-day notice to pay rent or quit and a 30-day notice to quit on Tenant. When Tenant did not comply with these notices, Landlord filed an unlawful detainer action to recover possession of the premises and back-due rent for the month of May 2011. The trial court granted both requests. Subsequently, in March 2011, Landlord filed another action for breach of contract against Tenant. This time Landlord requested back-due rent for the period from September 2009 through February 2011. When Tenant argued that Landlord was barred from bringing this claim because of res judicata and collateral estoppel, the trial court ruled in favor of Landlord. The trial court reasoned that because Landlord was limited by statute in the amount of rent it could recover in the unlawful detainer action, it had to bring two separate actions; as such, claim preclusion did not apply. Tenant appealed. On appeal Tenant argued that Landlord may not split a claim for rent between an unlawful detainer action and a subsequent civil action.
Holding:	The court held that the claim for breach of contract was not precluded because the back-due rent cause of action was split between two totally different legal proceedings—an unlawful detainer action and an ordinary civil lawsuit. The court explained that Landlord's unlawful detainer action has a limited res judicata effect because Landlord could only recover back-due rent for the month in which Landlord demanded it—May 2011. As such, back-due rent for the time period from September 2009 through February 2011 was not recoverable in the unlawful detainer action and therefore not precluded in a subsequent civil action. Thus, Landlord's request for back-due rent would have been precluded if Landlord had requested rent associated with a time period decided on the merits in the unlawful detainer action.
Multani v. Knight, 23 Cal. App. 5th 837 (2018)	
Issue:	Whether a landlord is responsible to a commercial tenant, who has a month-to-month tenancy, for damage to the tenant's property resulting from a sewer backup, given that prior to the damage, the landlord filed an unlawful detainer action for tenant's failure to pay rent.
Facts:	Knight (Landlord) owned commercial property. Landlord entered into a five-year lease with Multani (Tenant), operator of a medical clinic, in 1993 and again in

	1998. After the 1998 lease expired in 2003, Tenant continued to pay rent and therefore had a month-to-month tenancy by law. When Tenant stopped paying rent in 2011, Landlord gave Tenant a three-day notice to pay rent or quit. Tenant did not respond, so Landlord filed an unlawful detainer action against Tenant. Tenant defaulted, and judgment was entered in favor of Landlord, who obtained a writ of possession and immediately evicted Tenant from the premises in 2012. Sometime between the time Tenant stopped paying rent in 2011 and the 2012 judgment, the sewer line for the premises backed up causing irreversible damage to Tenant's property. The damage included: contaminating the clinic's medical equipment, supplies, and patient files. Tenant brought suit against Landlord alleging, among other things, claims of conversion, breach of the covenant of quiet enjoyment, nuisance, contract interference, and negligence/strict liability. At the trial court, Landlord's motion for summary adjudication was granted for all of Tenant's claims arising from the sewage backup that damaged personal property while an unlawful detainer action was pending, except for the contract interference claim, which went to trial and resulted in a verdict in favor of Landlord.
Holding:	The court held that when Tenant failed to pay rent (a material breach) and Landlord filed a wrongful detainer action, the month-to-month tenancy was terminated. This made Tenant a tenant of sufferance with no legal right to possession of the premises. In addition, the termination of the month-to-month tenancy meant Landlord was relieved of any liability for a sewage backup. The court also held that Landlord was not liable for damage to Tenant's personal property because that damage was not caused by Landlord's intentional act or negligence.
Petrolink, Inc. v. Lantel Enterprises, 21 Cal. App. 5th 375 (2018)	
Issue:	Whether a tenant is entitled to an offset against the purchase price for rents it paid to a landlord through the pendency of litigation regarding a purchase option provision contained in a lease.
Facts:	Lantel Enterprises ("Landlord") and Petrolink, Inc. ("Tenant") were parties to a lease that contained a right to purchase provision. This provision gave Tenant "an option to purchase the property at any time after the first ten years of the lease term at a price equal to the fair market value of the property based on an appraisal." In 2011, Tenant sent Landlord a letter indicating a desire to exercise this option. When the two parties' appraisals came back with very different valuations of the property, the parties could not agree on a purchase price. As such, Tenant brought suit against Landlord for specific performance. Landlord filed a cross-complaint alleging breach of contract, breach of the covenant of good faith and fair dealing, and a claim for specific performance. At trial, through use of the court's own appraiser, the court found that the fair market value of the property was $889,854 and held in favor of Tenant on its specific performance action. Nevertheless, the court denied Tenant's request for an offset against the purchase price of the rents paid to Landlord during the pendency of the litigation. Tenant appealed.

Holding:	When a tenant exercises an irrevocable option, the lease and the option cease to exist, and, in its place, a contract of purchase and sale is established. As such, absent an express stipulation to do otherwise, the former lessee's obligation to pay rent under the lease also terminates. Tenant continued paying rent to avoid being found in default in the event that the court determined it did not validly exercise the purchase option. This does not imply an agreement between the parties that rent would continue. Since Tenant validly exercised its option to purchase the property, the lease was transformed into a contract of sale and the landlord-tenant relationship was extinguished along with any duty to pay rent. As such, Tenant was entitled to an offset for the rents it paid to Landlord after it exercised its purchase option. Nevertheless, where specific performance is granted, both the seller and buyer are entitled to full performance of the contract. Landlord did not have use of the purchase funds it would have received from the time the purchase and sale contract reasonably should have been performed to the entry of judgment. As such, Landlord was entitled to some form of compensation as well. The court reversed and remanded the case to the trial court with instructions to determine the reasonable date on which the contract for purchase and sale should have been performed, and to consider what financial adjustments must be made in order to relate the parties' performance back to the date that the contract should have been performed. Further, the court held that the trial court could undertake whatever proceedings necessary to address these matters.
Glovis America Inc. v. County of Ventura, 28 Cal. App. 5th 62 (2018)	
Issue:	Whether the trial court erred in its finding that a tenant of federal land would likely exercise its option to renew its lease, and therefore the value of the leasehold interest was properly based on the extended term.
Facts:	In 2007, Glovis America, Inc. ("Tenant") leased land from the U.S. Navy ("Landlord") to provide vehicle inspection and processing services. In 2013, Tenant and Landlord signed a five-year lease, with two five-year options. The Ventura County Assessor issued a tax bill in 2013-2014 and a supplemental tax bill for 2013-2014. These bills were based on a 15-year term, because the assessor determined that it was reasonable that Tenant would possess the property during that time. When Tenant appealed these assessments to the County's assessment appeals board (the Board), Tenant was denied because it did not establish that the assessments were incorrect. Tenant filed suit in the trial court, challenging the Board's decision. The trial court sustained the county's demurrer without leave to amend.
Holding:	The court affirmed the trial court's decision holding that the Board properly determined that Tenant's lease included an option to extend and that it was reasonable to assume that the option would be exercised, thereby justifying a higher tax valuation. When a lease of federal lands includes an option to extend its term and the tax assessor reasonably concludes that the option will likely be exercised, the value of the leasehold interest is properly based on the extended term. The court reasoned that this was Tenant's fifth lease with Landlord, all of which were renewed. In addition, the subject lease was the first to include an option to

	extend the lease term. Finally, a representative of Tenant was quoted in a newspaper article saying that the lease was "a critical part of its plan to offer…customers long-term stability at a port strategically located just north of the Los Angeles market," and that Tenant "looked forward to a long business relationship" with Landlord.
COLORADO	
Colorado Health Consultants v. City & Cty. of Denver through Dep't of Excise & Licenses, 429 P.3d 115 (Colo. Ct. App. 2018)	
Issue:	(1) Whether plant husbandry is a permitted accessory use of a marijuana retailer's industrial mixed-use property. (2) Whether the reasonable expectation of receiving renewal of a government permit provides grounds for an equitable estoppel or takings claim.
Facts:	Marijuana retailer, Starbuds ("**Plaintiff**"), operated in a special context zone (I-MX-3) for industrial mixed use with a permit for retail sales. Its zoning application included plans to have a "bloom" space on the second floor of the property. Plaintiff separately applied for a retail marijuana cultivation (RMC) license from the Department of Excise and Licenses ("**Defendant**"), which was issued and renewed the following year. On its second application for renewal, Plaintiff initially received the RMC license, but this decision was challenged by some neighborhood residents. Following a hearing, the hearing officer recommended that Defendant deny the Plaintiff's renewal request, arguing that plant husbandry was not a permitted use or permitted accessory use in the special context zone that Plaintiff operated in, and that granting the permit initially was an error under Denver Revised Municipal Code (DRMC). Plaintiff challenged this decision, arguing that plant husbandry was a permitted accessory use within the special context zone under §6-214(a)(1) of the DRMC and that Defendant abused its discretion. It also argued that the lower court erred in finding that the doctrine of equitable estoppel applied to this case and revoking the license should be considered a taking.
Holding:	The Court found statutory support for the agency's decision to hold a hearing regarding the renewal of Plaintiff's license. Additionally, there was sufficient evidence to give deference to Defendant's discretionary determination that plant husbandry violated the relevant zoning laws and ordinances, which allowed for marijuana retail sales, but not cultivation. Under applicable state law, licenses for the cultivation, manufacture, distribution, or sale of medical and retail marijuana can be suspended, restricted, or revoked upon a finding that the holder violated the law. The Court was not persuaded that Plaintiff reasonably relied on receiving the permit, given their awareness of Denver's Zoning Code. Additionally, the lack of evidence that Starbuds invested additional resources to support its operations during the period between initial approval and the hearing setting, was evidence that it did not detrimentally rely on renewal of the zoning permit nor did they have a reasonable expectation of continued licensure. As such, Plaintiff's equitable estoppel argument failed. Finally, given that there is no vested right in the renewal of a license, there can be no taking. Plaintiff held its license with no assurances and at its own peril, assuming the risk that its license would not be renewed.

DELAWARE	
CSH Theatres, LLC v. Nederlander of San Francisco Assocs., 2018 Del. Ch. LEXIS 259, 2018 WL 3646817	
Issue:	Whether there was an exception to the Delaware Statute of Frauds that applied to justify enforcement of an alleged oral lease.
Facts:	In 1980, the predecessor-in-interest to Shorenstein Hays-Nederlander Theatres LLC ("Tenant") entered into a lease with the Lurie Company ("Original Landlord") for the Curran Theater (the "Property"), which was extended on three occasions. Tenant is owned equally by CSH Theatres L.L.C., which is controlled by Carole Shorenstein Hays ("Shorenstein") and Nederlander of San Francisco Associates ("NSF Owner"), which is controlled by Robert E. Nederlander ("Nederlander"). Original Landlord subsequently offered to sell the Property to the Tenant. Nederlander was unwilling to purchase the Property on behalf of Tenant; however, Shorenstein, acting independently of her interest in Tenant, purchased the Property personally through CSH Curran LLC ("Landlord") with Nederlander's permission. According to Nederlander, his permission was conditioned on agreement by Shorenstein that Tenant would continue to lease and to run the Property. By contrast, Shorenstein did not recall promising to rent the Property to Tenant after expiration of the original lease. Although there were several conversations about extending the lease upon expiration, Landlord and Tenant were subsequently unable to agree to a new lease for the Property. Thereafter, the case went before the Chancery Court on several claims arising from the relationship between the parties, including NSF Owner's counterclaim that there had been an enforceable contract to continue to lease the Property to Tenant after expiration of the original lease. NSF Owner sought specific performance and damages.
Holding:	The Chancery Court denied NSF Owner's request for relief on several grounds. First, the Chancery Court concluded that NSF Owner could not meet its burden to show that Shorenstein ever made a promise to renew the lease after its expiration based on the evidence presented. The Court noted that there were significant discrepancies in the testimonial evidence with respect to conversations between Shorenstein and Nederlander, and there was no contemporaneous writing evidencing the conversations or the alleged promise. Second, the Chancery Court found that, even if there was a promise which constituted a contract, it would not be enforceable because Shorenstein did not receive consideration for her alleged promise. Nederlander's permission for Shorenstein to purchase the property did not qualify as consideration because Shorenstein had requested the permission only as a courtesy, and it was not necessary for her to obtain it before she purchased the Property. Third, the Chancery Court found that even if the parties had agreed to an oral lease, NSF Owner did not show that an exception to the statue of frauds applied that would make the lease enforceable without a writing. The Court first found that Tenant had not partially performed the oral lease. NSF Owner needed to demonstrate evidence of performance by Tenant of the lease itself, and the only evidence it could show of actions taken in reliance on the lease were the rebranding of the theater and the booking of certain shows. These acts were insufficient to demonstrate an injustice that would justify an exception to the statue of frauds. The Court further found that these acts were insufficient to support liability on the grounds of promissory estoppel. Thus, the Court found that there was no applicable exception to the statute of frauds that would justify relief.

FLORIDA	
Custom Marine Sales, Inc. v. Boywic Farms, Ltd., 245 So.3d 791 (Fla. Dist. Ct. App. 2018)	
Issue:	(1) Whether the plain language of a lease agreement between the landlord and tenant created a condition precedent to tenant's paying rent. (2) Whether the landlord's failure to satisfy this condition excused the tenant's failure to pay its monthly rent.
Facts:	Boywic Farms, Ltd. ("**Landlord**") entered into a lease agreement with Custom Marine Sales, Inc. ("**Tenant**") providing that the Landlord would (1) complete various improvements to the property prior to delivering possession to the Tenant and (2) waive the Tenant's rent payments for the period between the lease's execution and delivery of possession. The Landlord did not complete the improvements but obtained a non-final order against the Tenant to deposit rent payments into the court registry, which the Tenant appealed.
Holding:	The trial court erred in ordering the Tenant to pay rent under the lease agreement because the plain language of the lease waived the Tenant's rent payments until the Landlord completed the agreed improvements, which the Landlord stipulated had not been completed.
Jahangiri v. 1830 N. Bayshore, LLC., 253 So. 3d 699 (Fla. Dist. Ct. App. 2018)	
Issue:	Whether a lease provision providing for "renewal at the then prevailing market rate for comparable commercial office properties," defines a sufficiently definite procedure to establish the amount of rent and make that provision enforceable.
Facts:	1830 North Bayshore, LLC ("**Landlord**") and Jahangiri ("**Tenant**") entered into a written lease for a commercial property to be used as a market and deli. The lease was for five years, but included an option for two five-year renewal periods at the "then prevailing market rate for comparable commercial office properties," conditioned upon six months' notice and provided that the Tenant was not in default of any provision of the lease. Tenant, via letters and electronic mail, provided timely notice of its intent to exercise the first of the two renewal terms; however, Landlord refused to renew the lease, prompting the lawsuit. The court cited three cases to explain the parameters of sufficiently definite language in a renewal provision to determine the amount of rent: *Edgewater Enters., Inc. v. Holler*, 426 So.2d 980 (Fla. Dist. Ct. App. 1982), *LaFountain v. Estate of Kelly*, 732 So.2d 503 (Fla. Dist. Ct. App. 1999), *Ludal Development Co. v. Farm Stores, Inc.*, 458 So.2d 781 (Fla. Dist. Ct. App. DCA 1984). The court also found persuasive the case *Walker v. Keith*, 382 S.W.2d 198 (Ky. 1964), which found a lease renewal provision with language similar to the contested provision in this case ("comparable business conditions") too indefinite to be enforceable.
Holding:	Summary judgment was granted in favor of the landlord because the renewal provision lacked an essential term: the amount of rent to be paid upon renewal. The Court reiterated that, under Florida law, "rent is an essential element to be agreed upon in the future; therefore, when the parties cannot subsequently agree, an essential element is missing and since the parties have not agreed upon a method for solving this impasse, the contract is indefinite as to an essential term and is unenforceable." Without this term, the Court could not determine whether there was a "meeting of the minds" between the parties, thus making the renewal

	term unenforceable. The Court found the plaintiff's argument that the lease contained a method for arriving at the renewal rental amount unpersuasive because it was too indefinite. The Tenants were ordered to vacate the premises. Where the lease does not provide for the amount of renewal rent, the procedure for determining rent has to be definite enough, without further negotiation or litigation on the methodology used, to fix the rent with certainty. Factors the court will look for include: delegating responsibility for determining what properties are comparable; factors defining what makes a property comparable (size, condition, location, etc.); steps for objecting to comparisons and the processes for resolving such objections; and a definition of "prevailing market rate" (e.g., mean, medium, or mode of the identified comparable commercial properties).
Haggin v. Allstate Investments, Inc., 264 So. 3d 951 (Fla. Dist. Ct. App. 2019)	
Issue:	Whether a guarantee clause of a lease created a continuing guaranty that extended to amendments and modifications of the original lease, or if the guaranty was limited to the original term and renewal period of the lease.
Facts:	Commercial landlord, Allstate Investments, Inc. ("**Landlord**"), brought action against tenant, Haggin ("**Tenant**") and the Tenant's guarantor to recover rent payments based on a guaranty clause in the parties' original lease that Landlord alleged was a continuing guaranty. The original lease was for 3 years, with a single renewal option for an additional 3-year term. Over the course of 14 years, several amendments and modifications to the original lease extended the Tenant's term of occupancy and increased the size and rent of the Tenant's leased space in a shopping center. However, Tenant's guarantor did not sign any of these modifications and the parties offered differing testimony regarding their awareness and understanding of the guaranty provision. "Under Florida law, a guaranty for a lease can be continuing, but it must expressly state that it is intended to cover future transactions for the guarantor to be liable for extensions and renewals." *Sheth v. C.C. Altamonte Joint Venture*, 976 So.2d 85, 87 (Fla. Dist. Ct. App. 2008). A guaranty is continuing, "if it contemplates a future course of dealing during an indefinite period, or if it is intended to cover a series of transactions or succession of credits, or if its purpose is to give to the principal-debtor a standing credit to be used by it from time to time. Thus, a continuing guaranty covers all transactions, including those arising in the future, which are within the description of contemplation of the agreement." *Fid. Nat'l Bank of S. Miami v. Melo*, 366 So.2d 1218, 1221 (Fla. Dist. Ct. App. 1979).
Holding:	The Court ruled that the language of original lease was unambiguous in that the guaranty clause was limited to the initial term of three years, plus the single three-year option to renew. While the original lease contained a provision limiting any "renewal, modification, extension or waiver" to the parameters of the original term, the guaranty provision directly referenced the original lease and was therefore limited to its initial term and single renewal period. Though the language was unambiguous, the court added in dicta that the outcome would have been the same if the language were ambiguous. "[A]n agreement of guaranty is construed against the party who prepared or presented same." *Miami Nat'l Bank v. Fink*, 174 So.2d 38, 40 (Fla. 3d DCA 1965). Because the landlord drafted the original lease, the language must be construed against it.
GEORGIA	
Siarah Atlanta Hwy, LLC v. New Era Ventures, LLC, 2019 WL 1928107 (Ga. Ct. App. May 1, 2019)	

Issue:	(1) Whether a notice of lease termination sent on the same day that a tenant properly exercised its option to purchase leased property prevents the tenant from exercising the option. (2) Whether tender of a purchase price for property is necessary to exercise an option to purchase and sue for specific performance.
Facts:	Consistent with the option to purchase provision in its commercial lease contract, New Era Ventures, LLC ("**Tenant**") sent its "**Landlord**", Siarah Atlanta Hwy, LLC notice and an initial payment for property it sought to purchase, though not the actual purchase price. On the same day, the Landlord sent Tenant a notice that it was terminating the lease and demanding possession. According to the terms of the lease, Landlord had a right to terminate with 30 days written notice. Landlord argued (1) that it terminated the lease, which included the option provision, and (2) that in order to validly exercise the option, Tenant had to actually purchase the property.
Holding:	To Landlord's first argument, the Court noted that, while it had provided notice of termination, termination was not *effective* until after the contractual notice period ended. Prior to that date, Tenant exercised its option to purchase consistent with the terms of the contract. As such, the relationship between the parties shifted from landlord-tenant and optionor-optionee to that of ven-vendee, where Tenant was a purchaser in possession. This shift meant that there was no longer a tenancy for Landlord to terminate. Because the contract did not require the closing of the sale to occur within the option period and payment or tender of the purchase price was not a condition precedent to the exercise of the option, Tenant effectively exercised its lease's purchase option. Tenant therefore could sue for specific performance and Landlord's attempt to terminate the lease was ineffective. While Georgia law requires an "absolute and unconditional tender of the purchase-price" in order to sue for specific performance, actual tender is not, as was the case here, "a condition precedent to entitlement to specific performance where rejection is deemed likely." *Burns v. Reves*, 457 S.E.2d 178, 180 (1995). Tenant was, however, responsible for paying rent payments until the closing of the purchase pursuant to the option, less any damages it incurred arising out of Landlord's breach of contract.
HAWAII	
Coggins v. Kona Seaside, Inc., 2018 Haw. App. LEXIS 366 (Haw. Ct. App. August 13, 2018)	
Issue:	(1) Whether a lease's terms regarding the sale of a business extends to the sale of stock. (2) Whether the sale of stock violated a lease's non-assignment clause and consent provisions.
Facts:	In 2010, Coggins, Inc. (tenant) ("Company") executed a lease with Kona Seaside, Inc. ("Landlord") for a restaurant. The lease would have expired in 2021. Under the lease's terms, if the restaurant is sold by the Company, Landlord would receive 40% of the sale price. The lease contained a consent provision that required the express consent from Landlord for certain transactions. The lease also contained a non-assignment clause that prohibited the Company from subletting or assigning the premises to another entity during the term of the lease. In 2014, the two shareholders of the Company executed a stock purchase agreement to sell the entirety of their stock in the Company to another pair of

	individuals. Soon after, Landlord contacted the Company to review the terms of the sale and Landlord notified the Company that Landlord, pursuant to the terms of the lease, was owed 40% of the sale price. However, the Company's initial shareholders claimed Landlord was not entitled to compensation because the sale of corporate stock, as opposed to the outright sale of the business, is not covered by the lease's terms. Because the two sides could not come to an agreement, the sale of the Company was terminated. The Company sought a declaratory judgement claiming that (1) the sale of the Company's stock is not the sale of the business as described in the lease, and, because of this, (2) Landlord is not entitled to compensation from the sale. Landlord counterclaimed that (1) Landlord was entitled to 40% of the gross sale price, (2) the Company failed to appropriately notify Landlord of the sale and did not to obtain written consent for the transaction from Landlord, and (3) the Company improperly threatened Landlord with criminal sanctions if it did not revoke its demand for a share of the earnings. The trial court granted the Company's motion for summary judgement and denied Landlord's counterclaims. The trial court found that (1) Landlord is not entitled to a payment from the shareholders' sale of stock shares, (2) the lease neither restricts the Company from selling shares of stock nor requires Landlord's consent for the sale of stock, and (3) the shareholders' sale did not breach a good faith agreement under the lease. On appeal, Landlord argued that it was owed commission under the lease and that the sale violated the lease's consent provision and non-assignment clause.
Holding:	The appellate court affirmed the trial court's verdict in favor of the Company, ruling that Landlord was not entitled to compensation. The appellate court also concluded that the sale was not in violation of the lease's non-assignment clause and consent provision. The court found that, under both Hawai'ian common law and a standard reading of the lease's sale provisions, shareholders selling their stake in a business is unambiguously distinct from the sale of a business as a whole. The court pointed out that after the sale of stock from one shareholder to another, Coggins, Inc. remains the owner of its assets and is responsible for the continuation of the lease. Therefore, as the court opined, the sale of stock did not violate the lease's terms. The court further noted that because the individual shareholders are not, under the law, the same entity as the Company, Landlord is not entitled to commission for any funds the shareholders receive. Because shareholders do not own the assets and properties of a business and are not liable for any of the company's debts, as the court concluded, the legal entity of a shareholder cannot be perceived as being the same as the legal entity of a business unless a contract expressly notes otherwise. The trial court was, therefore, affirmed.
ILLINOIS	
Michigan Wacker Assoc. LLC. V. Casdan, Inc., *100 N.E.3d 596 (Ill. App. Ct. 2018)*	
Issue:	Whether Tenant properly exercised its option to extend the lease term when its representative used an email correspondence, rather than a written notice, as proscribed in the Lease, to discuss a renewal option with Landlord.
Facts:	Michigan Wacker Associates, LLC ("Landlord") leased the premises (the

	"Premises") to Casdan, Inc. ("Tenant") to operate a restaurant. The initial term of the lease (the "Lease") was ten (10) years. Tenant had an option to extend the Lease for two (2) additional five (5) year terms. The rent for each option term would be a market rate agreed to by the parties. One year into the first renewal term, Landlord and Tenant disagreed on the rent payment. In an email sent by its representative, Tenant indicated it wanted to exercise the second option for an entire second ten (10) year term. Landlord did not address the request to exercise the second option. The Landlord alleged that the communication surrounding the second option deviated from the agreed upon notice requirements in the Lease because it was an email and not a written notification.
Holding:	The court found that proper notice to Landlord required using the means of notification agreed upon in the Lease. Accordingly, using a means of notification not agreed upon under the Lease and suggesting an interest in exercising an option does not constitute valid notice.
1002 E. 87th Street, LLC v. Midway Broadcasting Corp., 107 N.E.3d 868 (Ill. App. Ct. 2018).	
Issue:	Whether Landlord has standing to evict Tenant and collect on a guaranty signed by a prior landlord for past due rent that accrued before the new landlord acquired the property.
Facts:	1002 E. 87th Street, LLC ("Landlord") purchased the premises (the "Premises") that Midway Broadcasting Corporation ("Tenant") was leasing. Previously, when Tenant had initially leased the Premises, two individuals had signed the lease as guarantors. When Landlord acquired the property, Tenant owed over $70,000 in rent. Landlord filed a complaint for eviction shortly after acquiring the property because of the overdue rent. The trial court issued an agreed order on use and occupancy payments. Two years later, Tenant filed a motion to dismiss, and the trial court granted the motion, awarding attorney's fees to Tenant.
Holding:	The court found that a new landlord does not have a right to recover past due rent from before it owned the property, only the party who was the landlord during the time the past due rent accrued has the right to sue a tenant for it. A new owner cannot use a non-waiver clause to enforce a tenant's obligations to a previous owner. Additionally, a new landlord does not have standing to sue a guarantor for past due rent accrued from before it was the owner.
KENTUCKY	
Blue Stallion Brewing, LLC v. Strecker, No. 207-CA-001341-MR, No. 2017-CA-001411-MR, 2018 WL 6721227 (Ky. Ct. App. Dec. 21, 2018)	
Issue:	Whether a certain lease provision is enforceable and, thus, makes Tenant liable to Landlord for parking lot payments.
Facts:	Blue Stallion Brewing, LLC ("Tenant") and Erika Strecker ("Landlord") (collectively, the "Parties") set out to take advantage of an "adaptive reuse" program (the "Program") created by the Lexington-Fayette Urban County Government. To take advantage of the Program, however, the Parties had to assure the local government that sufficient parking would be available. The Parties agreed to solve the "parking problem" by including in their lease agreement (the "Lease") a separate provision regarding the securing of off-site parking ("Paragraph VII"). Paragraph VII provided that the Landlord would negotiate a sub-lease (the "Sub-Lease) with a third party who owned "adjacent

	property across the street." After securing the Sub-Lease, Landlord would make this property available to Tenant for parking. Pursuant to the Paragraph VII, Landlord began negotiations with the third-party to secure alternative parking, but for reasons outside of the Parties' control, the Sub-Lease for additional parking was never executed. Tenant was able to find parking elsewhere, but only for the minimum number of spots necessary to satisfy the government. Tenant sued Landlord, seeking damages for Landlord's failure to obtain the Sub-Lease. Landlord counterclaimed, seeking to evict Tenant from a different parking lot that Landlord had eventually obtained across the street.
Holding:	The court found that Paragraph VII was not enforceable because: (a) it was overly vague and (b) left open an agreement for future negotiations. As a general rule, "an agreement to agree in the future" is not enforceable unless it specifies all material and essential terms and leaves nothing to be agreed upon as a result of future negotiation.
LOUISIANA	
Specialty Retailers, Inc. v. RB River IV LLC, 237 So.3d 63 (La. Ct. App. 2018)	
Issue:	Whether a lease provision capping Tenant's monthly obligation for common area operating costs, taxes and insurance premiums ("CAM") also capped the actual annual CAM payment owed by tenant to landlord under the lease.
Facts:	Specialty Retailers, Inc. ("Tenant") entered into a ten-year lease agreement (the "Lease") with RB River IV LLC, RB River V LLC and RB River VI LLC (collectively "Landlord"). Among other things, the Lease called for payment of "Additional Rent", which required Tenant to pay its proportionate share of costs and expenses in monthly installments. The Lease further provided for a year-end reconciliation of the amount actually incurred by the Landlord for the given calendar year. Notwithstanding the year-end reconciliation provision, Tenant believed that a "cap provision" contained in the Lease placed a cap on the total Additional Rent Tenant owed per year. Consequentially, Tenant filed suit against Landlord to recover rent that it allegedly overpaid. Landlord moved for summary judgment asserting that the Lease obligated Tenant to "pay its proportionate share of all Common Area Operating Costs, Taxes and Insurance Premiums incurred on an *annual basis*" and that any "cap provision" simply limited the monthly payment obligation against those annual costs. The trial court granted summary judgment in favor of Landlord. Tenant appealed.
Holding:	The court affirmed the trial court's judgement on the ground that the Lease language clearly required Tenant to pay Landlord on a yearly basis its actual share of CAM without reference to any cap. Accordingly, the Lease provision limiting Tenant's monthly obligation did not cap the actual annual payment owed by the Tenant to Landlord under the Lease.
MARYLAND	
Cushman & Wakefield of Maryland, Inc. v. DRV Greentec, LLC, 203 A.3d 835 (Md. 2019)	
Issue:	Whether a successor landlord was liable for brokerage commissions under an

	assumed lease when the assignment contained language requiring the successor landlord to assume all of the covenants, agreements and obligations binding on assignor but related documents contained an express negation of the assumption of the brokerage fee.
Facts:	MGP Greentec ("Original Landlord") purchased a commercial property in Greenbelt, Maryland and secured financing for the purchase through a mortgage from Bank of America ("Lender"). As part of the security for that mortgage, Original Landlord assigned Lender all current and future leases. The assignment clause in the Deed of Trust provided that "[s]uch assignment to Lender shall not be construed to bind Lender to the performance of any of the covenant, conditions, or provisions contained in any such Lease or otherwise impose any obligation upon Lender." A separate Assignment of Leases and Rents was also executed supplementing this clause. When Original Landlord's existing tenant vacated the property, Original Landlord entered into a contract with a real estate brokerage company, Cushman & Wakefield ("Landlord's Broker"), to find a new tenant and agreed to pay them a commission when they found a new tenant. Additionally, the contract stated that if the new tenant renewed or extended its lease, Landlord's Broker would be entitled to an additional commission for the renewal term. Landlord's Broker found a government contractor, TRAX ("Tenant"), to lease and manage the space. In the lease, Original Landlord agreed to pay Tenant's broker ("Tenant's Broker") a set commission fee "in the event Tenant exercises its Option to Renew." Soon after Tenant moved in, Original Landlord defaulted on the mortgage and the commercial property was sold at foreclosure to Lender, subject to the lease. Lender subsequently sold the property to DRV Greentec, LLC ("Successor Landlord"). As part of that sale, Lender transferred its interest in the lease to Successor Landlord and Successor Landlord assumed and agreed to perform "all of the covenants, agreements and obligations under the Lease and Contracts binding on Assignor or the Real Property, Improvements, or Personal Property…" Three years after Successor Landlord took over the commercial property, Tenant renewed its lease for an additional five years. Both Landlord's Broker and Tenant's Broker (collectively, the "Brokers") demanded that Successor Landlord pay the commissions provided for in the lease. Successor Landlord rejected the demand, and the Brokers sued Successor Landlord for their respective commissions. The Brokers argued that Successor Landlord was liable for the commissions agreed to by Original Landlord because the lease covenant was one that ran with the land and, even if it did not, Successor Landlord had expressly assumed the duty to pay the commissions when it assumed the lease with *all* of its obligations. The Brokers further argued that they could recover as third-party beneficiaries and that they could also recover under theories of successor liability and *quantum meruit* for unjust enrichment.
Holding:	The appellate court concluded that the Circuit Court and Court of Special Appeals were correct in entering judgment for Landlord. The appellate court held that even if the Brokers qualified as third-party beneficiaries, they only had the right to sue for the brokerage fees whomever was liable for paying them. Here, the appellate court agreed with the lower courts that the covenant to pay the brokerage commissions was a personal one that did not run with the land. The appellate court held that Successor Landlord was not liable for payment of the brokerage commissions because (1) because neither Successor Landlord nor Lender (its

	assignor) signed the lease, (2) Successor Landlord agreed to assume only those obligations that were binding on the assignor, and (3) the Assignment of Leases and Rents expressly rejected the assumption by Lender of any obligations under the lease.
*Cipriano Square Plaza Corp. v. Munawar, No. 1871, 2018 Md. App. LEXIS 167, at *1 (Ct. Spec. App. Feb. 21, 2018)*	
Issue:	Whether, under New York law, a landlord materially and willfully breaches a contract by overbilling and refusing to provide a tenant with billing information.
Facts:	The Munawars ("Tenants") agreed to rent space in a shopping center owned by Cipriano Square Plaza Corporation ("Landlord"). The lease agreement had two pertinent provisions: (i) it stated that the lease was governed by the laws of New York and (ii) it stated that the Tenants were responsible for reimbursing the Landlord for common area maintenance ("CAM") expenses and real estate taxes. The lease listed the formulas to be used to calculate the CAM expenses and real estate taxes. After the Tenants moved into the space, they contacted the Landlord with concerns about the high CAM and property tax charges. The Landlord did not respond to the Tenants' inquiries. Eventually, the Tenants retained counsel, and their attorney contacted the Landlord and asked for documentation regarding the CAM and real estate tax expenses. While the Landlord replied to the Tenants' counsel, the Landlord did not provide all of the requested information. Shortly after this exchange, the Tenants filed an action in Maryland seeking rescission of their lease and damages for misrepresentation. Landlord filed a separate action in New York alleging breach of lease and seeking damages for unpaid rent for the full lease term.
Holding:	Applying New York law as the governing law under the lease, the Appellate Court held that the Tenants were entitled to a rescission of the lease because the Landlord materially and willfully breached the lease by overbilling and refusing to provide information to the Tenants. Under New York law, rescission of a contract is appropriate when there is a material and willful breach and no adequate remedies at law. The Court found that the Landlord's conduct was willful because the Landlord's overbilling and refusal to provide information on multiple occasions was both voluntary and intentional. The Court also found that the breach was material. Under New York law, a breach is material if it "leaves the subject of the contract substantially different from what was contracted." The evidence presented to the Court demonstrated that the Tenants were being billed at a rate that was thirty percent higher than it should have been based on the formula in the lease. The Court reasoned that requiring the Tenants to pay thirty percent more than their actual rate was substantially different from what was contracted. Finally, the Court found that rescission was the only adequate remedy at law. According to the lease, any monetary judgment for the Tenants could only be recovered if the Landlord sold the shopping center. Therefore, rescission was an appropriate remedy.
PMIG 1024, LLC v. SG Md., LLC, 2018 Md. App. LEXIS 61, 2018 WL 509347 (Md. Ct. Spec. App. Jan. 23, 2018)	
Issue:	Whether the tenant could enforce a purchase option for a lease's subject properties when the lease did not specify the purchase price or provide a method for determining the fair market value of the properties.

Facts:	On April 1, 1968, PMIG 1024, LLC ("Tenant")'s predecessor-in-interest signed a lease with SG Maryland, LLC ("Landlord")'s predecessor-in-interest. The lease gave Tenant an option to purchase the subject properties if the premises became "uneconomic or unsuitable" for Tenant's "continued use and occupancy." The lease also stated that if Tenant's exercised its option, Tenant's notice should be "accompanied by an offer to purchase the Premises … at a price equal to twelve (12) times the then annual Basic Rent." On July 31, 2006, Tenant and Landlord signed a lease amendment. The amendment provided Tenant "the right and option to purchase or cause the sale of all or any of the properties leased . . . for a price that is equal to the then-current fair market value . . . ." On April 26, 2016, Tenant sought to purchase two of the leased properties and notified Landlord as proscribed in the amendment. Landlord rejected Tenant's offer because Tenant's purchase prices were inconsistent with the Landlord's calculation of the properties' fair market value. Tenant responded proposing a process to calculate the fair market value. Landlord did not respond and Tenant threated to take legal action. On June 12, 2016, Landlord answered and claimed Tenant needed to provide documentation supporting Tenant's proposed price. Tenant replied that the support Landlord asked for was not required by the amendment. On June 22, 2016, Tenant offered to purchase two additional leased properties from Landlord. Landlord did not respond to Tenant's offer. Tenant filed suit on July 19, 2016 seeking an order for specific performance and declaratory relief. On August 22, 2016 the circuit court granted a preliminary injunction in favor of Tenant. On September 2, 2016, Landlord filed a motion for summary judgment and a request for a hearing, arguing that Landlord was not required to accept Tenant's offers for purchase and Tenant did not have a contractual right to purchase the properties. On December 5, 2016, the circuit court granted Landlord's motion for summary judgment.
Holding:	The court held that Tenant had no enforceable contract right or option for purchase because the lease and amendment did not define market value or provide a process for determining market value. The court relied on its previous holding in *Hanna v. Bauguess*, 49 Md. App. 87, 430 A.2d 104 (Md. Ct. Spec. App. 1981). In *Hanna*, the court refused to grant specific performance for a purchase option in a lease that did not provide either a definite price or include a method to determine the price. The court stated that if a contract does not define "what fair market value is, it must specify a process to determine fair market value." Here the lease and amendment provided neither, so the court held that the purchase option was unenforceable.
*USA Real Estate-2, LLC v. Carter, No. 2648, 2018 Md. App. LEXIS 39, at *1 (Ct. Spec. App. Jan. 12, 2018)*	
Issue:	Whether guarantors are responsible for unpaid rent due under a lease extension when they did not receive notice of the extension and there was no language in the lease or guaranty contemplating a lease extension.
Facts:	Faithful and True Christian Center ("Tenant") entered into a lease agreement with USA Real Estate ("Landlord"). The Tenant's pastor signed a fixed five-year lease. At the same time, six church members signed a personal guaranty of the lease. The Landlord accepted the guaranty after requesting and reviewing the federal and

	state tax returns of the guarantors. The lease agreement contained a clause stating that the Tenant would be liable for 200% of the rent if it held the premises longer than the five-year term. The guaranty stated that "modifications" to the lease could be made "without releasing [the guarantors] from [their] obligations," and it stated that it was an absolute guaranty of "the full and complete payment of rent and other charges…under said Lease agreement." Neither the lease agreement nor the guaranty had specific language regarding a lease extension. Four years later, the Tenant entered into a three-year lease extension with the Landlord. The guarantors were not notified about the extension, and their consent was not sought. In addition, the Landlord did not request financial information from the guarantors. Three years after the lease extension, the Tenant could no longer pay the rent. The Landlord and Tenant agreed that the Tenant would vacate the property eight months before the lease extension ended. Shortly thereafter, the Landlord sued the Tenant and the guarantors for breaching the lease and the personal guaranty.
Holding:	The Appellate Court concluded that the guarantors were not responsible for the payments due under the lease extension because there was no language in the lease or guaranty that rendered notice to and consent of the guarantors unnecessary. While section (b) of the guaranty stated that *modifications* to the lease could be made "without releasing [the guarantors] from [their] obligations," the Court found that a lease extension was not a modification. The Court reasoned that "modification" did not include a lease extension because no language in the lease or guaranty suggested that a lease extension was possible. The Court also reasoned that if "modification" did include lease extensions, the term "modification" was ambiguous. As an ambiguous term, the Court explained that "modification" should be construed against the drafter; thus, the term would not include lease extensions. In addition, the Court explained that the guaranty signed by the church members was not a "continuing guaranty." The guaranty was only for the "full and complete payment of rent and other charges" under the lease agreement, and the original lease was for a fixed five-year term. Therefore, the guaranty was only for charges incurred during those five years. Lastly, the Court found that the guarantors were not liable simply because the original lease had a holdover clause. The Court differentiated a lease extension from a holdover, explaining that a holdover is a non-consensual unilateral refusal to vacate, while a lease extension is a consensual extension. Accordingly, the Court found that the guarantors did not consent to a lease extension by agreeing to the holdover clause.
MASSACHUSETTS	
CSHV Concord, LLC v. Omega Mgmt. Grp. Corp., No. 17-ADSP-87NO, 2018 WL 1136574 (Mass. App. Div. Feb. 26, 2018)	
Issue:	Whether a "Landlord Estoppel" in a lease was ambiguous enough to waive Landlord's right to ever collect conditionally abated rent.
Facts:	CSHV Concord, LLC ("Landlord") owns a building in Billerica, Massachusetts. Omega Management Group Corporation ("Tenant") leased a suite in the building from Landlord by a standard form lease (the "Lease") commencing in May 2006.

	At commencement of the Lease, the first six (6) months of rent were abated, but the Lease stated that if Tenant were to default on its obligations under the Lease, all future rent abatement would cease and all previously abated rent would become due and payable with interest. The Lease was amended on two subsequent dates: August 27, 2010 and September 1, 2012 (individually, each, a "Lease Amendment"). The first Lease Amendment provided Tenant with an additional four (4) months of rent abatement. The second Lease Amendment contained a Landlord Estoppel that stated in part that "Landlord hereby certifies and acknowledges that, as of the date of the mutual execution of this second amendment, to Landlord's knowledge, (a) Tenant is not in default in any aspect under the lease; and (b) there is no offset against any prior rent abatements." On March 27, 2013, Tenant was served with its first notice of default for failure to pay rent. The notice set forth the total amount of rent due and established a cure date of April 5, 2013. Tenant failed to cure the rent by the desired date and was thus in default of the Lease. Landlord terminated the Lease on April 11, 2013. Subsequently, Landlord brought an action against Tenant seeking a judgment for possession and damages. After Tenant paid a portion of the past due rent, the action was dismissed. Thereafter, Tenant made additional rent payments but discontinued in August 2013; Landlord re-filed the action seeking possession and damages. On re-file, the issue at trial was the status of the Lease at the time of alleged breach. Tenant asserted that because the Lease had been terminated in April 2013, Landlord had no right to pursue lease remedies arising from a default that occurred in August 2013. The trial court found that the Lease had been reinstated and entered judgment in favor of Landlord and awarded damages. Tenant appealed. On appeal, the Court concluded that there was no evidence of a reinstated Lease. Because of this finding, the Court vacated the judgment and remanded the case for a new trial. On remand, Landlord filed a motion for summary judgment arguing that Tenant's failure to pay rent constituted a breach of the Lease and that Landlord was entitled to damages. On September 28, 2016, the trial court allowed Landlord's motion. On March 29, 2017, judgment was entered in Landlord's favor in the amount of $457,889.88. Tenant appealed $276,631.56 of the awarded damages arguing that amount stemmed from abated rent and interest on the abated rent.
Holding:	Tenant argued that the Landlord Estoppel in the second Lease Amendment was ambiguous in that it was intended to amend the Lease by abolishing any obligation to pay conditionally abated rent. While the Court had not expressly discussed the ambiguity of the Landlord Estoppel, when it vacated the underlying judgment and returned the case for a new trial, it held that Landlord was entitled to seek all damages under the provisions of the Lease Agreement, including abated rent. It further added that plain reading and common sense demonstrated that the Landlord Estoppel was nothing more than an affirmation that, as of that particular moment in time, Tenant was not in default of the Lease and therefore Landlord had no claim of abated rent at the time; the Landlord Estoppel was not meant to forever waive Landlord's right to recover abated rent. The Court thus concluded that the Landlord Estoppel language was not ambiguous and the trial court's calculation and grant of summary judgment was permissible.

MICHIGAN	
Illiria, Inc. v. Pinebrook Plaza, LLC, Nos. 338666, 338671, 2018 WL 5305103 (Mich. Ct. App. Oct. 25, 2018)	
Issue:	Whether a "right of first refusal" provision contained in a Lease addendum became automatically applicable to the Tenant's holdover period despite the fact that a formal agreement between the parties was no longer in effect.
Facts:	Pinebrook Plaza, LLC ("Landlord") leased property to Illiria, Inc. ("Tenant"). The lease (the "Lease") went into effect on February 18, 2010 and continued until February 28, 2015. Paragraph K of the Lease's addendum granted Tenant a right of first refusal concerning the purchase of the restaurant property. Tenant claims that on October 24, 2014, in accordance with the Lease's renewal provision, it sent Landlord a letter of intent to renew the Lease. Landlord denies receiving that notice. In August of 2015, Landlord sold the property to a third-party. Tenant filed suit against the Landlord, seeking, among other remedies, specific performance of the Lease to allow Tenant to purchase the property and an order requiring the third-party to convey the property to Tenant. Both parties moved for summary judgment, and the trial court granted the third-party's motion. Tenant appealed.
Holding:	The court found that Tenant was deprived of the option to renew the Lease by virtue of making multiple late rent payments. Moreover, the court found that the right of first refusal provided in the Lease addendum did not extend to the period in which Tenant was a holdover tenant.
MISSOURI	
Fairmont/Monticello, LLC v. LXS Investments, Inc., 554 S.W.3d 478 (Mo. Ct. App. 2018)	
Issue:	Whether Tenant could effectively exercise the renewal clause contained in a lease agreement for a commercial space even when Tenant's actions otherwise activated the default clause in the same agreement.
Facts:	Fairmont/Monticello, LLC ("Landlord") owns real estate in St. Louis where LXS Investments, Inc. ("Tenant") operated a restaurant called The Drunken Fish. The parties entered into an agreement in 2006 for the lease of the commercial space (the "Lease"), which provided a standard renewal clause and the following default clause: "In the event of any failure of Tenant to pay any rental due hereunder within thirty (30) days after the same shall be due, or any failure to perform any other of the terms, conditions, or covenants of this Lease to be observed or performed by Tenant for more than ten (10) days after written notice of such default ... Landlord, besides other rights or remedies it may have, shall have the immediate right of re-entry. . . . Landlord does not waive its right to pursue any other right or remedy to which it may be entitled." When Tenant notified Landlord of its intent to renew the Lease for another five (5) year term, Landlord rejected the notice based on Tenant's previous late rent payments. At trial, Tenant suggested Landlord was attempting to get out of the Lease for a more lucrative deal and argued that its exercise of the renewal option in the terms of the agreement was enforceable. The trial court entered judgment in favor of Tenant, reasoning that a conflict between the renewal and default clauses created an ambiguity, which should be

	construed against Landlord as the drafter.
Holding:	The trial court's decision was reversed and the appellate court found that the default clause of the contract described "defaulting" as any failure to pay rent or failure to perform any term, covenant, or condition. Moreover, Tenant's right to renew was conditioned on absence of non-compliance with the Lease. Tenant's late rental payments thus triggered the default clause, preventing Tenant's exercise of the renewal clause.
Shocklee v. Albers Chiropractic Health Center, P.C., 558 S.W.3d 83 (Mo. Ct. App. 2018)	
Issue:	Whether Tenant effectively exercised the option for renewal of a commercial lease.
Facts:	The Shocklees ("Landlord") and Albers Chiropractic Health Centre, P.C. ("Tenant") entered into a commercial lease in April 2012 (the "Lease"). The Lease included a renewal provision for Tenant to renew the Lease for two (2) consecutive five (5) year terms by giving written notice to the Landlord no later than ninety (90) days prior to expiration of the Lease, by registered mail with return receipt requested. Tenant sent a letter to the Landlord by registered mail and expressed its intent to renew the Lease for a period of three (3) years. Landlord, however, did not believe that the letter effectively exercised Tenant's renewal right because Tenant changed the renewal term from five (5) years to three (3) years. Accordingly, Landlord considered Tenant's letter to be an attempt by Tenant to renegotiate the terms of the Lease through a counter-offer. The circuit court disagreed with Landlord and concluded Tenant had exercised the option to renew by sending the letter of intent by registered mail.
Holding:	The circuit court's decision was reversed. Tenant did not provide a definite and unqualified statement exercising the option to renew. Tenant notified Landlord in a manner inconsistent with the form and terms of the Lease. Tenant did not want to renew the Lease according to the terms previously negotiated but instead conditioned renewal on Landlord agreeing to a three-year term of renewal. Tenant's letter amounted to an insufficient exercise of the renewal option.
NEBRASKA	
Hand Cut Steaks Acquisitions, Inc. v. Lone Star Steakhouse & Saloon of Nebraska, Inc., 905 N.W.2d 644 (Neb. 2018)	
Issue:	(1) Whether Landlord retaking and selling property for Landlord's benefit extinguishes a commercial lease; and (2) Whether a commercial Landlord's efforts to mitigate damages by reclaiming and selling leased property qualified as reasonable under Nebraska law.
Facts:	Lone Star Steakhouse & Saloon of Nebraska, Inc. ("Tenant") leased property for use as a steakhouse restaurant from Hand Cut Steaks Acquisitions, Inc. ("Landlord") from 2010 through 2016. In late October 2012, Tenant provided Landlord with three (3) weeks' notice of plans to shut down its restaurant. Nonetheless, Tenant continued paying rent until February 2013. Landlord notified Tenant that it had defaulted on its lease (the "Lease"). Landlord requested that Tenant vacate the premises but noted that the request was not to be construed as a termination of the Lease or relinquishment of any amounts

	due under the Lease. Tenant vacated, and the parties executed an acknowledgment of tender and receipt of premises agreement. After several months, Landlord received an offer from a potential buyer to purchase the property. The parties agreed to a letter of intent outlining the terms of the sale and later they finalized the purchase agreement. Unpaid rent, however, accrued during this time period. Tenant argued that Landlord accepted its surrender of the Lease, thereby terminating it, when it sold the property. In contrast, Landlord claimed it retook possession of the property in order to re-let it on Tenant's account as means of mitigating damages.
Holding:	The court held that the actions taken by Landlord were consistent with an intent to mitigate damages. In addition, because Landlord expressly stated that it did not intend to terminate the Lease in its demand letter to Tenant, Landlord did not accept Tenant's offer to terminate the Lease through its abandonment of the property. In addition, as a matter of first impression, a landlord may satisfy the duty to mitigate damages by retaking the premises and making reasonable efforts to sell the property after a tenant abandons leased premises. Nonetheless, a landlord's efforts to mitigate damages must be commercially reasonable under the circumstances. Although Landlord's initial efforts to mitigate damages by leasing or selling the leased property qualified as reasonable, delay after the execution of a letter of intent with the ultimate buyer, where approximately $90,000 of unpaid rent and other expenses accrued, did not amount to a reasonable mitigation effort.
NEVADA	
Kim v. Meadowood Mall, SPE, LLC, 72463, 2018 WL 2129732, at *1 (Nev. App. Apr. 30, 2018)	
Issue:	(1) Whether there was a genuine issue of material fact regarding the landlord's claims after an eviction; (2) Whether there was adequate notice before removal of personal property; (3) Whether the lease agreement was unconscionable or otherwise unenforceable.
Facts:	Dean Kim ("Tenant") was evicted by Meadowood Mall, SPE, LLC ("Landlord"). Tenant later filed suit against Landlord for trespass and conversion. Meanwhile, Landlord filed claims against Tenant for breach of contract, breach of the implied covenant of good faith and fair dealing, monies due and owing, and declaratory relief relating to Tenant's commercial lease at Meadowood. Tenant's claims were dismissed, and the parties proceeded with litigation. Landlord then moved for summary judgment on its claims against Tenant, which the district court granted in its favor. Tenant appealed. On appeal, Tenant argued that purported damages to Tenant's personal property that was moved after Landlord evicted Tenant from the leased premises created a genuine issue of material fact so that summary judgment in favor of Landlord should not have been granted. Tenant further asserted that Landlord's removal of Tenant's property from the premises violated NRS 118C.230, governing commercial leases, because Landlord did not give Tenant adequate notice before removing Tenant's property. NRS 118C.230(1)(a) provides that a landlord must mail notice of intent to remove abandoned property and wait 14 days before disposal.

	In the alternative, Tenant argued that the lease was unconscionable as an adhesion contract or the effects of the lease clause were not readily ascertainable upon review of the contract.
Holding:	The Court found there were no genuine issues of material fact and affirmed the lower court's holding of summary judgment in favor of Landlord. As to Tenant's claim that the purported damages somehow created a genuine issue of material fact, the Court found no basis to reverse the grant of summary judgment. Regarding the alleged violation of NRS 118C.230, the Court found that Tenant failed to show as a matter of law that the lease provisions do not abrogate the statutory provisions. According to NRS 118C.230(3), if a written agreement between a landlord and a person who has an ownership interest in any abandoned personal property of the tenant contains provisions which relate to the removal and disposal of abandoned personal property, the provisions of the agreement determine the rights and obligations of the landlord and the person with respect to the removal and disposal of the abandoned personal property. The Court further found that regardless of whether the statute or lease applies, the undisputed facts in the record show that Landlord did give adequate notice before removing Tenant's personal property, both under the statute and the terms of the contract. As to Tenant's claim of unconscionability or that the effects of the lease clause were not readily ascertainable upon review of the contract, the Court found no claim because the relevant wording in the lease was set off in bold print with an area for the parties to initial the clause. Further, the Court found no real argument or explanation as to why the agreement would be an adhesion contract. Thus, the Court found that they need not consider that claim.
Swarovski Retail Ventures Ltd. v. JGB Vegas Retail Lessee, LLC, 416 P.3d 208 (Nev. 2018)	
Issue:	Whether the landlord would face irreparable harm if not allowed to enjoin the tenant from leaving the leased space.
Facts:	Appellant Swarovski Retail Ventures, Ltd. ("Tenant") entered into a license agreement with JCB Vegas Retail Lessee, LLC ("Landlord") to occupy a space at the Grand Bazaar Shops in Las Vegas. Tenant sought to terminate its lease early, maintaining that Landlord violated the lease by failing to meet the co-tenancy requirements. Landlord filed an emergency motion seeking to enjoin Tenant from leaving the Grand Bazaar on the eve of the holiday shopping season. Landlord contended that Tenant was a unique anchor tenant that entered into a hybrid lease and cross-marketing agreement to make its Starburst Crystal a central attraction at the property and further agreed to sponsor a daily event centered around the Starburst. After the district court granted Landlord's emergency motion, Tenant appealed. Tenant argued that the district court abused its discretion by granting injunctive relief, despite a lack of substantial evidence supporting irreparable harm, and by concluding that Landlord would likely be successful on the merits of its claim based on erroneous factual findings. Specifically, Landlord argued that the harm it faces is beyond economic damages and merits specific performance.
Holding:	The Supreme Court of Nevada found that the district court abused its discretion by

	finding Landlord would suffer irreparable harm. The license agreement contained no provision that indicated Tenant owed a duty to Landlord to remain in operation such that, if Tenant left, it would irreparably harm Landlord or the Grand Bizarre Shops. In fact, the license agreement contained a standard continuous operations clause with none of the particularized language that would clearly set forth an expectation of irreparable damage. Further, Tenant was allowed to terminate the lease early under certain conditions and was thereby allowed to leave with the allegedly irreplaceable Starburst Crystal. Additionally, the license agreement stated, only permissively, that Tenant had requested the right to be a sponsor and that Landlord was amenable to granting such sponsorship right to Tenant. Therefore, the Supreme Court of Nevada vacated and remanded this matter to the district court.
NEW HAMPSHIRE	
Slania Enters. v. Appledore Med. Grp., Inc., No.2017-0159, 2018 WL 2012465, (N.H. May 1, 2018)	
Issues:	1) Whether a commercial real estate lease can be considered an installment contract. 2) If a commercial real estate lease can be an installment contract, whether the installment contract rules regarding its statute of limitations for rent payments apply.
Facts:	In October 2012, Slania Enterprises ("Landlord") and Appledore Medical Group, Inc. ("Tenant") entered into a commercial real estate lease ("the Lease") for a fixed term that ended April 30, 2015. Although Tenant paid rent through January 2013, it never took possession of the premises. In March 2013, Tenant communicated with Landlord that it wanted to terminate the Lease. On April 12, 2013, Landlord informed Tenant that it was in default on its rental payments. According to the Lease, if Tenant did not pay the rent within the 10-day cure period, Landlord had the election to keep the Lease in effect and recover rent and other charges due from Tenant. At the end of the 10-day period, Tenant had not cured the default. Landlord elected to keep the Lease with Tenant in effect the entire term thus accumulating an excess in rent and other charges. On April 29, 2016 Landlord filed a breach of contract action against Tenant for $82,527.87 in damages which included rent, late fees, and utilities costs from May 2013 to April 2015. Tenant argued that the claim was barred by a three-year statute of limitations because the Lease was breached no later than April 22, 2013. Landlord argued that the Lease was an installment contract, and therefore the statute of limitations did not bar the suit. The trial court agreed with Tenant and granted its motion to dismiss. Landlord appealed.
Holding:	On appeal, the Court agreed with Landlord. It held that commercial real estate leases can be installment contracts. Its reasoning stemmed from Black's Law Dictionary's definition of an installment contract which states that it is "a contract requiring or authorizing the delivery of goods in separate lots, or payments in separate increments, to be separately accepted." Thus, a commercial real estate lease that calls for separate payments separately accepted is an installment contract. The Court also held that the installment contract rule applies to commercial real estate leases. This rule treats each missed payment as an independent breach of contract subject to its own limitations period. The Court however remanded the case back to the trial court to deal with an issue of first

	impression. The issue was whether a non-breaching party's lawsuit is barred by the statute of limitations when the non-breaching party elects not to sue within three (3) years of the other party's anticipatory breach or repudiation.
NEW YORK	
Chupack v. Gomez, 160 A.D.3d 491, 75 N.Y.S.3d 156 (N.Y. App. Div. 2018)	
Issue:	(1) Whether an exchange of emails is enough to form a contract in the absence of a written agreement. (2) Whether a court can impose sanctions on an attorney when such relief isn't sought by a moving party.
Facts:	Cindy Chupack ("Tenant"), a screenwriter, rented an apartment from Rebecca Gomez ("Landlord") for a three month period in order to work on an upcoming movie. The rent for the apartment was $20,000 per month and included a nonrefundable $15,000 deposit. The movie did not begin filming as planned so Tenant renegotiated with Landlord to rent the apartment for a one-month period. However, Tenant did not rent the apartment and demanded the nonrefundable deposit to be returned. Tenant argued that a contract was never formed due to a lack of a signed agreement. Tenant's husband/attorney threatened to file suit if Landlord did not return the nonrefundable deposit. Tenant filed suit claiming breach of contract and fraudulent conveyance. Landlord countersued for breach of contract and requested sanctions against Tenant. The court ruled in favor of Landlord and imposed sanctions on both Tenant and Tenant's husband/attorney. Tenant and her attorney/husband appealed the decision.
Holding:	The court held that emails between the parties detailing the rental agreement were enough to show the existence of a valid contract. The court also held that Tenant's claims against Landlord for fraudulent conveyance and breach of contract were unsubstantiated. The court erred in imposing sanctions on Tenant's attorney/husband since Landlord's motion did not seek such relief.
Springer Science + Bus. Media LLC v. Soho AOA Owner LLC, *161 A.D.3d 555 (N.Y. Sup. Ct. App. Div. 2018)*	
Issue:	(1) Whether the tenant breached the anti-assignment provision of its commercial lease through a change in ownership of the ultimate parent of the corporate conglomerate of which tenant is a part.
Facts:	Springer Science + Business Media LLC ("Tenant") leased commercial space from Soho AOA Owner LLC ("Landlord"). The lease restricted assignments by Tenant, and Landlord claimed that a change in control of Tenant's ultimate corporate parent constituted an assignment by Tenant. At trial, Tenant prevailed and was awarded injunctive relief, attorney's fees, and a dismissal of Landlord's counterclaims. Landlord appealed. (An appeal from order, with the same court and Justice, denying Landlord's motion to compel compliance with nonparty subpoenas and for discovery sanctions and granting Tenant's cross motion for summary judgment on its claims for declaratory and injunctive relief, was subsumed in the appeal from judgment.) Tenant's lease "restricts 'assignments' by 'Tenant' only. 'Tenant' is defined as plaintiff (a limited liability company) or its successors, and an 'assignment' is defined as the transfer of 'a majority of the … stock of any corporate tenant' or 'a majority of the total interest in any … limited liability company…, however accomplished, whether in a single transaction or in a series of related or unrelated

	transactions." It is undisputed that during the relevant period Tenant's immediate parent did not change. The change in ownership occurred with the "ultimate parent of the corporate conglomerate," an "entity multiple rungs up the corporate ladder."
Holding:	Referencing the court's previous decision in *Cellular Tel. Co. v. 210 E. 86th St. Corp., 44 AD3d 77, 82 (1st Dept. 2007)*, the court noted that, "Given the vast web of interlocking ownership between many corporations, it would be unreasonable to read the lease provision as affecting an assignment or transfer whenever some far removed corporate parent is sold, especially when the lease expressly limits the prohibition to capital stock of 'tenant' or other entity which is 'tenant'." Thus, the appellate court affirmed the trial court's ruling that Landlord's claim of breach of the anti-assignment provision was properly denied. The appellate court also concluded that "even if the facts of the underlying transactions in this case are not as fully developed as in *Cellular Tel.*, that is immaterial, because the critical fact—that the transactions took place well up the corporate chain—is not in dispute." Accordingly, defendant's motion to compel compliance with nonparty subpoenas and for discovery sanctions was also properly denied.
Sushi Tatsu, LLC v. Benaresh, 162 A.D.3d 577 (N.Y. App Div. 2018)	
Issue:	(1) Whether the Landlord's failure to cure landmark violations allows the tenant to exercise their option of terminating the lease. (2) Whether the tenant is entitled to consequential damages.
Facts:	Sushi Tatsu, LLC ("Tenant") entered into a lease with Benaresh ("Landlord"). The lease referenced certain city landmark violations and expressly stated that the Landlord was responsible for curing the violations. The landlord failed to cure these city landmark violations. This failure to cure prevented the Tenant from building out the leased premises. The Tenant exercised their option to terminate the lease. In response, the Landlord sued the Tenant for breach. The Supreme Court granted a summary judgment in favor of Tenant and Landlord appealed. Landlord argued that there was an implied condition precedent or an implied duty of good faith under which Tenant should have filed for work permits and waited for the Department of Buildings to object as a result of the violations.
Holding:	The court held that Tenant was justified in terminating the lease. The lease imposed a duty to cure the violations on the Landlord without any conditions precedent. Landlord's argument that there was an implied condition precedent would have negated the purpose of the lease provision. The court also held that Tenant was not entitled to consequential damages because the lease did not have such a provision.
Victory State Bank v.EMBA Hylan, LLC, 169 A.D. 3d 963 (N.Y. Sup. Ct. App. Div. 2019)	
Issue:	(1) Whether it is proper to allege breach of contract against defendants who were not parties to a commercial lease agreement; (2) Whether it is proper to dismiss a motion seeking specific performance of a contract at the pleadings stage of litigation.

Facts:	Victory State Bank ("Plaintiff") commenced an action to recover damages for breach of contract and for specific performance against EMBA Hylan, LLC, Staten Island Executive Plaza, LLC ("SIEP"), and six individual defendants, stemming from an alleged breach of a commercial lease agreement between Plaintiff and SIEP regarding the construction of a bank building (the "Lease"). Plaintiff's complaint contained multiple causes of action, but this case focuses on the first cause of action, seeking specific performance, and the sixth cause of action, alleging breach of contract. It is undisputed that the individual defendants were members of SIEP and not parties to the Lease, and they, along with SIEP, moved to dismiss the complaint. The lower court dismissed the specific performance claim against the individual defendants and SIEP, and dismissed the breach of contract claim against the individual defendants only. Plaintiff moved for leave to reargue and the lower court granted leave to reargue. Upon reargument, the lower court did not change their decision. Plaintiff appealed.
Holding:	The court found that the breach of contract claim was properly dismissed against the individual defendants, but that the specific performance claim was improperly dismissed against SIEP. The elements of breach of contract are "the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of his or her contractual obligations, and damages resulting from the breach." Here, the court found that the individual defendants were not parties to the Lease, were not in contractual privity with Plaintiff, and that the facts did not support Plaintiff's assertion that SIEP's corporate veil should be pierced (to allow liability for the individual defendants in their roles as managers of SIEP). Accordingly, the breach of contract claim was properly dismissed against the individual defendants, and as such, the issue of specific performance did not apply. The court found that Plaintiff "has adequately stated a cause of action for specific performance against SIEP" and that, assuming Plaintiff prevails, a determination of whether monetary damages or specific performance should be awarded should not be made at the pleading stage of litigation. Accordingly, SIEP's motion to dismiss the specific performance claim was denied.
NORTH CAROLINA	
Morrell v. Hardin Creek, Inc., 371 N.C. 672 (2018)	
Issue:	(1) Whether a lease provision releasing a landlord from claims covered by insurance is ambiguous when the section detailing the required insurance is incomplete. (2) Whether a lease provision establishing a general release from claims covered by insurance also includes claims arising from the landlord's negligence.
Facts:	The Pasta Wench, Inc. ("Tenant"), a specialty pasta manufacturer, rented space for a kitchen and drying room from Hardin Creek, Inc. ("Landlord"). To comply with the results of a state inspection, Landlord performed renovations to Tenant's units but walled off the sprinkler lines in an unheated space. The lines subsequently froze and flooded Tenant's business. Tenant filed suit against Landlord for claims including negligence and breach of the implied warranty of workmanlike construction regarding the renovations. The lease contained a general release mutually discharging any claim "arising from

	or caused by any hazard covered by insurance . . . or covered by insurance in connection with the property . . . .” A subsequent section on insurance required Tenant to carry fire and liability insurance, as well as to “indemnify Landlord in accordance with the provisions of sub-paragraph (c).” The section did not contain a sub-paragraph (c). Nevertheless, Tenant’s insurance covered up to $60,000 in flood damages. On summary judgment, Landlord argued that because Tenant’s losses arose from a hazard covered by insurance, the general release provision in the lease was a complete defense to Tenant’s claims. The trial court granted summary judgment for Landlord, holding that the lease’s general release of any claims covered by insurance was unambiguous and applied to Tenant’s claims. Tenant appealed, claiming that the release was ambiguous because the scope of the insurance contemplated by the lease was incomplete. Furthermore, Tenant argued that the release did not cover claims arising from Landlord’s negligence. The appellate court concluded that the release was sufficiently ambiguous to survive a motion for summary judgment, reversing the trial court’s grant of summary judgment for Landlord and remanding the case for further proceedings. The appellate court also noted that the general release could not and did not cover claims based on Landlord’s negligence because it did not contain clear and explicit words exempting liability based on negligence.
Holding:	The Supreme Court of North Carolina held that the appellate court erred in finding that the lease was ambiguous regarding the parties’ intent to exempt each other from negligence liability. The Court found the contract provision exempting parties “from all claims and liabilities arising from any hazard covered by insurance on the leased premises” to be explicit and unambiguous, regardless of the missing sub-paragraph (c). The Court validated the trial court’s motion for summary judgment on this issue and remanded for other issues.
WFC Lynnwood I LLC v. Lee of Raleigh, Inc., 817 S.E.2d 437 (N.C. Ct. App. 2018)	
Issue:	(1) Whether a tenant and guarantors of a lease met their burden when challenging a liquidated damages clause. (2) Whether attorneys’ fees were properly awarded pursuant to a reciprocal attorneys’ fees provision within a lease.
Facts:	WFC Lynwood I LLC and WFC Lynwood II LLC (together, “Landlord”) entered into a lease agreement with Lee of Raleigh, LLC (“Tenant”) for certain space in the Lynnwood Collection Shopping Center. The lease contemplated a 64-month term and contained an agreement by Tenant to continuously operate during the lease term. The lease also stated that “[i]n the event of a Default by Tenant . . . Landlord shall have . . . the right at its option not only to Minimum Rent, but Additional Rent at the rate of one three hundred and sixty fifth (1/365th) of the amount of the annual Minimum Rent” for each day Tenant was in default and contained an acknowledgement by Landlord and Tenant that the Additional Rent remedy was a provision for liquidated damages and not a penalty. The lease further contained a reciprocal attorneys’ fee provision. In addition, two individuals (“Guarantors”) personally guaranteed Tenant’s obligations under the lease, agreeing to pay “all damages including, without limitation, all reasonable attorneys’ fees and disbursements incurred by Landlord or caused by any such default and/or by enforcement of the Guaranty.” Prior to the end of the lease term, Tenant ceased operating business. Landlord sued, alleging that Tenant’s abandonment of the premises constituted a default

	under the lease and a breach of contract by both Tenant and Guarantors. The trial court granted Landlord summary judgment and awarded Landlord damages and liquidated damages, with attorneys' fees to be subsequently determined. The trial court later awarded attorneys' fees in the total amount of $44,736.85. Tenant and Guarantors appealed, alleging that the lease provision establishing liquidated damages was void and that the trial court erred in awarding attorneys' fees pursuant to N.C. Gen. Stat. § 6-21.6.
Holding:	The appellate court affirmed the trial court's grant of summary judgment, holding that Tenant and Guarantors did not meet their burden when challenging the liquidated damages clause. The court noted that Tenant and Guarantors bore the burden of showing that (1) the damages were not difficult to ascertain; (2) the amount stipulated was not a reasonable estimate; or (3) the amount stipulated was not reasonable proportionate to Landlord's actual damages. Tenant and Guarantors argued that the term "Additional Rent" was erroneously included within the final lease agreement and that the liquidated damages provision was based on both actual damages and lost percentage rent, which showed that the liquidated damages provision was not a reasonable estimate of actual damages. However, the court noted that these arguments relied upon parol evidence and were inadmissible for purposes of contradicting the language of the contract. Thus, the court held that Tenant and Guarantors failed to meet their burden and affirmed the trial court's decision to uphold the liquidated damages clause. The appellate court also found that the trial court did not err in holding Tenant and Guarantors liable for attorneys' fees; however, it found that the trial court did err in determining the amount of fees awarded. The court noted that for an attorneys' fees provision in a lease agreement to be valid under N.C. Gen. Stat. § 6-21.6 (which became effective two days before Tenant and Guarantors executed the lease and guaranty and therefore applied in this case), (1) the lease must be a business contract; (2) the parties must execute the contract by hand; and (3) the terms of the contract concerning attorneys' fees must apply with equal force to all parties. The court held that all three requirements were met. In so holding, the court rejected Guarantors' argument that the lease agreement was "evidence of indebtedness" governed by N.C. Gen. Stat. § 6-21.2 rather than a business contract. Additionally, the court found that unconditional guarantors, despite not being parties to the lease itself, can be liable for attorney's fees pursuant to a provision in the lease. Because Guarantors agreed to cover "each and every obligation" of Tenant, which expressly included attorneys' fees, Guarantors were likewise responsible for attorneys' fees. Therefore, the appellate court affirmed the trial court's decision to hold both Tenant and Guarantor liable for attorneys' fees. However, the appellate court reversed the amount of attorneys' fees awarded and remanded the issue to the lower court. The court noted that the trial court, determining the amount of the fees to be awarded, relied upon counsel's rates provided in an affidavit, which it found to be comparable, reasonable, and necessary. The affidavit, however, offered "no statement with respect to comparable rates in the field of practice. Nor did counsel offer comparable rates at the hearing on attorneys' fees." Therefore, the appellate court found that there was insufficient evidence for the trial court to make a finding on the customary fee for like work and to award attorneys' fees accordingly.
NORTH DAKOTA	
James Vault & Precast Co. v. B&B Hot Oil Service, Inc., 2019 WL 2135916 (N.D. May 16, 2019)	
Issue:	Whether specific language in a commercial lease that waives liability for property damage caused by Tenant is enforceable under North Dakota law.

Facts:	B&B Hot Oil Service Inc. ("Tenant") entered into an agreement (the "Lease") to lease half of a building owned by Steve Forster and Daniel Krebs ("Landlord") to store two (2) hot oil trucks. An explosion and fire later destroyed the building and extensively damaged the surrounding property. An investigation revealed that the explosion was caused by a propane leak from one of the trucks Tenant stored on the property. Landlord filed suit against Tenant to recover damages from the explosion. The district court granted Tenant's motion for summary judgment, claiming that Landlord waived claims for damages to property under language in Paragraph X of the Lease. On appeal, Landlord argued the district court erred in determining that all property damage claims against Tenant were waived under the waiver clause. In the alternative, Landlord argued the language in the waiver clause was unenforceable under N.D.C.C. § 9-08-02 to the extent that the language purports to exempt Tenant from responsibility for damages caused by a willful or negligent violation of law. Section 9-08-02, N.D.C.C., provides: "All contracts which have for their object, directly or indirectly, the exempting of anyone from responsibility for that person's own fraud or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law."
Holding:	The court found that the district court correctly construed the waiver provision. Landlord waived any and all rights of recovery or cause of action based on the specific language in the waiver clause. Nonetheless, a contractual provision purporting to exempt anyone from responsibility for a willful or negligent violation of statutory or regulatory law is against public policy and thus unenforceable. As a result, Landlord could seek damages caused by the explosion notwithstanding the language in the Lease's waiver provision.
OHIO	
E.G. Licata, LLC v. E.G.L., Inc., No. L-17-1124, L-17-1125, 2008 WL 2383029 (Ohio Ct. App. May 25, 2018)	
Issue:	(1) Whether the parties' lease required Landlord to make capital improvements; and (2) Whether specific costs incurred by Tenant should have been paid by Landlord.
Facts:	E.G.L., Inc. ("Tenant") operated two "sexually-oriented businesses" that it leased from E.G. Licata, LLC ("Landlord") in Toledo, OH. The lease agreement (the "Lease") called for Tenant to pay a variety of costs (e.g., property taxes), to make all repairs of the premises, and to keep the premises in good condition. Moreover, according to Tenant's property manager, Landlord was responsible for making capital improvements to the property. But because the Landlord never made these improvements, Tenant paid for the work to be performed and then deducted its expense from its monthly rental payment. Tenant's property manager raised the issue of capital improvements "in every conversation he had with [Landlord]," but no agreement between the two parties was reached. The issue remained unresolved when the parties negotiated and signed a five-year lease extension in July, 2014. In August, 2015, Tenant stopped making full monthly rent payments in protest of Landlord's failure to make capital improvements. The parties ultimately resolved the substance of their dispute, but the issue of damages (i.e., who was responsible

	for paying for past improvements) remained. The trial court ordered Tenant to pay full rent and taxes (~ $120,000), as well as $5,000 tied to a sanction. Tenant appealed. Tenant argued that pursuant to the oral agreements and the Lease, Landlord was required to make all capital improvements necessary for the safety, preservation, or improvement of the premises. The Lease language in Paragraph 17, however, made no reference to "capital improvements" – it only referenced "repairs." Furthermore, Landlord's witnesses testified that Landlord never promised to make, and in fact never did make, any capital improvements.
Holding:	The court found that the Tenant did not demonstrate that the Lease required Landlord to make capital improvements or that the specific costs incurred by Tenant should have been paid by the Landlord. Thus, Tenant was not entitled to offset any amount against the judgment in Landlord's favor.
OKLAHOMA	
Abercrombie & Fitch Stores, Inc. v. Penn Square Mall Limited Partnership, 425 P.3d 757 (Okla. Civ. App. 2018)	
Issue:	1) Whether a lease could form the basis for a shopping center landlord's duty of care to a tenant and support the tenant's tort-based claim. 2) Whether a lease waiving a landlord's liability for indirect or consequential damages applies to tort suits brought against it by its tenants.
Facts:	Abercrombie & Fitch Stores, Inc. ("**Tenant**"), a shopping mall tenant, filed suit against its landlord, Penn Square Mall Limited Partnership ("**Landlord**"), alleging that Landlord was negligent and breached its "contractual duty to maintain the mall's plumbing lines in good order, condition, and repair." Tenant sought damages in excess of $300,000 - which included the costs of cleanup, repair, lost merchandise, lost profits, and interruption to its business - incurred after a water leak formed in a roof drain line running above Tenant's ceiling. Tenant successfully recovered at trial. On appeal, Landlord argued that its failure to comply with its contractual obligations to keep the water lines in good order and repair did not give rise to a tort claim. Landlord also argued that the parties' contract disclaimed indirect and consequential damages, and thus its liability for the tort claim should also be limited to the direct costs of its negligence.
Holding:	A lease can form the basis for a shopping-center landlord's duty to a tenant and support the tenant's negligence claim related to a breach of such duty. The court here pointed to the holding in *Keel v. Titan Const. Corp.*, 639 P.28 1228, 1232 (Okla. 1982), which held that "[a]ccompanying every contract is a common-law duty to perform [] with care, skill, reasonable experience and faithfulness the thing agreed to be done, and a negligent failure to observe any of these conditions is a tort, as well as a breach of contract." Furthermore, the parties' contract expressly provided that claims for negligence were not waived. By default, causes of action arising ex delicto provide a basis for recovering damages for all injuries of which the breach was the proximate cause. However, this rule can be contracted around, including indemnity to a party from tort claims arising from its own negligence, using clear and unambiguous language. However, relevant precedent recognized that the phrase "consequential damages"

	ordinarily refers to contract damages, not tort damages. *See Berwind Corp. v. Litton Industries, Inc.*, 532 F.2d 1, 7 (7th Cir. 1976). As such, contractual language disclaiming consequential damages must clearly disclaim such damages related to tort claims to effectively shield the party disclaiming responsibility for such damages in tort actions. Therefore, the contractual language here did not limit the Landlord's duty to provide compensatory damages to Tenant.
OREGON	
Black Tail Dev., LLC v. Oregon TV, LLC, 430 P.3d 1095 (Or. App. 2018), review dismissed, 436 P.3d 789 (Or. 2019)	
Issue:	Whether an arbitration provision requires the landowner to arbitrate with the tenants rather than proceed with their eviction.
Facts:	Plaintiff Black Tail Development, LLC ("Landowner") owns hilltop property near Eugene. Defendants Oregon TV, LLC and KMTR Television, LLC (together, "Tenants") own and operate television stations that lease space on the hilltop property for their broadcasting towers. Tenants' predecessors leased the premises for several years. According to Landowner, the lease required Tenants to provide copies of all subleases, collect and disburse subrents, and maintain accurate records about subrents from subtenants. Landowner believed that Tenants and its predecessors had failed to provide such information and therefore were in breach of the lease. Meanwhile, Tenants claimed that Landowner's investigation was prompted by a lease-barter arrangement created in the past between Tenants' predecessor and a third-party entity, Silke Communications, Inc. ("Silke"). According to Tenant, in June 2014, Tenants' predecessor had provided to Tenants and Landowner copies of at least 12 subleases, including the arrangement with Silke, as well as photographs, inventory information, and spreadsheets. Additionally, Tenants had received some responsive documents from Silke that Tenants did not share with Landowner because Landowner refused to sign a confidentiality agreement. In 2015, Tenants demanded arbitration but received no response. The parties pursued mediation but without success. Landowner filed this action for forcible entry and detainer (FED) that alleged Tenants' breach of the lease and sought possession of the premises. In 2016, Tenants filed a motion to compel arbitration. The trial court denied the motion to arbitrate because the trial court did not believe the breaches were within the scope of the lease's arbitration provision, which related to the "characterization or calculation" of subrent sums due to Landowner. The trial court claimed that Landowner was only asking for possession of the property and was not asking the court to determine the amount of rent due nor ordering that Tenants pay any amount of disputed subrents. Tenants claimed the trial court was erroneous in denying the motion to compel arbitration. Tenants argued that because Landowner's allegations of breach involve a dispute over the classification and calculation of subrents due, the eviction proceeding involved issues that must be arbitrated. Additionally, Tenants argued that because the lease provides that no breach involving subrents can be deemed to occur until after a determination in arbitration of subrents due, Tenants cannot yet be deemed to be in default as to subrents.
Holding:	Based on the unambiguous language of the lease, the Court held that Landowner's allegation that Tenants failed to pay all subrents due and Landowner's allegation

	involving Tenants' failure to provide records were within the scope of the arbitration provision. The Court gave four reasons for its holding. First, the failure to pay all subrents due with respect to the payment of any percentage rentals from subrents cannot be proven without a final determination of the amount due. Although Landowner was not seeking damages or asking the court to calculate subrents, Landowner did ask that the court determine that Tenants were in breach of the lease, which cannot be determined without a calculation of percentage rent due to determine whether there was a breach at all. Second, the characterization of percentage rent due on subrents is implicated by Tenants' undisputed allegation that Landowner's investigation was prompted by a lease-barter arrangement between Tenants' predecessor and Silke. Tenants claimed there was a question about whether barter agreements were subrents. According to Tenants, the language of Tenants' predecessor's lease and the language of the current lease might suggest that only financial payments constitute subrents. Because the value of a lease-barter arrangement with a subtenant is at issue, it is arbitrable as a matter of "characterization." Third, the lease provides that any failure to pay subrents cannot be deemed a breach until an arbitration determines it so. Therefore, there can be no default in payment, as alleged in the complaint, in the absence of an arbitration of subrents due. Fourth, the arbitration provision in the lease addresses "any" controversy "with respect to" subrents. Landowner's allegation of a failure to provide records is a controversy that involves information that is needed to calculate or characterize subrents due.
Makarios-Oregon, LLC v. Ross Dress-for-Less, Inc., 430 P.3d 142 (Or. App. 2018), opinion adhered to as modified on reconsideration, 430 P.3d 1125 (Or. App. 2018) *Makarios-Oregon, LLC v. Ross Dress-for-Less, Inc., 430 P.3d 1125, (Mem)–1126 (Or. App. 2018)*	
Issue:	Whether the tenant's affirmative defenses of laches, waiver, and estoppel barred the landlord's claim that the tenant had failed to maintain the building in good condition.
Facts:	Defendant Ross Dress-For-Less, Inc. ("Tenant") was a tenant of the Richmond building that Plaintiff, Makarios-Oregon, LLC ("Landlord") owned in downtown Portland. Landlord filed a forcible entry and detainer (FED) action. Landlord alleged that Tenant had let the building fall into gross disrepair despite Tenant's continuing obligation under the lease to maintain the building in good condition. The Richmond building was part of a design for a retail operation that would span across two buildings—the Richmond Building and the adjacent Failing Building. Each building was subject to a separate lease. Only the Richmond Building lease was at issue in the suit. The lease required Tenant to separate the Richmond Building from the Failing Building at the expiration of the lease in 2016. In December 2014, Tenant filed a declaratory judgment action in federal court to determine its obligations under that provision. Shortly thereafter, Landlord sent Tenant a notice of default, alleging that Tenant had failed to comply with its obligation to maintain the building in a good and lawful state of repair. When, in May 2015, Landlord concluded that Tenant's response to the notice of default had been inadequate, Landlord served Tenant with a five-day notice to quit and surrender the premises. Landlord followed up on that notice by initiating an FED proceeding on May 26, 2015.

	The trial court ruled that Tenant's affirmative defenses of laches, waiver, and estoppel barred plaintiff's claims. The trial court also found that even if Landlord's claims were not otherwise barred, Tenant was entitled to prevail because Landlord's notice of default had been inadequate. Finally, the trial court ruled that the parties' course of conduct demonstrated that Tenant had not violated the lease's continuing maintenance obligation. As the prevailing party, Tenant then petitioned the trial court for costs and attorney fees as authorized under the lease and by statute. Landlord moved to stay the determination of attorney fees pending this appeal, but the trial court denied Landlord's motion. Following a hearing on Tenant's petition, the court entered a supplemental judgment awarding Tenant attorney fees and costs. Tenant subsequently filed a supplemental petition to recover the fees and costs it had incurred in filing the fee petition and responding to Landlord's motion to stay. The court entered a second supplemental judgment awarding Tenant its additional attorney fees and costs. Landlord appealed the trial court's dismissal of its FED action against defendant. Landlord raised six assignments of error, including challenges related to the trial court's interpretation of the lease, its ruling that Landlord's notice of default was inadequate, the court's admission of a defense witness's testimony, its ruling in favor of Tenant's affirmative defenses of laches and waiver, and the court's award of attorney fees to Tenant.
Holding:	The Court affirmed the dismissal of Landlord's FED action based on the equitable defense of laches, because Landlord failed to preserve its challenge to that ruling for appeal. Landlord's argument on appeal was substantively different from the argument that Landlord raised in the trial court. In the trial court, Landlord argued that there was insufficient evidence of unreasonable delay. On appeal, Landlord argued that laches does not apply as a matter of law. The Court found that as a result, it was unnecessary to discuss the trial court's alternative grounds for dismissal. However, the court found that the trial court abused its discretion in awarding the attorney fees ordered in its first and second supplemental judgments. The Court vacated and remanded both supplemental judgments, but otherwise affirmed. Tenant moved for reconsideration of the Court's decision to designate Landlord as the prevailing party for purposes of costs on appeal. Landlord did not oppose Tenant's motion. The Court granted Tenant's motion for reconsideration and revised the prevailing-party designation to designate Tenant as the prevailing party. The Court likewise revised the allowance of costs based on the revised prevailing party designation.
Nancy Doty, Inc. v. WildCat Haven, Inc., 439 P.3d 1018, 1021 (Or. App. 2019)	
Issue:	Whether the legislature intended to hold the landowners immune, according to the exclusive remedy provision of the Workers' Compensation Law, for their negligence committed in the scope of a lessor-lessee relationship.
Facts:	Defendants Michael and Cheryl Tuller ("Landowners") are officers and directors of WildCat Haven, Inc. ("WildCat Haven"). They also personally owned the land leased by them to WildCat Haven, on which WildCat Haven operated a wildlife sanctuary. Nancy Doty, Inc. ("Plaintiff") is the personal representative of the estate of Renee Radziwon-Chapman, a WildCat Haven employee ("Employee") who was killed in a cougar attack at the wildcat sanctuary.

	WildCat Haven had a policy that required two qualified staff members to assist in the cleaning and maintenance of the wildcat enclosures. The policy further provided that "once the animals are locked out, one staff member can safely enter the enclosure to clean or make repairs." The lockout procedure involved employees luring the cougars into a "lockout" chamber, closing the lockout door, and securing that door with a light-duty gate latch. Then an employee would finalize the lockout process by actually entering the enclosure and attaching a carabiner to the gate latch. On November 9, 2013, Employee was working alone at the sanctuary. At approximately 6:30 p.m., Michael Tuller discovered Employee's body, fatally mauled, inside an enclosure where three cougars lived. Only one of the cougars was in a lockout chamber, and the other two were roaming freely in the enclosure. Because no one was working with Radziwon-Chapman at the time of her death, the circumstances that led to it are not fully known. After Plaintiff brought tort claims against Landowners, Landowners answered by asserting immunity. There is an "exclusive remedy" provision of the Workers' Compensation Law that generally makes an employer that satisfies its insurance obligations for subject workers immune from civil liability for injuries to a worker arising out of the worker's employment. The immunity extends to the employer's officers, directors, and employees. However, the immunity does not apply if the negligence of a person otherwise exempt is a substantial factor in causing the injury and occurs outside of the capacity that qualifies the person for exemption. Plaintiff argued that as a matter of law Landowners could be sued as landlords because any action or omission Landowners took in furtherance of their lessor-lessee relationship with WildCat Haven is by definition outside the capacity as officer or director. The trial court rejected this argument. Plaintiff appealed. Meanwhile, Landowners argued that a corporate officer does not lose her immunity merely because she also owns the land where the injury occurs. The lower court dismissed plaintiff's claims and dismissed a claim against a separate limited liability company owned by Landowners called WildCat Haven Holdings.
Holding:	The Court looked to statutory construction, legislative history, and case law to hold that the legislature intended the exception to the general immunity to have the more limited scope described by Landowners. Additionally, the Court highlighted that Plaintiff never identified precisely what actions Landowners took or failed to take as landlords that were separate and distinct from acts or omissions in their capacity as officers and directors of WildCat Haven. Therefore, the Court found that Landowners were protected by the exclusive remedy provision. However, the Court found that the holding company was not protected by the exclusive remedy provision. The immunity provision provides immunity to a discrete group, of which WildCat Haven Holdings is not a part. Regardless of the merits of Plaintiff's claim, the claim is not subject to dismissal because WildCat Haven Holdings does not have immunity from the claim. Thus, the Court affirmed the lower court's dismissal of the claims against the Landowners individually on grounds of immunity and reversed and remanded the judgment dismissing the claim against WildCat Haven Holdings.
PENNSYLVANIA	
Pops PCE TT, LP v. R&R Rest. Grp., LLC, 2019 Pa. Super. 113 (Pa. Super. Ct. 2019)	

Issue:	(1) Whether tenant had sufficiently terminated its lease with landlord according to the lease's terms. (2) Whether the trial court erred in refusing to open the judgment that granted landlord accelerated rent when landlord had already obtained possession of the leased premises. (3) Whether the trial court abused its discretion in failing to consider principles of equity when it did not modify the judgment awarded to landlord.
Facts:	R&R Restaurant Group ("Tenant") entered into a ten-year lease with Pops PCE TT, LP ("Landlord") for a premises to be used as a restaurant. In the event of a default by Tenant, the lease included a provision for rent acceleration and allowed Landlord to confess judgment for the remainder of the rent due under the lease. The lease also provided that Tenant could terminate the lease if it was unable to secure a liquor license ("Tenant Liquor License") for the restaurant within a specified period of time ("Transfer Period"). The lease stated that Tenant "may elect to terminate the Lease by providing notice of its intent to terminate . . . by: (i) delivering to [Landlord], within two (2) business days following the expiration of the Transfer Period, [] written notice of its inability to obtain the Tenant Liquor License prior to expiration of the Transfer Period and exercising its right to terminate [the] Lease; and (ii) including with such notice all documentary evidence of [Tenant's] efforts to obtain the Tenant Liquor License on or before expiration of the Transfer Period." On July 1, 2014, Tenant informed Landlord by letter that it intended to terminate the lease if it was unable to obtain a liquor license by August 28, 2014, the end of the Transfer Period. Tenant continued its efforts to obtain a liquor license until November 2014, and paid rent to Landlord through December 2014. After Landlord filed a complaint in January 2015, a Magisterial District Judge entered a notice of judgment for Landlord and granted it possession of the premises. In June 2015, Landlord filed a complaint to confess judgment for monetary damages and was awarded accelerated rent through November 2023, plus post-judgment interest and costs, totaling over $2.3 million. After an appellate court decision reversed the trial court's ruling that Tenant's defenses to the confession of judgment were barred by *res judicata* and collateral estoppel, the case returned to the trial court. Tenant argued that whether or not its letter to Landlord properly terminated the lease and whether or not the letter included sufficient documentary evidence of Tenant's efforts to obtain Tenant's Liquor License were questions of fact for the jury. Landlord argued that the letter predated the end of the Transfer Period and thus did not follow the lease's termination procedures. Landlord also asserted that Tenant continued to search for a license and pay rent after the letter was sent. The trial court found that opening the confessed judgment was not warranted because Tenant had not presented "sufficient evidence to give rise to a jury question as to whether it properly terminated the Lease through the delivery of the July 1, 2014 letter to [Landlord]."
Holding:	The appellate court found no error or abuse of discretion in the trial court's finding that Tenant's July 1, 2014 letter was insufficient to terminate the lease. The appellate court reasoned that the letter only claimed that Tenant would terminate the lease in the future if it could not obtain a liquor license by the end of the Transfer Period. Additionally, the letter itself did not include requisite evidence of Tenant's efforts to obtain a license.

	The appellate court concluded that the trial court erred in its refusal to open the confessed judgment for accelerated rent when Landlord had already obtained possession of the leased premises. The appellate court pointed to Pennsylvania precedent that "a landlord 'can confess a judgment for future rent accruing under the acceleration clause, or a judgment in ejectment, but not both.'" Homart Dev. Co. v. Sgrenci, 662 A.2d 1092, 1101 (Pa. Super. 1995) (quoting Matovich v. Gradich, 187 A. 65, 69 (Pa. Super. 1936). The appellate court found that Landlord could have either elected to confess judgment for possession and rent due to that point, or to confess judgment for rent due throughout the entire term of the lease. Because Landlord had already obtained possession of the premises when it filed for confession of judgment, it was limited to monetary damages as of the date it took possession. The appellate court further concluded that the trial court should have modified the $2.3 million judgment against Tenant. The appellate court reasoned that the two judgments against Tenant were inequitable as they were effectively a double recovery for Landlord. Moreover, the appellate court found that Landlord's redevelopment and leasing of the property to another tenant during the months it had collected accelerated rent from Tenant constituted another form of double recovery. Thus, the appellate court reversed the trial court's order refusing to open the judgment and remanded to determine Landlord's actual damages.
Tsung Tsin Ass'n v. Luen Fong Produce, Inc., No. 3724 EDA 2016, 2019 Pa. Super. Unpub. LEXIS 1301 (Pa. Super. Ct. Apr. 9, 2019)	
Issue:	Whether Pennsylvania's four-year statute of limitations for a breach of contract action bars a landlord's suit for unpaid rent when the first alleged instance of nonpayment occurred more than a decade prior but continued until the time of landlord's suit.
Facts:	In 1995, Tsung Tin Association ("Landlord") leased the first floor of its building to Luen Fong Produce, Inc. ("Tenant"), a produce wholesaler. In 2003, both parties entered into a new lease for the space. In 2009, both parties signed an addendum to the 2003 lease, extending the lease to June 30, 2019. On June 6, 2015, Landlord sued Tenant for nonpayment of additional rent from 2003 to 2015 and won. On appeal, Tenant raised a statute of limitations defense, asserting that Landlord's suit was untimely. The trial court permitted Landlord's claim to proceed but, based on the statute of limitations, limited Landlord's damages to four years preceding the day Landlord filed suit. Therefore, the trial court found that Landlord could only seek damages from June 6, 2011 forward. Tenant appealed.
Holding:	The appellate court concluded that the trial court properly applied Pennsylvania's four-year statute of limitations. The appellate court reasoned that a litigant must file a lawsuit for a breach of contract claim four years from the time the cause of action accrued. Tenant argued that the statute of limitations expired in 2007 because Tenant first failed to pay additional rent in 2003. The appellate court disagreed, explaining that a different cause of action accrued each year Tenant failed to pay additional rent. Thus, when Tenant failed to pay additional rent on July 1, 2011, that breach of contract accrued a new cause of action as of July 2, 2011. Based on Pennsylvania's four-year statute of limitations, Landlord had until July 2, 2015 to file suit for the July 2, 2011 breach. Because Landlord sued Tenant on June 6, 2015, the appellate court affirmed the trial court's ruling that Landlord's suit was timely with respect to unpaid rent from 2011 onward, but that Landlord's claims for rent prior to 2011 were barred by the statute of limitations. Thus, Landlord was able to seek damages from June 6, 2011 and onward.
Horsham Towne Assocs. v. Hurley, No. 1555, 2018 Pa. Super. Unpub. LEXIS 868 (Pa. Super. Ct.	

Mar. 23, 2018)	
Issue:	(1) Whether a landlord who has transferred ownership of the property to a new owner is barred from collecting unpaid rent and fees from a tenant. (2) Whether a transferor landlord is barred from suing a tenant for unpaid rent by principle of collateral estoppel when landlord transferred its property interests to a transferee, and the transferee also sued tenant for unpaid rent.
Facts:	In November 2004, Horsham Towne Associates ("Landlord") began leasing commercial property to John Hurley ("Tenant"). In March 2014, Landlord filed a complaint against Tenant claiming Tenant breached the terms of the lease by failing to pay rent when due. Moreover, Landlord claimed that it demanded Tenant surrender the premises but Tenant refused and unpaid rent continued to accrue. At trial, Tenant generally denied that it was in breach of the lease. Tenant counterclaimed that Landlord had committed fraud because prior to signing the lease, Tenant made inquiries of Landlord as to the non-competition clause contained in the lease, and that as a result of Landlord's fraudulent statements, a third party sued Tenant for violating the lease's covenant not to compete. Tenant claimed that Landlord therefore breached the covenant of quiet enjoyment in the lease and was liable to Tenant for the tort of fraudulent representation. The trial court granted Landlord's motion on the issue of Tenant's liability for breach of contract and dismissed Tenant's counterclaims in February 2015. Landlord then filed a Petition to Substitute Transferee as Plaintiff, claiming in the petition that Landlord had assigned all of its rights, including but not limited to all rents, issues and profits, under the subject lease, to an entity named 575 Horsham Road Owner, LLC ("575 Horsham"). Tenant stated that as a result of this transfer, Landlord no longer had any claim against it, and that the trial court should substitute 575 Horsham as party plaintiff. In November 2016, the trial court ordered that 575 Horsham be joined, but not substituted, as plaintiff in the action. The trial court then conducted a damages hearing and concluded that Tenant was liable to Landlord for a total of $268,228.28. Tenant appealed and raised two issues. Tenant first raised the issue that the trial court abused its discretion in granting judgment on the pleadings regarding Tenant's liability to Landlord. Tenant next raised the issue that the trial court abused its discretion in denying Tenant's motion to dismiss and refusing to permit Tenant to put on a defense at trial which would have demonstrated both that Landlord had assigned all of its rights under the subject lease to 575 Horsham and that the action was barred on the basis of collateral estoppel.
Holding:	The appellate court affirmed the lower court's judgment finding that the two claims Tenant raised were meritless. First, the court concluded that Tenant failed to prove any contractual provision that prohibited Landlord from recovering the unpaid rent and fees owed by Tenant during the time that Landlord was the lessor of the land. In addition, the court found that the property transfer was irrelevant because the new owner, 575 Horsham, was joined to the suit, made no objection to the relief sought by Landlord and opposed Tenant's request for post-trial relief. Second, the court concluded that collateral estoppel did not bar Landlord's suit in this instance. The court stated that for collateral estoppel to apply, both the former and latter suits must possess four elements in common: (1) identity in the thing sued upon, (2) identity in the cause of action, (3) identity of persons and parties to

	the action, and (4) identity of the capacity of the parties suing or being sued. Because 575 Horsham sued Tenant to collect unpaid rent that owed to it after 575 Horsham became the owner of the property and Tenant was still a holdover on the premises, there was not common identities of the parties, common identities of the thing sued upon, or common issues to be decided. Thus, Tenant's claim was rendered meritless.
Gamesa Energy USA, LLC v. Ten Penn Ctr. Assocs., L.P., 181 A.3d 1188 (PA. Super. Ct. 2018)	
Issue:	(1) Whether a tenant who moved out of its premises but continued to pay rent "vacated" the premises in violation of the lease. (2) Whether a landlord defaulted under the lease when it proposed a counter-offer to the tenant's request for the landlord's approval of a proposed sublease, where the lease required that the landlord either accept or deny such requests. (3) Whether the landlord unreasonably withheld its approval of the tenant's request to sublet the premises, where the landlord conditioned its consent to the sublease on the tenant first waiving its right to any further improvement allowance, and where the lease required that the landlord's approval to a sublease request could not be unreasonably withheld, conditioned or delayed.
Facts:	Ten Penn Center Associates, L.P. and SAP V Ten Penn Center NF G.P. L.L.C (together, "Landlord") and Gamesa Energy USA, LLC and Gamesa Technology Corporation, Inc. (together, "Tenant"), entered into a lease in 2008 for office space, which permitted Tenant to sublease portions of the premises with Landlord's prior approval, not be unreasonably withheld, conditioned or delayed. In May 2011, Landlord approved a request from Tenant to sublet a portion of the premises. In May 2012, Tenant moved out of the premises but continued to make rent payments. On June 12, 2012, Tenant again requested Landlord's approval to sublet another portion of the premises to a different subtenant. Landlord responded with a letter informing Tenant that it had defaulted under the lease by vacating the premises, which extinguished Landlord's obligation to entertain further requests for subleases. Landlord relied on language from the lease, stating "it shall be an 'event of default' under the lease if tenant vacates the premises." On July 5, 2012, Tenant denied the alleged default and again requested Landlord's approval to the proposed sublease, to which Landlord replied that it was not required to entertain the proposed sublease but that it would approve Tenant's request if Tenant waived its right to the outstanding amount of Tenant's improvement allowance provided for under the lease. In 2013, Tenant filed a complaint alleging that Landlord materially breached the lease by failing to accept or reject the proposed sublease pursuant to the terms of the lease. Tenant sought damages arising from the breach as well as an order that the lease was terminated as of the date Landlord failed to accept or reject Tenant's proposed sublease. Tenant also requested the return of all rent paid following Landlord's alleged breach under the theory of unjust enrichment. The trial court found in favor of Tenant. The court awarded Tenant damages equal to the amount it would have received under the proposed sublease. The court also ruled that Landlord's breach was sufficient to terminate the lease as of July 22, 2012, and awarded damages to Tenant for all rent paid from such date of termination through December 2015. Landlord appealed the trial court's ruling.
Holding:	The appellate court concluded that the trial court erred when it reasoned that Tenant did not default under lease when Tenant vacated the premises because

	Tenant did not show an intent to *abandon* the premises. The appellate court noted that the contract used the term "vacate" and not "abandon", which it determined are two entirely different concepts, and held that Tenant vacated the property when it moved from the premises in violation of the lease. The appellate court next held that Landlord did not default under the lease when it conditioned its approval of Tenant's proposed sublease on Tenant first waiving its right to any outstanding improvement allowance. The court reasoned that Landlord's conditional approval constituted a counter-offer, which effectively rejected Tenant's sublease request in compliance with the lease requirement that Landlord accept or reject Tenant's proposal. Finally, the appellate court agreed with the trial court's ruling that Landlord unreasonably conditioned its approval of Tenant's sublease request because the request was made in good faith, and Tenant submitted a reasonable sublease application. For that reason, the appellate court held that Landlord defaulted under the lease, however the court noted that it was relying on the trial court's determination that Landlord's counter-offer was unreasonable. ***NOTE: This case is on appeal.***
SOUTH CAROLINA	
A&P Enters. v. SP Grocery of Lynchburg LLC, *812 S.E.2d 759 (S.C. Ct. App. 2018)*	
Issue:	(1) Whether the tenant owned an equitable interest in the landlord's property under a theory of promissory estoppel, where there was no written lease agreement between the parties and where the tenant claimed that the landlord made an oral promise to the tenant that the tenant could buy the property from landlord over a period of years. (2) In the event the tenant does not own an equitable interest in the property, whether the landlord could eject the tenant for failure to pay rent; and (3) In the event the tenant does not own an equitable interest in the property, whether the landlord was owed back rent on the unpaid rent under a theory of quantum meruit.
Facts:	Kamlesh "Kim" Patel, the sole owner of A&P ("Landlord"), sued Sam Patel, the sole member of SP Grocery ("Tenant"), for ejectment and monetary damages. The principals of Landlord and Tenant were brothers. Tenant owned three parcels of land (the "Property"), which were foreclosed upon by Tenant's lender. Landlord purchased the Property at the foreclosure sale. After the sale, Tenant continued to operate its businesses on the Property, however there was no written lease agreement between Landlord and Tenant stating the terms of Tenant's continued occupancy. Tenant subsequently failed to pay rent and other expenses, prompting Landlord to sue for ejectment and damages. At a hearing before a special referee, both Landlord and Tenant had differing testimony regarding Landlord's purchase of the Property. According to Tenant, Landlord purchased the Property in order to convey it back to Tenant after a three to five year period during which Tenant would pay back the purchase price to Landlord. In reliance on Landlord's promise to reconvey the Property back to Tenant, Tenant argued that it invested labor and money to improve the Property, which it would not have otherwise done if Tenant was not to eventually resume its ownership of the Property. Conversely, Landlord claimed that no such promise

	was made, and that Landlord purchased the property expecting Tenant would pay rent. However, Tenant never paid rent and Landlord had to pay property taxes and business fees, which Tenant was allegedly supposed to pay. After approximately two years into Landlord's ownership, Landlord presented Tenant with a lease, which Tenant refused to sign. The special referee ruled in favor of Tenant and found that: (1) Tenant owned an equitable interest in the Property; (2) Tenant could not be evicted; (3) Tenant had a right to purchase the Property from Landlord; and (4) Landlord was owed compensation for expenses associated with Tenant's occupancy. Landlord appealed the special referee's ruling on the basis that Tenant failed to prove the necessary elements of promissory estoppel creating Tenant's equitable interest in the Property.
Holding:	The court ruled in favor of Landlord and found that Tenant failed to prove promissory estoppel and, thus, did not own an equitable interest in the Property. The court noted that, in order for promissory estoppel to apply, the claimant must prove: (1) a promise unambiguous in its terms; (2) reasonable reliance upon the promise; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise. The court first explained that the alleged promise by Landlord that Tenant would be able to re-purchase the Property was a vague promise without any definite or articulated terms. Thus, Tenant failed to prove that the promise was unambiguous in its terms The court then explained that, although Tenant spent money on improvements to the Property, Tenant's reliance on any alleged promise by Landlord was unreasonable given the ambiguities of such alleged promises, in that it was devoid of any terms, conditions, timelines, or performance requirements. The court also concluded that the special referee erred in denying Landlord's ejectment request. Under South Carolina Code Section 27-37-10(A), Tenant could be ejected for failure to pay rent. Because Tenant never paid rent and continued to use the Property, the court remanded the case for eviction proceedings. Finally, the court held that Tenant's use of the Property rent-free was unjust under the theory of quantum meruit. Under this theory, Landlord could recover if: (1) a benefit was conferred upon Tenant by Landlord, (2) Tenant realized that benefit; and (3) retention of the benefit would be unjust without paying its value. Although there was no written agreement between the parties, the court noted that Landlord did propose a lease to Tenant. The court determined that Landlord was owed back rent from the date of the proposed lease. The court remanded the case so the special referee could calculate the amount of back rent owed, however the court specified that such amount be offset by the amount Tenant invested in the Property.
TENNESSEE	
Jones v. VCPHCS I, LLC, No. W2016-02142-COA-R3-CV, 2018 WL 575349 (Tenn. Ct. App. Jan. 26, 2018)	
Issue:	(1) Whether a tenant who continues to pay rent after their lease term ends implicitly exercises its option to renew the lease; and

	(2) Whether a tenant properly terminated its periodic tenancy upon thirty days' notice.
Facts:	Following the end of a three-year term of a commercial real estate lease (the "Lease"), VCPHCS I, LLC ("Tenant") continued to occupy the leased premises (the "Premises") and pay rent to Homer Jones ("Landlord"). Landlord accepted the rent payments for six (6) months and then notified Tenant that the amount of the required rent had increased. Tenant paid the increased rent for that month, but notified the Landlord that it was ending its tenancy in thirty (30) days. Contending that Tenant had in effect exercised its option to renew the Lease for an additional three (3) years, Landlord demanded Tenant pay rent for the remainder of the renewal term. Tenant refused, and Landlord brought action for breach of the Lease. Both parties filed motions for summary judgment. Because the trial court found the Lease had not been renewed and Tenant properly terminated the resulting periodic tenancy upon thirty (30) days' notice, the court denied Landlord's motion and awarded summary judgment to Tenant.
Holding:	The court found that an option to renew a lease is a unilateral contract under which a tenant retains an irrevocable right to extend the lease during the option period. Such renewal, however, is not automatic; the right to renew will be lost if not exercised in accordance with the lease provisions. The Lease executed by Landlord and Tenant provided that, absent a written agreement signed by both parties, the Lease could only be renewed by a timely written notice by Tenant. The undisputed facts establish that there was no written agreement to renew the Lease and that Tenant did not provide written notice of an intention to renew prior to expiration of the original Lease term. Additionally, the mere demand for higher rent is not a sufficient manifestation of intent to waive the written notice requirement for renewal. When a lease gives a tenant the option to renew at an increased rent, as this one does, the tenant's payment of the original rent amount during the holdover period rebuts any presumption that the tenant intended to exercise the option. By accepting Tenant's holdover rent payments, Landlord consented to the creation of a new periodic tenancy. In the absence of a contrary provision in the original lease, a tenant is bound for another like term, but if the original tenancy was for a year or more, the new or holdover tenancy is from year to year. Notice to terminate such a year-to-year tenancy must be given six months before the end of the year.
TEXAS	
Saltworks Ventures, Inc. v. Residences at Spoke, LLC, 2018 WL 2248274 (Ct. App. Tex. May 17, 2018)	
Issue:	(1)Whether a lease addendum acknowledging transfer of possession waives the lease requirement for written notice and certificate before transferring ownership; (2)Whether Landlord's failure to complete development materially interfered with Tenant's use of the premises; and (3)Whether rightful termination of a lease constitutes a default under the lease,

	enabling Landlord to change the locks and dispose of Tenant's equipment and fixtures remaining on the premises.
Facts:	Residences at the Spoke, LLC ("Landlord") entered into a lease agreement (the "Lease") to construct a retail-restaurant space for Saltworks Ventures, Inc. ("Tenant"). Because the premises (the "Premises") were not yet constructed, Tenant was not required to pay rent until the Commencement Date, which would be determined by certain construction and retail benchmarks. Moreover, to effect a transfer of possession (the "Transfer") of the Premises, Landlord was required by the Lease to notify Tenant, in writing, that Landlord's work was substantially completed ("requirement of Substantial Completion"). The Lease further contained an abatement provision ("Abatement Provision"), which entitled Tenant to abate rent for a delay in the Transfer. Tenant was additionally authorized to terminate the Lease after November 1, 2013, if Landlord failed to Transfer the Premises with the requirement of Substantial Completion having been fulfilled by that date. On October 30, 2013, the parties executed an addendum confirming the Transfer. The addendum, however, did not mention whether the Landlord had met the requirement of Substantial Completion. The addendum solely noted that "to Tenant's knowledge, all Landlord's work required to be performed by Landlord under the Lease has been satisfactorily completed." Due to construction delays, Tenant was not able to open until April 28, 2014, and by opening, the Abatement Provision had been triggered. Landlord nonetheless requested rent on June 9, 2014. The parties thus argued over the amount the Tenant actually owed. Tenant claimed it had no obligation to pay rent, due to development delays and lack of the notice and certificates as mandated under the requirement of Substantial Completion under the Lease. Tenant terminated the Lease in October, 2014, claiming Landlord had breached the Lease by failing to demonstrate and/or meet the requirement of Substantial Completion and failing to offer sufficient rent abatement. In response, and with notice, Landlord changed the locks and removed all of Tenant's equipment and fixtures. Tenant filed suit against the Landlord alleging that Landlord breached the Lease and wrongfully denied it access to the Premises. Landlord contends that the lockout was proper because Tenant had not paid rent, despite maintaining possession of the Premises for more than one year. Furthermore, Landlord asserts that Tenant waived its right to demand strict compliance with the requirement of Substantial Completion when it signed the addendum confirming Transfer.
Holding:	Upholding the trial court's finding, the appellate court found that signing the addendum did not amount to waiver of the requirement of Substantial Completion by the Tenant. The Court reasoned that notwithstanding the addendum and following its execution, Tenant continued to ask for compliance with the requirement of Substantial Completion. Furthermore, the court found that Landlord's construction delays deprived Tenant of the benefits it reasonably anticipated under the Lease. After Tenant terminated the Lease, however, Landlord was authorized to change the locks and dispose of tenant's equipment and fixtures remaining on the

	premises, following proper notice, without being held liable for these losses.
UTAH	
Triple J Parking Inc. v. SCSB LLC, 436 P.3d 185 (Ut. Ct. App. 2018)	
Issue:	Whether a landlord breached the non-competition provision of a ground lease agreement, or the implied covenant of good faith and fair dealing, when it terminated a lease agreement and signed a new lease agreement with a third-party following failed lease-renewal negotiations with a tenant.
Facts:	Triple J Parking Inc. ("Tenant") ground leased property from SCSB LLC ("Landlord") to run its park-and-ride business. During this time, the Tenant made millions of dollars of improvements to the property; however, the lease did not contain any provision regarding repayment or compensation for those improvements. When the parties could not come to an agreement regarding renewal of the lease, Landlord negotiated a separate, future lease to commence when the initial lease expired. Tenant brought suit, alleging a breach of the non-competition provision of the lease agreement and a breach of the covenants of good faith and fair dealing.
Holding:	1) The non-competition provision of the lease agreement only prohibited the Landlord from operating a parking facility during term of lease, not negotiating and entering into a lease with a *future* tenant while lessee's lease agreement was still operative; and 2) Tenant could not recover value of improvements it made to leased property on a theory of breach of the implied covenants of good faith and fair dealing where the Landlord did not interfere in any way with Tenant receiving the complete benefit of the bargain it made.
KB Squared LLC v. Memorial Building LLC, 2019 WL 1716447 (Ut. Ct. App. Apr. 18, 2019) (Unpublished case)	
Issue:	Whether industry custom makes it reasonable for a nightclub lessee to interpret "seating area" on a construction document as implying that an area is designed for dancing and jumping where the lease contained no occupancy or use representations or guaranties.
Facts:	Memorial ("Landlord") entered into a lease with PCL ("Tenant") to occupy a night club and entertainment venue. The space included a "bridge" area that had an occupancy limit of 50-60 people, including a mix of fixed seating and standing room. Tenant intended to use the space as premium event seating, but the lease did not contain any representation or guaranty concerning the appropriate manner of use or occupancy of any particular part of the club. Furthermore, the lease provided that Tenant was taking the building "as is". City officials issued a stop work order prohibiting any use of the bridge when they observed 80-100 people dancing and jumping on the bridge on consecutive nights. A subsequent engineering assessment determined that the bridge was structurally sound, but its original intended use differed from the way the Tenant used it and so the assessment recommended a maximum occupant load of 25 people under its new usage. Tenant asked Landlord to restore the seating area to its promised use, but the Landlord refused, noting that the City's directive resulted from misuse of the bridge, not from its condition. Tenant then sued for a breach of an alleged representation.

	While no oral representations or guarantees were made as to how the bridge was to be used, Tenant believed there was an implicit promise of its intended use and that nightclub industry custom is that seating would include dancing and jumping, especially in light of the prior tenant's use.
Holding:	The Court found the lease ambiguous. It therefore considered a construction diagram intended to detail the square footage of the space that was attached to the lease. In the diagram, the floor plan noted a "seating area," but the court held that it was unsupported and unreasonable to conclude that this created a guarantee that the area could be used for dancing and jumping. Because Tenant was still able to use the space for furtherance of its operations, and because there was no representation or guarantee of a specific use or occupancy, there was no breach of the terms of the Lease. Landlord, therefore, did not breach the lease agreement by not making structural repairs to the bridge necessary to enable maximum occupancy or dancing on the bridge.
Gardiner v. Anderson, 436 P.3d 237 (Ut. Ct. App. 2018)	
Issue:	(1) Whether a landlord can recover rent accrued by a tenant through a non-conforming sublease as damages where the lease agreement between the landlord and tenant does not provide for improperly accrued rent as the measure of damages for a non-conforming sublease and the tenant vacates the premises upon termination of the lease.
Facts:	Tenant and Landlord entered into a two-year, commercial lease concerning a warehouse, whereby the Tenant assumed the sole obligation to improve the premises in exchange for discounted rent. The lease also prohibited the Tenant from subletting the warehouse without Landlord's written authorization. Tenant sublet the premises on the same day that the lease became effective. When Landlord discovered that Tenant had sublet the warehouse, Landlord sent the Tenant notice of default and demanded that Tenant cure by paying Landlord a sum of money within 10 days. Tenant refused and vacated when Landlord terminated under lease's termination clause. Landlord then filed suit, alleging that Tenant (1) unlawfully detained the premises during the lease period because of the unauthorized sublease, (2) breached the lease, and (3) was unjustly enriched by the sublease action. The trial court found that nothing in Utah's unlawful detainer statute or the lease entitled the Landlord to recover damages because (1) Tenant complied with Landlord's directive to vacate after Tenant's failure to cure the breach and (2) nothing in the statute or lease provided for damages when a Tenant sublets rented premises without authorization.
Holding:	The Court of Appeal affirmed the trial court, because the lease did not provide for excess rent as damages for a non-conforming sublease and the Landlord did not demonstrate that he was actually damaged or injured by the sublease. Additionally, since the Tenant vacated upon receiving Landlord's notice of termination, the Landlord had an adequate remedy at law, so the trial court was justified in refusing to grant any equitable relief. The Court of Appeal affirmed the trial court without addressing its interpretation of the Landlord's claim under Utah Code §78B-6-802(1)(d), which prohibits unlawful detainer.
Grove Bus. Park LC v. Sealsource Int'l LLC, 2019 WL 2050766 (Ut. Ct. App. May 9, 2019)	
Issue:	(1) Whether a lease agreement was ambiguous as to which party bore responsibility for repairing the HVAC system in a commercial property.

	(2) Whether a landlord incurred an obligation to repair a tenant's doorway by attempting to repair it unsuccessfully. (3) Whether pre-lease communications between a tenant and landlord regarding the amount of parking available to the tenant were incorporated into a lease.
Facts:	Grove Business Park LC ("Landlord") leased a commercial property to Sealsource International LLC ("Tenant") for a term of 68 months. Soon after the Tenant moved in, it noticed problems with the property's HVAC system and entryway, and that the available parking was insufficient for its needs. With more than four years remaining on the lease, Tenant vacated. The lease agreement provided that (1) Tenant "accept[ed] Premises in the condition they [were] in at the inception of this Lease"; (2) Tenant "agree[d] to pay for all labor, materials and other repairs to the heating and air conditioning systems in or serving the premises"; (3) Tenant "had the right. . . to use the parking areas jointly with any other tenants of the building"; and (4) that Landlord agreed to "repair any latent defects in the exterior walls, floor joists and foundations of the building" and "repair any defects in the plumbing and electrical lines, facilities and equipment in the common areas." Prior to entering the lease agreement, Landlord sent Tenant a letter stating that Tenant would be "entitled to use not more than 8 onsite parking stalls in front of the office," but with the express qualification that the letter was not an agreement. Landlord also attempted to repair the entryway malfunction before Tenant vacated the premises, but its efforts did not satisfy Tenant. Landlord sued Tenant for breaching the lease by vacating the premises prior to the lease's expiration. Tenant answered by claiming that Landlord's failure to address the issues it complained of constituted a breach of the covenants of suitability and quiet enjoyment and, thus, a constructive eviction. Before trial, the trial court granted Landlord summary judgment motion on the defendant's counterclaims.
Holding:	(1) Tenant's claim that the HVAC problems were "latent defects" was correctly disposed of on summary judgment by the trial court because the plain language of the lease provided that the Tenant was obligated to repair the HVAC system and allocated responsibility for repairing latent defects to Landlord only with respect to exterior walls, floor joists and the building's foundation. (2) Because the lease provided that Tenant accepted the premises in its condition "at the inception" of the lease and did not offer support for its argument that Landlord incurred an obligation to complete repair of the entryway by attempting to repair it, the trial court's entry of summary judgement was appropriate. (3) Because the letter written prior to the lease explicitly stated that it was not an agreement, the lease did not explicitly incorporate the terms of the letter, the lease was not ambiguous, and the lease contained an integration clause, the trial court properly interpreted the lease according to its plain meaning without reference to the letter.
WASHINGTON	
Bellevue Square, LLC v. Whole Foods Mkt. Pac. Nw., Inc., 6 Wn. App. 2d 709 (Wash. Ct. App. December 17, 2018)	
Issue:	Whether a lease's terms required a tenant to perform the entirety of a contract

	despite the tenant vacating the premises before the lease expired.
Facts:	Whole Foods Market Inc. ("Tenant") signed a 20-year lease with Bellevue Square LLC ("Landlord") for a Whole Foods store in a shopping mall. The shopping mall contained numerous restaurants and retail stores on its premises. The two parties executed the lease in July 2015 and Tenant opened the store in September 2016. The lease contained a provision ("Operating Covenant") where Tenant must "conduct and carry on" its business "without interruption" for the first 10 years of the lease. In October 2017, two years after the lease was executed, Tenant closed the store and vacated the premises. Landlord sued Tenant and sought a preliminary injunction, claiming that the lease's Operating Covenant required Tenant to perform at least the first 10 years of the lease. Landlord also claimed that it was entitled to specific performance because Tenant's closing of the store disturbed the business, financial stability, and integrity of the entire shopping mall. Tenant claimed that, under the lease, the appropriate remedy for breach was monetary damages and that the Operating Covenant did not grant Landlord a right to specific performance. The trial court granted Landlord's motion for a preliminary injunction and ordered Tenant to reopen the store within 14 days of the order.
Holding:	The appellate court reversed the trial court's ruling because the lease gave Landlord appropriate remedies (other than specific performance) if Tenant vacated the premises. The court found that the lease's "plain and unambiguous language" does not support the trial court's conclusion that the Operating Covenant requires specific performance. The court noted that a provision (distinct from the Operating Covenant) within the lease entitles Landlord to specific performance when Tenant does not pay damage fees related to an event of default for an improper vacating of the premises. That is, specific performance is warranted when a tenant vacates the premises and defaults on the "continuing payment obligations" owed to Landlord. The court went on to discuss how the lease provided these measures to allow Landlord to collect damages appropriately. Specifically, the court determined that the lease entitled Landlord to the recovery of "rent, damages, and other payments" as they become due.
Fuji Food Prods., Inc. v. Occidental, LLC, 2018 Wash. App. LEXIS 2718 (Wash. Ct. App. December 3, 2018)	
Issue:	(1) Whether a conversion claim is warranted if a landlord seizes equipment that the landlord perceives to have been abandoned or forfeited from a tenant. (2) Whether it is permissible for a jury to find both parties in a dispute, in a potentially contradictory way, in violation of certain contractual agreements.
Facts:	Occidental LLC ("Landlord") executed a 5-year lease for a warehouse to Fuji Food Products Inc. ("First Tenant"), a food processing company. The lease noted that when First Tenant vacates the premises, First Tenant must remove all cooler rooms within the warehouse. Shortly before the lease expired, and after finding a new tenant ("Second Tenant") interested in keeping the cooler rooms in place, Landlord executed a one-month extension to First Tenant's lease to finalize the transition. The three parties had a conference call in November 2013. First Tenant understood that if the new lease was executed, First Tenant was not required to

	remove the cooler rooms. On December 6, First Tenant sent a draft release agreement to Landlord. After Landlord and Second Tenant failed to reach an agreement on the new lease's terms and after Landlord objected to changes within First Tenant's draft release agreement, Landlord sent First Tenant an email on December 11 noting that First Tenant must remove the cooler rooms by December 13. First Tenant objected and vacated the premises on December 13; First Tenant assumed it would have continued access to the premises and could remove the cooler rooms later. On December 17, Landlord notified First Tenant that it was in default for failing to remove the cooler rooms. First Tenant sued in 2014, alleging breach of contract, unjust enrichment, and conversion. Landlord counterclaimed for breach of contract, alleging that First Tenant neither made necessary repairs on the premises nor made necessary repayments for the maintenance and upkeeping of the premises. On balance, the trial court found First Tenant as the prevailing party; First Tenant was awarded attorney fees and monetary damages. Landlord appealed, arguing that "the trial court erred in denying its motion for a directed verdict as a matter of law on the conversion claim and in finding Fuji to be the prevailing party." First Tenant counterclaimed, claiming the jury's verdict was inconsistent with the distinguishing of the breaching parties.
Holding:	The appellate court reviewed three issues: (1) First Tenant's conversion claim, (2) First Tenant's counterclaim regarding First Tenant's breach of the lease, and (3) the allocation of attorney fees. The court (1) affirmed the trial court's denial of Landlord's motions to dismiss First Tenant's conversion claim, (2) found the jury's findings consistent with its determination of First Tenant as a breaching party, and (3) awarded attorney fees to both parties and reversed the trial court's ruling solely in favor of First Tenant. On the conversion claim, the appellate court affirmed the trial court's denial of Landlord's motions to dismiss the claim before, during, and after trial. The court held that because the lease did not state that ownership of the cooler rooms would transfer to Landlord, Landlord improperly seized the cooler rooms. The court further relied on both First Tenant's statements that First Tenant had no intention of abandoning the cooler rooms and First Tenant's clear position that First Tenant would reclaim its property if no lease with Second Tenant was signed. Relating to the breach counterclaim, the court affirmed the jury's findings. First Tenant's point of concern was related to a special verdict form in which the jury found First Tenant as the breaching party but also found Landlord in violation of "its contractual obligations and conditions". First Tenant claimed that, because Landlord was found to have failed to fulfill certain obligations, the jury's finding that First Tenant breached the lease did not follow and was, therefore, contradictory. The court reasoned that the evidence in the record supported the conclusion that First Tenant breached the lease. The court also reasoned that because the record showed that Landlord may not have been able to fulfill all its requirements needed to prevail on its breach counterclaim, the special verdict question that asked whether "[Landlord failed to] fulfill all of its contractual obligations and conditions" was fairly answered by the jury. However, the court did not view these as mutually exclusive. Specifically, the court found that, because First Tenant was not given access to the facility to remove its property, Landlord did not fulfill its obligation to provide First Tenant

	with the "opportunity and access" needed. The court held that this can coincide with a breach by First Tenant. The court, therefore, affirmed the jury's conclusion. Finally, the court concluded that both parties are entitled to attorney fees. The court found that because the lease provides attorney fees to the prevailing party, and both sides were the prevailing party, both sides are entitled to attorney fees.
WEST VIRGINIA	
Wiles v. Work4WV-Region 1, Inc., No. 17-0557 W. Va. LEXIS 382 (W. Va. May 14, 2018)	
Issue:	(1) Whether a lease agreement which contains a termination provision and a non-renewal provision is ambiguous; (2) Whether the mutual intent of both parties should be considered when interpreting a lease agreement.
Facts:	WORK4WV-REGION 1 ("Tenant") entered into a lease agreement on May 21, 2013 for a certain portion of real property with Jeffrey Wiles, William Talbot, and Cowen Auto Parts d/b/a WBC Enterprises ("Landlord"). Provision 1 of the lease provided that the lease would be renewed for each ensuing fiscal year unless canceled by Tenant upon 30 days' notice prior to the end of the fiscal year (June 30). Further, the provision stated that notice could only be given by personal service or by certified mail, duly stamped and directed to the last-known address of the party to be notified. Provision 14 of the lease provided that the lease could be terminated upon thirty (30) days written notice to Landlord prior to the last day of the succeeding month. Tenant e-mailed Landlord on April 30, 2014 notifying Landlord that the lease would be terminated on June 30, 2014. Landlord responded on June 11, 2014 informing Tenant that e-mail was not a proper means of notice under the lease. On June 13, 2014, Tenant sent a certified letter terminating the lease. Tenant asserted that cancellation of the lease would be effective July 31, 2014, in accordance with the terms of the lease. On April 26, 2016, Landlord sought declaratory judgment, alleging that Tenant's initial termination notice via e-mail was improper and that the notice given on June 13, 2014 was untimely, and therefore ineffective in providing notice prior to the lease's renewal for the 2015 fiscal year. Further, the Landlord argued that Provision 14 was in contradiction to Provision 1, which provided the only process by which to terminate the lease. The lower court found that Tenant's e-mail notice was not proper under the lease, but that Tenant's June 13, 2014 certified letter was proper notice to terminate the lease as of July 13, 2014. The lower court also found that Provision 14 provided Tenant with a proper terminate right, regardless of the renewal language contained in Provision 1. Thus, the lower court did not find the lease ambiguous. Landlord subsequently appealed, arguing that Provision 1 provided the only method for termination and that Provision 14 was in direct conflict with it.
Holding:	The appellate court held that no conflict existed between the provisions and therefore the terms of the lease were not ambiguous. The court determined that Provision 1 did not indicate that it was the only means by which to terminate the lease, and that if it were, Provision 14 would have no purpose. The court chose to read the language of the lease as a whole, stating that were the Landlord's reading correct, "Provision fourteen would be rendered redundant and

	meaningless." Thus, the purpose of Provision 14 was allowed to stand and Tenant's termination of the lease under that provision was proper. Further, since the lease agreement was unambiguous, the court determined that there was no need to consider extrinsic evidence and that interpretation of the lease should be limited to the four corners of the document.
PUERTO RICO	
1606 Ponce De León Ave., Inc. v. Sterling Consulting Corp., Inc., 2018 PR App. LEXIS 1256 (Apr. 20, 2018)	
Issue:	Whether a landlord can hold a tenant liable for all of its obligations related to breaching a contract when the landlord has already re-rented the premises.
Facts:	In 2007, Sterling Consulting Corporation ("Tenant") entered into a lease for office space with Ponce de León ("Landlord"), which was amended in 2011. Upon expiration of the prior lease, the parties signed a new 2012 Lease Agreement (the "Lease"). The Lease stated "[t]his Lease shall automatically renew for additional renewal terms unless Tenant notifies Landlord in writing of Tenant's intention to not renew this Lease at least ninety (90) days prior to expiration of the initial term." The initial term of the Lease expired on August 31, 2014; therefore, to avoid auto-renewal, Tenant needed to notify Landlord by June 3, 2014 of its intention not to renew. Tenant did not so notify Landlord by that date, and the term of the Lease was automatically renewed. Subsequently, on August 4, 2014, Tenant emailed a purported Lease termination to Landlord. Tenant vacated the leased office on August 30, 2014, and Landlord brought suit on December 9, 2014 for unpaid rent. Thereafter, Landlord rented the property to a new third party tenant.
Holding:	The Court found that Tenant's email of August 4, 2014 had the effect of terminating the Lease before the expiration of the agreed renewal term. Then, the abandonment of the leased property constituted a breach of the Lease. Further, Article 19 of the Lease stipulated "for non-compliance and upon termination of the contract the tenant would still be responsible for all his obligations and the owner could rent the premises again." Thus, the contract language explicitly allowed Landlord to re-rent the premises. With this in mind, the Court held a landlord can hold a tenant liable for all of its obligations related to breaching a contract when the landlord has already re-rented the premises. The Court required Tenant to respond for the sum of $13,320.60 under cover of the contractual breach of the Lease.

FEDERAL CASES	
FIRST CIRCUIT	
None.	
SECOND CIRCUIT	
None.	
THIRD CIRCUIT	
None.	
FOURTH CIRCUIT	
None.	
FIFTH CIRCUIT	
None.	
SIXTH CIRCUIT	
None.	
SEVENTH CIRCUIT	
IPS Steel LLC v. Hennepin Industrial Development, LLC, No. 17-1451, 2018 WL 3093959 (C.D. Ill. Feb. 23, 2018)	
Issue:	(1) Whether Seller made adequate showing of likely success, irreparable harm, and lack of adequate remedy of law such that its request for a temporary restraining order in its breach of contract action against Buyer should be granted.
Facts:	On December 14, 2016, IPS Steel, LLC ("Seller") and Hennepin Industrial Development, LLC ("Buyer") entered into a Real Estate Sales and Personal Property Sales Agreement for the sale of an industrial property in Illinois (the "Property"). The purchase price of the Property was $20M and the original closing date was set for January 3, 2017. The original agreements required Buyer to pay $250k in earnest money, $4.75M at closing, and a minimum quarterly payment of $3.75M. The parties changed the closing date to January 23, 2017 and amended the terms of the agreements to reduce the payment at closing to $2.5M. On January 17, 2017, Buyer executed a Promissory Note and Security Agreement with Seller in the amount of $17.5M at 10% interest. The closing occurred on January 23, 2017. On May 1, 2017, the parties modified the Promissory Note and Security Agreement to extend the deadlines of the minimum quarterly payments and to modify the revenue sharing agreement. The Promissory Note and Security Agreement were amended again on July 1, 2017 to suspend the quarterly payments and extend the maturity date of the loan to July 1, 2018. On October 6, 2017, Seller filed a complaint alleging breach of contract against Buyer. On October 13, 2017, Seller filed a Motion for Temporary Restraining Order, seeking an order barring Buyer's employees from removing any materials from the Property and requiring Buyer to place any proceeds it received from the Property in escrow, among other things. On December 15, 2017, the parties entered into a

	stipulation whereby Buyer agreed to cease all operations on the Property. On February 6, 2018, Seller filed its Second Motion for Temporary Orders seeking an order barring Buyer from accessing the property. The Second Motion for Temporary Orders is the matter before the court.
Holding:	The court held that Seller failed to establish that there is no adequate remedy at law to warrant a temporary order. A temporary restraining order ("TRO") is an emergency remedy granted to maintain the status quo and minimize the hardship to parties pending the ultimate resolution of the matter. Like a preliminary injunction, a TRO is warranted when (i) the movant has some likelihood of success on the merits of the underlying litigation, (ii) no adequate remedy at law exists, and (iii) the movant will suffer irreparable harm if the TRO is not granted. Although the court found that Seller has a strong likelihood of success in its breach of contract claim and that it would suffer some additional harm if the TRO is not granted, the court ultimately found that there exists an adequate remedy at law. Specifically, the court found that a damage remedy is adequate in that Buyer has sufficient assets to cover any judgment.
Abellan v. HRDS Le Roy IL, LLC, No. 16-1037, 2018 WL 6247260 (C.D. Ill. Nov. 29, 2018)	
Issue:	Whether the Seller of a commercial property breached representations in a purchase agreement with respect to the status of the sole tenant of the property.
Facts:	In March, 2015, Abellans ("Buyers") purchased a triple net lease commercial property in Le Roy, Illinois for $1,550,000. As advertised, the building was a Hardees where the tenant had 18 years remaining on a 20-year lease, with a 6.35% rate of return and personal and corporate lease guarantees. The advertisement further stated that the property was a former restaurant being reimaged as a Hardees to be opened in April, 2015. The advertisement stated that the tenant/guarantor operates 201 Carl's Jr and Hardees restaurants throughout several other states. The purchase agreement stated: "There is no default by Seller or, to Seller's knowledge, by [Tenant] under the Lease. Seller shall promptly deliver to Buyer a copy of any notice (including without limitation, a notice of default) received from [Tenant] relating to the lease." The pertinent provision of the Lease addressing default states: "Each of the following events shall constitute an Event of Default: If Tenant fails to continuously operate its business within the Premises except for temporary periods of closure caused by casualty, or temporary and reasonable periods of remodeling, not to exceed ninety (90) days in any Lease Year without first obtaining Landlord's written approval which approval shall not be unreasonably withheld, so long as Tenant is diligently pursuing re-opening of the Premises." After the purchase was completed, Buyers discovered that the property had remained vacant without an operating tenant since 2012, and that Seller had been receiving rent from the tenant despite the vacancy. Plaintiffs also subsequently learned that a renovation had ceased in 2014, leaving the property in a non-usable state. Less than two months after Buyers purchased the property, the parent company of the tenant/franchisee filed for Chapter 11 bankruptcy, and six months later the tenant's managing member – one of the guarantors of the lease – declared personal bankruptcy. Lastly, after Buyers purchased the property, they became aware of a prior sale-leaseback arrangement wherein two years prior to the Buyer's purchase, the Tenant bought the property for $325,000 and sold it to Seller one month later for $1,100,000 (a $775,000 profit) for the purpose of the Tenant investing this large profit into the property – an investment that never happened.

	At trial, Buyers proceeded on claims of (i) rescission of contract due to mutual mistake, (ii) breach of contract, and (iii) fraud, for which the jury found for plaintiff. Defendant's managing partner testified that he was aware that Tenant had not operated for over ninety days (or at all since the lease period began).
Holding:	The court found that Buyers adduced clear and convincing evidence at trial that seller's representations regarding tenant were false and that seller breached the applicable representation in the purchase agreement.
Cty. Of Cook v. Kellogg Co., No. 16-C-3399, 2019 WL 1254892 (N.D. Ill. Mar. 19, 2019)	
Issue:	(1) Whether a covenant that applies to successors of a property owner applies to persons that subsequently purchased the property. (2) Whether a party's right to receive a benefit which is a covenant that runs with the land applies to such party's successors. (3) Whether the County's obligation to provide free steam heat to the City's successors and assigns under the 1973 Agreement violates the Illinois Constitution. (4) Whether a contract of infinite duration is terminable at will.
Facts:	In 1973, the City of Chicago ("City") and the County of Cook ("County") entered into an agreement (the "1973 Agreement") in which the City sold certain property containing a steam heat plant, to the County. The 1973 Agreement provided in part that the County would provide free steam heat to a certain City property for free in perpetuity or until the City in its sole discretion no longer required. The 1973 Agreement stated further that "[t]he City, its successors or assigns shall have the right to receive the same quantity of steam heat servicing the property…from the County at no cost to the City for so long as the City in its discretion shall require"; and "[t]he right of the City to receive steam heat from the Municipal Heating Plant shall be a 'covenant running with the land' for the benefit of [the property in question owned by the City]." The "Ware House" is a portion of the property owned by the City. Pursuant to the 1973 Agreement, the County provided free steam heat to the City at the "Ware House." The City conveyed the Ware House to a private company. Subsequently several private entities owned the property which is now owned by Kellogg. In May of 2015, the County sent Kellogg a letter demanding payment of $2,116,800 for steam heat that the County had provided from 2005-2015.
Holding:	(1) Kellogg is a successor to the City. In the context of a contract involving real property, the most natural reading of the term "successor" describes one to whom title to the property is conveyed. (2) Under Illinois law, to determine whether a covenant runs with the land, a court looks to whether: (1) the grantee and the grantor intended the covenant to run with the land; (2) the covenant touches and concerns the land; and (3) there is privity of estate between the party claiming the benefit and the party resting under the burden of the covenant. The County conceded points (2) and (3), and the court found that the City and the County clearly intended the covenant to run with the land by looking at the plain language of the covenant. If a party has the right to convey property to a successor and another party's obligation to provide a benefit to such party inures to the successor's benefit, then a right of such party to receive a benefit which is a covenant that runs with the land also applies to that party's successors. (3) The Illinois Constitution provides that "[p]ublic funds, property or credit shall be used only for public purposes." The court held that because the benefit to the public was so great (the county saving large sums of money by owning the

	steam plant instead of paying for steam services for all of its facilities), it outweighed the incidental private benefits that were exchanged (the free steam in perpetuity to whomever owns the Ware House). (4) The 1973 Agreement lacks a fixed duration. An agreement without fixed duration that provides it is only terminable for cause or upon the occurrence of a specific event is in one sense one of infinite duration, but is nonetheless terminable only upon the occurrence of the specified event and not at will.

EIGHTH CIRCUIT

Hoover Bros. Farms, Inc. v. Wal-Mart Stores, Inc., 2018 WL 2050159 (W.D. Ark. May 2, 2018)

Issue:	(1) Whether Competing Business or Shopping Center Expansion clauses in agreement between parties precluded seller from leasing or selling property to purchaser's competitor where the real property at issue was separate from adjacent tracts of land explicitly considered in the parties agreement and acquired by seller prior to executing agreement with purchaser.
Facts:	Hoover Brothers Farms, Inc. ("Seller") entered into an agreement with and drafted by Walmart Stores, Inc. ("Purchaser") on June 28, 2001. The agreement concerned two tracts of land described collectively as the "Shopping Center." Tract 1 was owned by Purchaser and contained an affiliate store and parking lot. Tract 2 was owned by Seller and sat adjacent to Tract 1. A Competing Business restriction proscribed Seller from leasing or otherwise conveying Tract 2 to general merchandise, retail, or discount stores. The restriction also prohibited Seller from leasing or otherwise conveying "any other real property adjacent to the Shopping Center which may subsequently be acquired by [Seller]" to the same types of competitor stores. A Shopping Center Expansion clause stated that if "the Shopping Center is expanded by ownership, control of the parties or agreement with a third party, all of the provisions of this Agreement shall apply to the expanded area." Fifteen years later, Aldi Grocery Store ("Competitor") approached Seller about buying a separate piece of land that sat adjacent to Purchaser's Shopping Center. Seller and Purchaser subsequently brought cross-motions for summary judgment to resolve whether the 2001 agreement applied to the separate piece of land.
Holding:	The court granted summary judgment to Seller and concluded that neither the Competing Business restriction nor the Shopping Center Expansion clause applied to the separate piece of land. In regard to the Competing Business restriction, the court noted that if the intent of the Purchaser was to limit the ability of competing businesses to operate adjacent to the Shopping Center, it should have drafted the agreement to account for Seller's additional tracts of land. Seller acquired the separate piece of land more than a year prior to entering into the 2001 agreement, and the court found that the Competing Business restriction's language – "including any property that 'may subsequently be acquired'" thus did not cover the property at issue. In regard to the Shopping Center Expansion clause, the court found that because the "Shopping Center" was defined in the agreement as Tracts 1 and 2, any "expansion" occurring on the separate piece of land did not fall under the clause.

Helms v. Old Republic Nat'l Title Ins. Co., 2018 WL 718426 (D. Neb. Jan. 11, 2018)

Issue:	(1) Whether, under Nebraska law, a diminution in title value where a defect or encumbrance is discovered should be measured based on the property's highest and best use, or on the property's actual use as of the date the defect is discovered or the date the policy is issued; (2) Whether a title insurer must pay consequential damages where the insurer failed to indemnify or defend the title according to policy terms.
Facts:	Dale and Debra Helms (together, "Purchaser") secured a title insurance policy from defendant ("Defendant") which went into effect on October 15, 2012, for 240 acres of Nebraska farmland ("property"). The policy represented that the property was free of defects or encumbrances. The policy insured against "any defect in or lien or encumbrance on the Title," and "any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without knowledge." In May 2013 – before Purchaser had actually begun irrigating the property but after Purchaser had made a number of alterations for that purpose – Purchaser learned that 21.81 acres of the property was actually owned by the government. Purchaser was required to undo the alterations on the portion of property actually owned by the government. Purchaser filed a claim with Seller under the policy, which Defendant denied. Purchaser then filed an action for breach of contractual obligations for failure to pay policy benefits.
Holding:	The district court found for Purchaser and concluded that the proper measurement of a property's diminution in value should be based on its highest and best use. The court noted that the Nebraska Supreme Court "consistently" allows expert testimony regarding land's highest and best use in eminent domain proceedings and tax cases. The court further reasoned that Purchaser acquired the fee simple title in the belief that it would allow property development as Purchaser saw fit, so the title defect frustrated reliance based on the highest and best use of the property. The district court also concluded that because the title policy did not provide for consequential damages, they would not be available to Purchaser. The court reasoned that "where a covered loss occurs and the issue is what amount [Seller] must pay to perform its contract to indemnify, policy terms govern." The court noted that the plain language of the policy allowing for "actual monetary loss or damage," did not encompass consequential damages, so none could be claimed.

NINTH CIRCUIT

None.

TENTH CIRCUIT

In re 1075 S. Yukon, LLC, 590 B.R. 527 (2018)

Issue:	(1) Whether a debtor's exercise of an option to purchase property after the deadline set forth in an option agreement constitutes "cur[ing] a default" under § 108(b); (3) Whether a debtor's exercise of an option to purchase property after the deadline set forth in an option agreement constitutes an "other similar act" under § 108(b). (4)
Facts:	In February 2018, 1075 S. Yukon, LLC ("Debtor") sold property to Corporate Properties, Inc. ("CPI") for $1,400,000. The two parties also agreed that Debtor

	would have an option to repurchase the property from CPI if it met certain conditions. On the date that the option was set to expire, Debtor entered into an amended Repurchase Agreement with CPI and a third party assignee that extended the deadline to 5pm on May 31. On May 31, Debtor filed for Chapter 11 bankruptcy at 4pm. 43 days later, it filed a motion seeking to compel CPI to sell the property to Debtor for the option price listed in the amended Repurchase Agreement. To achieve this, Debtor also requested permission to borrow nearly $2,000,000 from lenders.
Holding:	The Court denied Debtor's motion. The Court ruled that Debtor's failure to meet the deadline set out in the amended Repurchase Agreement did not qualify as a curable default under § 108(b). Because Debtor filed for bankruptcy merely an hour before the Amended Agreement's deadline, the Agreement essentially expired on its own. The Court also ruled that Debtor's failure to meet the purchase option deadline did not fall within the category of "any other act" under § 108(b). Even though the Tenth Circuit has interpreted this phrase to be a broad, catch-all provision, the Court determined that Debtor's action was so dissimilar from the other acts listed in the subsection, which included "fil[ing] any pleading, demand, notice, or proof of claim or loss," that it would not rule for Debtor.
Doran Dev., LLC v. Starwood Retail Partners, LLC, 2018 WL 3659377 (D. Colo. Aug. 2, 2018)	
Issue:	(1) Whether a seller is liable for breach of contract for failing to maintain confidentiality or for failing to act in good faith during a 30-day exclusivity period; (2) Whether a buyer may bring a promissory estoppel claim when an agreement establishes a framework for future negotiations of a sale.
Facts:	In August 2017, Doran and Starwood signed a Letter of Intent in which Doran expressed its intent to buy Starwood's commercial property. The Letter of Intent required that 1) both parties keep the terms of Doran's offer confidential and 2) Starwood not negotiate with other potential buyers for 30 days. Doran spent large amounts of money on the development plans for the property, and Starwood was aware of these expenditures. However, in November 2017, Starwood shifted position, first requesting an increase in price and then requesting a joint venture in lieu of a sale. Ultimately, in December 2017, Starwood told Doran it would not be accepting Doran's offer, as it had received a better offer for the property. Doran sued Starwood for 1) breach of contract for failing to act in good faith during negotiations and failing to maintain confidentiality and 2) promissory estoppel, claiming Starwood made promises to Duran, and Duran relied on those promises to its detriment. Starwood moved to dismiss both of Doran's claims.
Holding:	The District Court for the District of Colorado granted Starwood's motion to dismiss for both claims. The Court determined that Doran's breach of contract assertions were speculative and failed to satisfy the *Iqbal* requirements of well-pleaded facts. Doran never demonstrated that Starwood either disclosed confidential information, or reached out to another buyer during the exclusivity period. The Court ruled that Doran's promissory estoppel claim must be dismissed, because the promises that Doran relied upon were conditional. The Court maintained that the Letter of Intent essentially constituted an "agreement to agree," and it was unreasonable for Doran to rely on such a promise.

Marcantel v. Michael & Sonja Saltman Fam. Tr., 2019 WL 1262648 (D. Utah Mar. 19, 2019)	
Issue:	(1) Whether a trust committed fraudulent nondisclosure and/or fraud when it was unaware that the buyer did not know of a sewer easement encumbering the property; (2) Whether a trust breached a Real Estate Purchase Contract by failing to disclose that the property was encumbered by a sewer easement and/or by failing to inform the buyer of a survey revealing the easement; (3) Whether a trust breached the implied covenant of good faith and fair dealing when it did not disclose the sewer easement to property's buyer.
Facts:	In 2007, the Michael and Sonja Saltman Family Trust (the "Trust") purchased a property that was encumbered by a sewer easement. During the purchase process, the property's prior owner commissioned a survey, but there was no evidence that the Trust received this survey. The Trust contemplated a subdivision design of the property that would require relocating the easement, and submitted an application to the sewer district. However, ultimately the Trust never relocated the easement. In 2015, the Trust sold the property to Curt A. Marcantel. The Real Estate Purchase Contract specified that the Trust would "disclose in writing to Buyer defects in the Property known to Seller that materially affect the value of the Property that cannot be discovered by a reasonable inspection by an ordinary prudent Buyer." Additionally, when filling out a Seller's Disclosure form, the Trust check the box "No" in response to the following questions: "Are you aware of any survey(s) that have been prepared for the Property or any adjoining property or properties?" and "Are you aware of any unrecorded easements, or claims for easements, affecting the Property?" Mr. Marcantel also commissioned a title search himself, which found no sewer easements on the property. Six months later, Mr. Marcantel entered into a contract with Joe Kelly to sell the property for $1,995,000. Prior to closing, Mr. Kelly discovered the sewer easement and cancelled the contract. Mr. Marcantel ultimately sold the property in March 2018 for $1,450,000. Mr. Marcantel sued the Trust, claiming fraudulent nondisclosure, fraud, breach of contract, and breach of the covenant of good faith and fair dealing.
Holding:	The Utah District Court ruled against Mr. Marcantel on all four claims. For the nondisclosure claim, the Court held that Mr. Marcantel failed to demonstrate by clear and convincing evidence 1) that the Trust had a legal duty to disclose and 2) that the Trust intended to deceive. This is because the Trust did not know Mr. Marcantel was unaware of the easement. Furthermore, Mr. Marcantel already had constructive notice of the easement, as Utah law dictates that a legal description of the property is sufficient to provide notice, even if the easement is difficult to find. For the claim of fraudulent misrepresentation, the Court ruled that the Trust did not make any false representations on any of the documents that Mr. Marcantel alleged (the MLS listing, a potential site plan, and a disclosure form). Additionally, Mr. Marcantel failed to show fraudulent intent and reliance. For the breach of contract claim, the Court maintained that the Trust did not breach the contract, because it complied with its obligations for the disclosure form and for all pertinent sections of the contract. The contract required the Trust to provide "[a] survey if one had been done." The Court interpreted that to mean a survey if one had been done *by or for the Trust*. The contract also required the Trust to disclose material defects not discoverable upon reasonable inspection. The Court

	determined that the easement was discoverable, and regardless (as discussed above) Mr. Marcantel had constructive notice of the easement. Lastly, the Court found that the Trust did not breach the implied covenant of good faith and fair dealing. Mr. Marcantel never revealed his plans for the property to the Trust, and therefore the Trust could not have intentionally impaired his purpose in purchasing the property.
ELEVENTH CIRCUIT	
In re Bay Circle Props., LLC, 593 B.R. 14 (2018)	
Issue:	(1) Whether a purchaser of property breached a contract of sale by failing to pursue an agreed-upon site plan for rezoning. (2) Whether a purchaser of property breached the implied covenant of good faith and fair dealing by failing to pursue an agreed-upon site plan for rezoning. (3) Whether a purchaser of property fraudulently induced the seller to enter into a contract of sale by representing that it would pursue a site plan for rezoning.
Facts:	Nilhan Developers, LLC ("Nilhan") owned a shopping center and a set of office suites in Georgia. These two properties served as collateral for a loan made by Wells Fargo to affiliates of Nilhan. In 2015, Nilhan filed for bankruptcy under Chapter 11 after Wells Fargo threatened foreclosure. Nilhan and Wells Fargo settled, and Wells Fargo subsequently assigned its interests to Bay Point Capital Partners, LP ("Bay Point"). In April 2017, Nilhan filed a motion to sell the properties to Westplan Investors Acquisitions, LLC ("Westplan"), which assigned all of its rights and interests to Accent Cumberland Apartments LP ("Accent"). The contract of sale featured a "Buy Back" provision, which stated, "Seller acknowledges that Purchaser intends to apply to rezone the Property to allow the development of a multi-use project…" Bay Point objected to this sale and offered to pay $7.3 million for the properties (compared with Westplan's offer of $7.2 million plus the Buy Back option). The Bankruptcy Court ruled that Nilhan may go through with its sale to Westplan, provided Nilhan pays an additional $100,000 to not prejudice Bay Point. The Court based its decision in part on Nilhan's clear interest in the Buy Back option. The sale to Accent closed on May 1, 2017. However, the site plan that Accent used to apply for rezoning differed from the plan used in the motion. The rezoning request was ultimately denied, and Nilhan sued Westplan and Accent for breach of contract, breach of the implied duty of good faith and fair dealing, and fraud.
Holding:	The Bankruptcy Court dismissed all three of Nilhan's claims against Westplan and Accent. The Court ruled that there was no breach of contract because the language of the contract clearly did not impose any obligations on Westplan and/or Accent to obtain zoning in a particular way. Furthermore, the contract contained a merger clause that prevented admission of parole evidence. The Court maintained that Westplan and Accent did not breach the implied covenant of good faith and fair dealing, because a claim for breach of this covenant can only be brought alongside an actionable breach of contract claim. Lastly, the Court held that Nilhan's claim of fraud in the inducement was not actionable, because Nilhan failed to seek rescission of the contract. A party alleging

	fraud must either 1) affirm the contract and sue for damages or 2) rescind the contract and sue for fraud.
Triangle River, LLC v. Caroline Square Realty, LLC, 2018 WL 4017693 (M.D Fla. Jul. 19, 2018)	
Issue:	Whether a buyer's claim that seller breached a purchase and sale contract which contained an arbitration provision is subject to the arbitration provision contained in such contract.
Facts:	In May of 2017, Plaintiff Triangle River, LLC entered into a contract with Defendant Caroline Square Realty, LLC for a purchase of land. The terms of the contract included a provision stating that all controversies or claims arising or relating to the contract, or breaches thereof were to be settled by arbitration. After the Defendant refused to adhere to the closing date on multiple occasions, the Plaintiff filed a complaint for breach of contract. In response, the Defendant argued that per the contractual agreement, all issues were subject to arbitration; however, Triangle River disagreed, arguing that the seller surrendered the right to arbitrate when it breached the contractual agreement by failing to adhere to the closing date within the contract's terms.
Holding:	Relying on both federal and Florida law, the Court explained that determining a party's right to arbitrate depends on the existence of a written agreement between the parties with an arbitration clause; if the issue is an arbitrable matter; and if the right to arbitrate has not yet been waived. Specifically, under the Federal Arbitration Act ("FAA"), pre-dispute agreements to arbitrate are valid, irrevocable, and enforceable, unless sufficient grounds exist for the contract to be revoked. The court held that the claims were subject to arbitration because (1) the contract contained an arbitration clause, (2) the claim for specific performance and the contention that Defendant improperly repudiated the contract are arbitral issues because they arose out of the contract, and (3) the Plaintiff did not demonstrate the Defendant's waiver of the right to request arbitration, and the court further stated that the FAA does not allow the exercise of discretion by a court in determining whether an issue is arbitrable.
*Baker's Bay at Great Guana, LLC v. Discovery Baker's Bay Inv'rs, LLC, No. 1:16-CV-02960-ELR, 2018 WL 3093960, at *1 (N.D. Ga. Feb. 16, 2018)*	
Issue:	(1) Whether plaintiff could introduce parole evidence of contemporaneous contracts to determine existence of consideration in the contract at issue. (2) Whether plaintiff alleged sufficient facts to demonstrate that an alter-ego doctrine/piercing the corporate veil theory was plausible to prevent the claim from being dismissed on a motion.
Facts:	In 2002, Plaintiff Baker's Bay at Great Guana ("BBGG") (an LLC owned by BMH) invested in and had the exclusive right to purchase property for the Baker's Bay project (a resort development in Abaco, The Bahamas). Later in 2003, BBGG negotiated with Discovery Land, a privately held real estate developer, and Farallon, a private equity firm, for an agreement for their joint participation in the Baker's Bay project. BBGG wanted $3 million more than what Farallon and Discovery Land were willing to pay, and Discovery Land resolved this impasse by agreeing to fund that amount through certain fees and commissions. The 2004 Letter of Intent stated that Discovery Land will pay BMH 20% of the gross commission earned by the resale company up to a total of $3 million, in exchange

	for BBGG assigning its interest in the property. On November 26, 2004, 3 separate agreements (the LLC Agreement, Development Agreement, and Fee Sharing Agreement) were entered into by different parties. • **LLC Agreement**: BBGG, Discovery Baker's Bay Investors, LLC ("DBBI") (a wholly owned subsidiary of Discovery Land), and Baker's Bay Investors, LLC (a wholly owned subsidiary of Farallon) entered into an agreement to form Baker's Bay Associates, LLC, to own, develop, operate, market, and utilize the Baker's Bay property (the "LLC Agreement"). • **Development Agreement**: Baker's Bay Associates then entered into a Development Agreement with Discovery Baker's Bay Management, LLC ("DBBM"), an affiliate of Discovery Land, where DBBM was to receive future compensation, including commission from real property sales, for managing the project. • **Fee Sharing Agreement**: This agreement provided that DBBI would pay BBGG 20% of "all gross commissions and fees earned by the real estate sales company" that DBBI would operate, subject to a cap of $3 million. DBBI was required to inform BBGG of any resales and remit payment due to BBGG as a result of such resales. After the parties executed the agreements, BBGG assigned its right to purchase the property to Baker's Bay Associates. Since 2010, DBBI continued to earn fees and commissions from real property resales, but neither DBBI nor Discovery Land had paid BBGG any amounts under the Fee Sharing Agreement. In 2011, DBBI asserted to BBGG that BBGG was entitled to 20% only after certain deductions were made for payments and fees to others. BBGG sued DBBI and Discovery Land (contending that DBBI is an alter ego of Discovery Land such that Discovery Land should be liable for any breaches by DBBI), to seek damages for breach of contract and attorney's fees. Defendants moved to dismiss, contending that the Fee Sharing Agreement was invalid due to lack of consideration, and that Discovery Land should not be a defendant as it is not a party to the Fee Sharing Agreement and not a sufficient alter-ego of DBBI.
Holding:	(1) Georgia rules O.C.G.A. §24-3-3(a) states that "all contemporaneous writings shall be admissible to explain each other." O.C.G.A. §24-6-3(a) states that with respect to contract construction, where multiple documents are executed at the same time in the course of a single transaction, they should be construed together. The court found that the plaintiff had sufficiently alleged the existence of consideration for the Fee Sharing Agreement, evident from the other documents (LLC Agreement, Development Agreement) signed by the related parties on the same day. The motion to dismiss the breach of contract claim was denied. (2) Georgia courts will disregard the corporate form if: (a) the corporation is a "mere instrumentality" of the parent company or the shareholders, and (2) to observe the corporate form would "work an injustice". The alter-ego doctrine is an equitable doctrine, and therefore cannot be applied unless there is no other adequate remedy at law. Plaintiff had sufficiently alleged that DBBI is a "shell" with "no assets," incapable of satisfying a money judgment against it. The court held that the plaintiff had alleged sufficient facts asserting DBBI is a "mere instrumentality" of Discovery Land, and its claim of alter-ego should go forward. The motion to dismiss Discovery Land was denied.

STATE CASES	
CALIFORNIA	
Hallet v. Khau, 2018 WL 1391772 (Cal. Ct. App. Mar. 20, 2019)	
Issue:	(1) Whether the trial court erred in preventing Defendant from relying upon "paragraph 4" which stated: "The Property is to be sold in its 'AS-IS and 'WHERE-IS' condition with all faults and all upgrades as they occur. Buyer shall be solely responsible to inspect the Property and all property-recorded information, known and unknown to Seller, its representative(s) and/or Real Estate Brokers."
Facts:	Defendant and appellant Andy Khau owned a commercial property located at 729 Merchant Street in downtown Los Angeles. Khau represented in advertising materials and, ultimately, a sales agreement, that the property included 8,450 square feet of warehouse space. Plaintiffs and respondents Patrick Hallett and the company he formed to buy the property, 729 Merchant, LLC, purchased the property from Khau for $1.85 million. Hallett subsequently discovered that the property had only 7,490 square feet of warehouse space, approximately 11 percent less than was advertised. Plaintiffs sued Khau for damages, alleging intentional misrepresentation, negligent misrepresentation, and breach of contract. A jury found for plaintiffs on all counts and awarded them $481,000 in compensatory damages. On appeal, Khau contends that a disclaimer on a property information sheet and a provision in the sales agreement imposed a duty on plaintiffs to inspect the property. He argues that this duty to inspect "cancelled" any representations he made about the warehouse size and negates, as a matter of law, the jury's findings that he intended to deceive plaintiffs and that plaintiffs reasonably relied on his representations. Alternatively, Khau contends the court erroneously barred the jury from considering a particular contractual provision in connection with the misrepresentation claims.
Holding:	The California Court of Appeal affirmed the trial court's verdict, concluding: (1) Paragraph 4 did not absolve Defendant of liability as a matter of law. Further, the court held that an owner of real property "is presumed to know the size of the property and ... a buyer is ordinarily entitled to rely upon the owner's representation of size without having to hire an expert to discover its falsity." Similarly, the court also concluded that "[a] misrepresentation of the area of real property is a misrepresentation of material fact, and if relied upon will warrant rescission or damages. The fact that plaintiffs visited the property does not necessarily determine that they depended upon their own observation in determining the area of the lot;" and (2) The jury should have been allowed to consider paragraph 4 as a factor in assessing intent and reliance, but the erroneous evidentiary ruling did not result in a miscarriage of justice because Defendant failed to show that he would have obtained a more favorable result if the jury had been permitted to consider paragraph 4 as an additional factor.
Smyth v. Berman, 31 Cal. App. 5th 183 (Cal. Ct. App. 2019)	
Issue:	(1) Whether the right of first refusal to purchase leased property presumptively carries forward into holdover tenancy; (2) Whether the allegation that lease containing right of first refusal was still in effect by virtue of an oral extension of that lease was valid under the sham pleading doctrine; and

	(3) Whether part performance estopped landlord from asserting statute of frauds as a defense.
Facts:	Plaintiff James Smyth (Smyth) owns and operates plaintiff Awesome Audio (Awesome), an audio recording company (collectively, plaintiffs). Since the mid-1990's, Smyth has leased 5725 Cahuenga Boulevard in North Hollywood (the Property) as Awesome's place of business. In 1999, Smyth bought the property next door as his residence. Also, in 1999, defendant Daryl Ann Berman (Berman) bought the Property and has since been plaintiffs' landlord. Plaintiffs and Berman signed their most recent written lease on December 2, 2011 (the 2011 Lease). By its terms, the 2011 Lease was set to expire on December 15, 2012, but contained an option to renew the lease for an additional three years. The lease also granted plaintiffs the right to make "alterations and improvements" to the Property and to sublet the Property as long as they obtained Berman's consent. The 2011 Lease further provided: "If the Tenant remains in possession after this lease ends, the continuing tenancy will be from month to month." In each of the two written leases that are part of the record in this case, Smyth inserted a handwritten term granting him an option to purchase the Property: In a 1999 lease, he wrote in "first option to purchase"; in the 2011 Lease, he wrote in "Right of 1st refusal to purchase." Both Berman and Smyth initialed the addition to the 2011 Lease. On June 29, 2016, defendant Carmen Santa Maria (Santa Maria) submitted a written offer to buy the Property from Berman. In that offer, Santa Maria offered to pay $60,000 in cash and to have Berman loan him $440,000 that would be repaid over 10 years with four percent interest. If the loan were repaid over the full 10 year period, Santa Maria would ultimately pay Berman $676,000, but Santa Maria would not be penalized if it elected to repay the loan early (even though it would mean Berman would receive less interest). Between July 12, 2016 and July 14, 2016, Smyth's attorney and Berman exchanged several emails. In an email to Berman, plaintiffs' attorney purportedly summarized an oral conversation in which Berman said that Santa Maria's offer had been cancelled and agreed "to give [Smyth] the right of first refusal to purchase the property." Berman responded that she had "spoke[n] with [her real estate agent] and requested that he respond with the contracts and other requests and we hope that this can be worked out quickly." Plaintiffs' attorney expressed her satisfaction that the parties were "moving forward with this transaction." Berman responded: "I have retained council [sic]." On August 4, 2016, plaintiffs submitted an offer to buy the Property for $505,000, comprised of $101,000 in cash and the balance from a $404,000 loan from a third-party lender. In emails sent on August 10, 2016 and August 12, 2016, Berman rejected plaintiffs' offer, explaining that Santa Maria's offer was "higher" and for "considerably more money." Berman moved forward with selling the property to Santa Maria and his business partner, defendant Pamela Ann Masters, and they recorded a grant deed and deed of trust on August 19, 2016. The trial court sustained the demurrer to the FAC with leave to amend. The court observed that all of plaintiffs' claims "appear to be based upon" the valid exercise of a

	right of first refusal. The court went on to find that plaintiffs possessed no right to first refusal at the time of their August 2016 offer because (1) plaintiffs were "holdover" tenants by August 2016 because the 2011 Lease—even if extended by three years—had expired on December 16, 2015; and (2) the right of first refusal contained in the 2011 Lease did not carry forward as a term of the "holdover" tenancy under *Spaulding v. Yovino-Young* (1947) 30 Cal.2d 138, 180 P.2d 691 (*Spaulding*).
Holding:	The California Court of Appeal affirmed the trial court's dismissal, concluding: (1) The right of first refusal contained in the expired lease does not presumptively carry forward into the holdover tenancy because the only terms from an expired lease that are presumed to carry forward into a holdover tenancy are the "essential" terms of that lease – that is, the "term[s] or conditions[s] of the demise" such as the "amount and time of payment of rent;" (2) Because the plaintiffs alternatively alleged no extension and then an extension, the oral extension theory is barred by the "sham pleadings" doctrine, and the court has no occasion to examine the trial court's alternative grounds for dismissing this theory; and (3) Plaintiffs failed to satisfy either prong of the estoppel doctrine test because they did not plead "unconscionable injury" based on "seriously . . . chang[ing] [their] position in reliance on the [oral] contract," or the "unjust enrichment" of Defendants.

DELAWARE

Bathla v. 913 Market, LLC, 200 A.3d 754 (Del. 2018)

Issue:	Whether Seller breached a contract for sale of real property when the title company claimed an exception on the title commitment for an earlier purchase agreement with respect to such property, relieving Buyer of any obligation to close, and entitling Buyer to the return of its deposit.
Facts:	In June 2016, 913 Market, LLC ("Seller") entered into a contract for sale of real property (the "Property") to InvestUSA. After InvestUSA failed to close the deal, Seller entered into a new contract for sale of the Property with Kamal Bathla ("Buyer"). Seller and Buyer's contract specifically noted the failed contract with InvestUSA. Buyer deposited $118,125 into an escrow account to serve as a deposit on the Property. The contract include multiple conditions for closing, including (1) that Seller convey title "free and clear of all liens and encumbrances other than real and personal property taxes not yet due and payable and the permitted exceptions" and (2) "[t]itle to the Property shall be subject only to the same exceptions as shown on Seller's title policy." The title company included and refused to remove an exception to its title commitment for any claims related to the failed InvestUSA contract. Buyer did not purchase the property and claimed that Seller breached the terms of the contract, relieving Buyer of any obligation to close, and entitling Buyer to the return of its deposit. Buyer argued that Seller breached the contract in two ways: First, Seller failed to convey title "free and clear of all liens and encumbrances other than real and personal property taxes not yet due and payable and the permitted exceptions" because of the litigation risk from InvestUSA, and furthermore, the litigation risk "in and of itself rendered title unmarketable." Second, because the title company refused to issue a policy without an exception for claims by InvestUSA, Buyer argued that Seller failed to satisfy a condition precedent

	in Section 4.1(a) of the contract, which held that "[t]itle to the Property shall be subject only to the same exceptions as shown on Seller's title policy."
Holding:	The court held that neither of Buyer's claims has merit and awarded the deposit to Seller. With respect to Buyer's first argument, the court held that the litigation risk was not a title defect because under Delaware's "pure race" recording statute, any potential claim that InvestUSA had on the Property would have been extinguished had Buyer closed and recorded the deed, even though Buyer had notice of the InvestUSA contract. With respect to Buyer's second argument, the court reasoned that the condition in the purchase agreement only required that the "title" to the Property (but not Buyer's title policy) be subject to the same exceptions as Seller's title policy. As before, because Delaware has a "pure race" statute, any claim InvestUSA had would be extinguished by Buyer closing and recording the deed. As such, the court held that Buyer's actual title to the Property would not have been subject to any additional exceptions due to the InvestUSA dispute. In a dissenting opinion, Justice Vaughn reasoned that because a party who takes title to a property with a notice of an equity interest takes subject to such equity, Delaware's "pure race" statute would not necessarily eliminate any risk of litigation. As such, the dissenting justice reasoned that the InvestUSA contract could be an encumbrance, and would have remanded the case to the trial court to determine whether the risk of litigation was in fact so remote and improbable as to constitute an encumbrance.
DISTRICT OF COLUMBIA	
Proulx v. 1400 Pennsylvania Ave., SE, LLC, 199 A.3d 667 (D.C. 2019)	
Issue:	Whether a purchaser who entered into a Contract of Purchase and Sale of a commercial property was (a) subject to a contract of adhesion and (b) party to a contract with an unenforceable penalty (liquidated damages clause).
Facts:	In March of 2012, Tahmina Proulx ("Purchaser") entered into a commercial Contract of Purchase and Sale with 1400 Pennsylvania Ave., SE, LLC ("Vendor"), which provided that Purchaser would purchase a commercial property in Washington D.C. for $550,000. The contract required a non-refundable $150,000 deposit, which would ultimately be credited towards the final purchase price of $550,000. Furthermore, in the event of breach by Purchaser, the $150,000 deposit would serve as liquidated damages for the benefit of Vendor. In March 2012, Purchaser paid Vendor the $150,000 deposit and took possession of the property pursuant to a use agreement. However, Purchaser was also unable to close on the purchase before the final settlement date of March 2014, and had been delinquent on contractually required payments. Vendor reclaimed the property in May of 2014. Purchaser filed a complaint on grounds that the contract was an unenforceable adhesion contract and that the $150,000 liquidated damages provision was an unenforceable penalty. Vendor filed a counterclaim for $24,779 in past rent and other costs.
FLORIDA	

Matheson v. Miami-Dade Cty, 258 So. 3d 516 (Fla. Dist. Ct. App. 2018)	
Issue:	(1) Whether a landowner has standing to challenge a sale of county property when the county did not engage in a competitive bidding process.
Facts:	Miami Properties ("Company") sought to purchase 2.79 acres of land owned by Miami-Dade County ("County") in order to construct a soccer stadium for a Major League Soccer Team. In June of 2017, County commission adopted a resolution pursuant to section 125.045 of the Florida Statutes authorizing the sale of land to Company in order to "promote economic development" within the area. The resolution required Company to construct and operate a sports stadium; spend a minimum of 175 million dollars to purchase and build the facilities, create a certain number of jobs, comply with the count's small business enterprise programs, and develop a permanent skilled job training program. Appellant Bruce Matheson ("Landowner") filed for a writ of mandamus against County under Section 125.035 (Florida Statutes), arguing that County failed to put the 2.79 acres of land up for competitive bid, effectively barring others from the opportunity to acquire the land for themselves. The trial court granted County's motion to dismiss the case, explaining that Section 125.045 allowed County to sell the land to Company notwithstanding Section 125.035 because the sale was classified as "economic development" The court also explained that Landowner lacked standing to challenge the sale in the first place. On appeal, Landowner argued that he had standing to challenge the sale to Company because he was "ready, willing, and able to purchase the property" for the same price and terms offered to Company. Landowner also mentioned that Section 125.35 places a legal duty on County to offer the land for competitive bidding, granting others a chance to acquire the land at a higher price. Conversely, County believed that agreements for economic development did not warrant a competitive bidding process and exempted it from Section 125.35. County also argued that Landowner lacked the necessary resources to fulfill the commissioning of a soccer stadium, which was what the bid was for, thus resulting in a lack of standing.
Holding:	The court affirmed the trial court's decision to dismiss Landowner's petition. Specifically, the court held that County possessed no legal duty to hold a competitive bidding process for land. While, Landowner pointed to Section 125.035, which explains the County's authority to sell any "real or personal property" to the highest bidder provided that public notice is advertised regarding the sale of land, Section 125.045 authorized County to sell this piece of land as an economic development project rendering section 125.035 inapplicable. While statutes must be examined as a whole, the court explained that Chapter 125 of the Statute described a variety of ways for a county to sell its property, Section 125.045 however, is an exception to Section 125.035 allowing land to be sold at below market value in favor of economic development. On balance, the decision relied on Florida Supreme Court precedent to explain the responsibility of the court to read a statute's contents in a manner which achieves consistency and reconciliation with the disagreement between conflicting sections.
Villamizar v. Luna Capital Partners, LLC, 260 So. 3d 355 (Fla. Dist. Ct. App. 2018)	
Issue:	(1) Whether a purchaser's knowledge of a lawsuit against the seller, created a legal duty to assure or inquire that the seller's creditors were paid. (2) Whether debtor presented sufficient evidence to demonstrate a genuine issue

	as to whether a purchaser's acquisition of condominiums was for a reasonably equivalent value.
Facts:	Plaintiff Nieto Villamizar ("Nieto") sued Luna Developments Group (the "Group") to collect on a series of unsecured promissory notes in 2012. In 2015, the Group sold 145 of its condominiums to Luna Capital Partners LLC ("Luna") while their lawsuit against Nieto was still pending. The court dismissed the case against the Group; however, Nieto successfully appealed the decision in 2016, which concluded with a judgement against the Group in January of 2017 ordering them to pay Neito $1.2 million. Four months later, Nieto sued Luna arguing that Luna and the Group engaged in a "fraudulent process for the purpose of avoiding obligations" during the purchase of the Group's condominiums. Luna moved for summary judgment asserting the affirmative defense that the condominiums were purchased in "good faith and for a reasonably equivalent value". The trial court granted summary judgment for Luna, and Nieto appealed. On appeal, Nieto argued that Luna's knowledge of the Group's debt to Nieto triggered a legal duty to make sure those debts were paid. Challenging summary judgment, Nieto also relied on arguments explaining his failure to complete outstanding discovery, and complaints that the purchase price was 11% below the 2006 purchase price per unit, despite a yearly inflation rate of 1.64%.
Holding:	(1) The court responded to Nieto's claims against summary judgment and held that Luna's alleged knowledge of the Group's legal proceedings regarding debt did not create a duty for Luna to assure that unsecured creditors were paid. Nieto's suit involved unsecured claims not asserted against the condominium units, which pre-judgment had no relation to the condominium units in 2015. Luna presented evidence that all liens against the condominiums themselves were paid, and further concluded that a purchaser's knowledge of the seller's debts to others does not in itself signal fraud. Finally, no evidence was presented to suggest that the Group and Luna were related parties. (2) Nieto's "unsubstantiated guesstimates" of value did not overcome Luna's presentation of documentation it used to demonstrate that Luna's purchase price was of reasonably equivalent value, where Luna demonstrated that the sale of condominium units resulted from a combination of Luna's evaluation of the property's income and resale value; business evaluation of the market from real estate companies; and arm's length negotiations. The court explained that Nieto did not attempt to submit any probative evidence of actual market value for the condominiums, such as an appraisal.
Megacenter US LLC v. Goodman Doral 88th Court LLC, 44 Fla. L. Weekly 1045 (Dist. Ct. App. 2019)	
Issue:	(1) Whether Purchaser properly terminated the PSA when notice of termination did not strictly comply with notice provisions of PSA. (2) Whether the PSA automatically terminated when Purchaser failed to timely deliver an Additional Deposit.
Facts:	Megacenter ("Purchaser") entered into an agreement (the "PSA") with Goodman ("Seller") for the purchase of real property located in the City of Doral, Florida ("City"). Upon execution of the PSA, Purchaser paid a $250,000 initial deposit to escrow agent. The PSA stated if Purchaser does not deliver an additional deposit of $750,000 (the "Additional Deposit") to escrow agent before the expiration of the

	"Inspection Period", the "same shall be deemed a termination of this [PSA]". The PSA also gave Purchaser the right to terminate, at its sole discretion, by providing written notice of cancellation to Seller prior to the end of the Inspection Period. The PSA stated that "Notices" shall be in writing and shall be deemed to have been given if delivered (i) by registered or certified mail, return receipt requested, postage prepaid, (ii) by hand delivery, (iii) by recognized overnight courier (such as Federal Express), or (iv) by facsimile with confirmed receipt, and addressed to Goodman's physical address with a copy to its counsel. An email shall also be sent to all parties simultaneously with the sending of such notice via the delivery methods described above. The initial Inspection Period expired at 5pm on March 13, 2017. The parties executed a First Modification to extend the Inspection Period to March 17, 2017 at 5pm, "to permit Purchaser the opportunity to obtain" a zoning letter from the City. The First Modification also included a statement that except as modified, the provisions of the PSA are ratified, confirmed, remain in full force and effect, and are enforceable. On March 17, 2017, at 4.23pm, Purchaser emailed Seller's counsel stating Purchaser did not receive the zoning letter from the City and that if it did not receive a signed modification to the PSA (attached to Purchaser's email) by 5pm that day, then Purchaser would terminate the PSA with the firm intention to reinstate the PSA once it receives the zoning letter. At 5pm Purchaser emailed Seller a formal notice of termination. At 5:07pm, Seller's counsel responded to Purchaser acknowledging receipt of notice of termination and indicating he would discuss with Seller. Purchaser did not make the Additional Deposit. Later that day, Seller requested a copy of the request of the zoning letter from Purchaser and stated it would be happy to extend the Inspection Period. On March 20, 2017, the City approved Purchaser's zoning application. Purchaser demanded the return of its $250,000 initial deposit. Seller refused to return it. Both parties sued for breach of contract. The trial court found for Seller, holding that Purchaser did not deliver timely written notice, and therefore had waived its right of termination. Purchaser appealed.
Holding:	(1) Under Florida law, sufficiency of legal notice is measured by the substantial compliance standard, and strict compliance is not required if one of the parties had actual notice. Seller and its counsel timely received Purchaser's email notice. Notice parties serve the purpose of preventing one party from claiming it never received notice while the other party alleges it gave notice. Seller accepted Purchaser's written notice and had actual notice of Purchaser's termination. Purchaser's substantial compliance with the notice provision of the PSA properly terminated the PSA. Purchaser was entitled to the return of its Initial Deposit. (2) The First Modification's amendment of the defined term "Inspection Period" extended the date by which Purchaser was required to make the Additional Deposit, since it was to be made prior to the Inspection Period. Purchaser did not timely deliver the Additional Deposit, therefore automatically terminating the PSA.
Morris v. MGZ Props., LLC, 251 So. 3d 929 (Fla. Dist. Ct. App. 2018)	
Issue:	Whether the phrase "sale of the property" is ambiguous and includes a foreclosure sale.
Facts:	After a commercial building was sold at a foreclosure sale, plaintiff owner of the company sued the company and its three other owners, demanding payment under provision of contract between the parties' stating that the plaintiff owner would be paid upon the "sale of the property."

	Company and defendant owners argued that the phrase "sale of the property" was ambiguous and did not include a foreclosure sale. The Circuit Court ruled in favor of company and defendant owners. Plaintiff owner appealed.
Holding:	The phrase "sale of the property" was unambiguous, and included a foreclosure sale. The terms of the contract were clear and unambiguous, and were not susceptible to multiple meanings. There was no extrinsic fact or extraneous circumstance that changed the parties' understanding of the contract. The Court therefore looked to the plain and ordinary meaning of the words, and applied them as written. Black's Law Dictionary defines "sale" as "[t]he transfer of property or title for a price", and "foreclosure sale" defines the term within the definition of "sale" as "[t]he sale of mortgaged property, authorized by a court decree or a power-of-sale clause, to satisfy a debt." Thus, "sale" includes any transfer of title, including foreclosure sales. The "sale of the property" provision was triggered when the property was sold, and if the appellees intended otherwise, they should have written the contract accordingly before signing it (for example, "sale of the property, unless it is a foreclosure sale" or "voluntary sale of the property"). Reversed and remanded, judgment entered in favor of appellant/plaintiff owner.
GEORGIA	
Homelife on Glynco LLC v. Gateway Ctr. Com. Ass'n Inc., 348 Ga. App. 97 (2018)	
Issue:	(1) Whether properties are subject to the easements, restrictions, covenants, and conditions set forth in a declaration when the warranty deeds do not specifically state that those properties are being annexed; (2) Whether the previous property owners' consent to the annexation of the properties into the association was required to be in writing; (3) Whether two properties that consist in part of wetlands are undevelopable, and therefore not subject to assessment; (4) Whether the association's board of directors was improperly appointed without a quorum, and thus incapable of issuing valid assessments; (5) Whether the association may bring a claim of unjust enrichment when there is a declaration of covenants, conditions, and restrictions.
Facts:	In 1995, Gateway Center Commercial Association, Inc. (the "Association") was formed to oversee a collection of commercial properties in a planned business district. The Association created a Declaration of Covenants, Conditions, and Restrictions (the "Declaration"), which called for the collection of quarterly dues. Exhibit B of the declaration described the property subject to annexation. The Declaration also stated that "Declarant may unilaterally subject to the provisions of this Declaration all or any portion of the real property… by filing a Supplemental Declaration describing the property to be annexed in the Official Records." U. C. Realty Corp. served as the initial Declarant from 1995 to 2003. In 1996, it conveyed one lot to Fairhaven Assisted Living Center, L.P. ("Fairhaven"), as well as two other lots to Fairhaven Eldercare, L.LC. The two lots were ultimately conveyed to Fairhaven as well. All deeds stated that "[t]his conveyance is subject to that

	Declaration of Covenants, Conditions and Restrictions of Gateway Center Commercial Properties." In 2003, U. C. Realty Corp. assigned its status as Declarant to HRB, LLC. Fairhaven paid its quarterly dues for over 15 years. In 2013, Fairhaven conveyed the lots to Homelife on Glynco, LLC as well as Homelife Companies, Inc. ("Homelife") through deeds that stated "[t]his conveyance and the warranties herein contained are expressly made subject to those liens, encumbrances, restrictions and other matters set forth on Exhibit 'B.'" Following the transaction, Homelife refused to pay any and all quarterly assessments. The Association sued Homelife for breach of contract and unjust enrichment. Homelife counterclaimed for breach of contract, alleging that the Association failed to maintain the common area, failed to provide proper notice of meeting, took corporate action without proper authority, and improperly calculated the assessments. Homelife moved for summary judgement, and the Association filed a cross-motion for partial summary judgement. The trial court ruled that all of Homelife's lots were subject to the Declaration, and determine that summary judgement was inappropriate for all other issues.
Holding:	The Court of Appeals of Georgia affirmed in part and reversed in part. It agreed that all of Homelife's properties are subject to the terms of the Declaration. The Court focused on the "subject to" clause in the initial deed in which U. C. Realty Corp. conveyed the lots to Fairhaven. This clause made clear that Fairhaven's interests in the properties were subject to the Declaration. Thus, Homelife's interests were also subject to the Declaration, because Fairhaven could not convey a title to Homelife that was greater than the title it itself owned. The Court of Appeals held that Fairhaven's consent to the annexation did not need to be in writing. OCGA § 44-5-60(d)(4) requires covenants to be in writing, but the Code section does not apply to preexisting covenants. The Court ruled that issues of fact remained pertaining to the usability of the lots and the Association's Board's compliance with the Bylaws. Regarding the lots' capacity to be developed, the Association conceded that the lots consisted largely of wetlands. However, it maintained that the lots included some usable land, and the assessments were based solely on that portion of land. For the Board's compliance, key information was still needed about the appointment of directors, the Board's election, the nominating process, and notice given for meetings. Lastly, the Court of Appeals held that the Association may not bring a claim for unjust enrichment. The doctrine of unjust enrichment only applies in the absence of written contracts, and the Declaration here qualifies as a written contract.
McNeill v. SD&D Greenbuilt, LLC, 825 S.E.2d 521 (Ga. Ct. App. 2019)	
Issue:	Whether the "duty to read" is a valid defense to a malpractice claim where the plaintiff alleges that the attorney misrepresented negotiated extensions and contract termination dates post execution of a purchase and sale agreement.
Facts:	In 2016, Greenbuilt, a real estate developer specializing in developing residential real estate, retained McNeill and his law firm Coleman Talley, LLP ("Talley"), to advise and assist with the purchase of several parcels of commercial real estate. Greenbuilt deposited $150,000 of earnest money into Talley's trust account in February 2016, and the Purchase and Sale Agreement was executed at the end of March 2016.

	• Paragraph 8 (A) of the Agreement allowed Buyer/Greenbuilt the right to terminate the Agreement at its sole discretion, by giving written notice to Seller on or before 5pm of the Due Diligence Date (May 11, 2016). If Buyer does not terminate the Agreement on or before May 11, 2016, the Buyer shall have no further right to terminate the Agreement pursuant to Paragraph 8A. • Paragraph 8 (C) of the Agreement *Environmental Testing* provided that if Additional Testing is required or recommended, Buyer shall have until May 26, 2016 to obtain the results of the Additional Testing provided that Buyer notifies Seller of the need for the Additional Testing before 5pm on May 11, 2016, in which event Buyer may extend the date of Closing. If the results of the Additional Testing indicate that the Property is impacted with Hazardous Materials…then Buyer may terminate this Agreement by written notice to Seller on or before May 26, 2016 and receive a return of the Earnest Money. In a communication between McNeill and Greenbuilt on April 19, 2016, McNeill stated that he was waiting on confirmation of the phase two environmental assessment approval from Seller, extension of the closing date, and the right to terminate. Seller provided written approval to McNeill on April 22, 2016. Environmental testing was conducted, which revealed large amounts of chlorine in the ground, but Greenbuilt did not attempt to terminate the contract for that reason. On May 9, 2016, McNeill emailed Greenbuilt, noting May 26, 2016, as an important date upon which the extended due diligence terminated. On May 25, 2016, McNeill sent a note to Greenbuilt stating "To be as clear as possible, if you don't terminate the contract by tomorrow, that money goes "hard", meaning it is fully earned by the seller. If you fail to close by _____, for any reason after tomorrow COB, whether it's a choice or inability to raise funds, it will be considered a breach of contract….If you…are growing concerned about the ability to raise the money, or if there is any other reason you might choose to terminate, please fill me in." Greenbuilt claims this constituted a misrepresentation by McNeill that the contract could still be terminated as late as May 26, 2016, due to choice or financing issues, reasons other than the environmental testing. Financing for the project was not secured. On May 26, 2016, Greenbuilt sent a letter to Seller to terminate the Agreement and to seek a refund of the earnest money. Seller's attorney replied that the due diligence date with right to terminate *for any reason* was NOT extended to May 26, as Greenbuilt incorrectly thought, and the earnest money therefore would not be refunded. Greenbuilt sued Talley for professional negligence, asserting that Talley led it to believe that the due diligence termination date was May 26, 2016, when in fact, that date only applied if there was a need for additional environmental testing. Talley filed a motion for summary judgment, arguing the "duty to read" defense. The trial court denied Talley's motion for summary judgment. Talley appealed.
Holding:	The court in *Berman* explained "duty to read" as "when the document's meaning is plain, obvious, and requires no legal explanation, and the client is well educated, laboring under no disability, and has had the opportunity to read what he signed, no action for professional malpractice based on counsel's alleged misrepresentation of the document will lie". The Court held that *Berman* is inapplicable because the alleged negligence in this case did not turn on negligent draftsmanship or reading of deadlines set forth in the

	contract, but McNeill's affirmative misrepresentations as to the legal effect of the extension of those dates which Talley negotiated after the contract was signed, that Greenbuilt did not have a chance to review. Communications on April 19, May 9, and May 25 from McNeill could have led Greenbuilt to the conclusion that the termination was still in play, and that the contract could be terminated for reasons other than the environmental testing as late as May 26, 2016. Since reasonable minds could disagree as to whether Greenbuilt was entitled to rely on its communications with McNeill after the signing of the contract, as opposed to the language contained therein, there were genuine issues of fact that precluded the entry of summary judgment. Summary judgment denied; judgment affirmed.
IDAHO	
Mulberry v. Burns Concrete, Inc., 164 Idaho 729, 435 P.3d 509 (Feb. 21, 2019)	
Issue:	(1) Did the district court properly determine the right of first refusal ("ROFR") is personal to the parties and nonassignable? (2) Did the district court properly determine the ROFR was "extinguished" after the assignment from Canyon Cove to Burns Concrete? (3) Whether the district court properly awarded Mulberry attorney fees and whether either party is entitled to attorney fees on appeal.
Facts:	On January 26, 1999, the Mulberrys sold land to Canyon Cove under a Commercial Investment Real Estate Purchase and Sale Agreement (PSA). At closing on March 18, 1999, the parties executed an addendum to the PSA which clarified the PSA's terms. A right of first refusal ("ROFR") for a second parcel of land owned by the Mulberrys, separate from that parcel sold to Canyon Cove, was executed at the same time. The ROFR provided: 1. For adequate consideration, Sellers hereby grant to the Buyer a right of first refusal to acquire the Sellers' undivided interest in and to the real property hereafter described on the same terms, conditions, and provisions as the Sellers might intend to sell and convey said interest to any third person hereafter. 2. Should the Sellers hereafter intend to sell in good faith and convey said premises they will first offer the same to the Buyer by a written notice containing all of the terms, conditions, and provisions by which they intend to sell in good faith the same to said third person. Buyer shall then have five (5) days from the date such notice is received to accept or refuse said offer. Approximately two weeks after closing, on March 30, 1999, Canyon Cove assigned the Purchased Property and its interest in the ROFR to Burns Concrete. In 2005, the Mulberrys conveyed the ROFR Property to TN Properties. Nora Mulberry is now the sole owner of TN Properties as Theodore Mulberry passed away sometime after the transfer. In June 2016, Mulberry filed a verified complaint seeking declaratory judgment and later filed a motion for partial summary judgment on August 22, 2016. Mulberry sought a declaratory judgment that the ROFR was "personal to the parties" and not *731 **511 binding on Theodore and Nora Mulberry's "heirs, successors, devisees, or assigns, nor can it benefit Burns Concrete." On November 10, 2016, the district court entered a memorandum decision and order declaring the ROFR personal to the Mulberrys and Canyon Cove and finding that the ROFR was extinguished when Canyon Cove assigned it to Burns Concrete. The Memorandum Decision and Order

	also declared that the ROFR was not binding on the Mulberrys' heirs, successors, devisees, or assigns. On December 30, 2016, Burns Concrete and Canyon Cove filed a motion for reconsideration. On March 20, 2017, the district court denied the motion. The district court stated that Canyon Cove's rights under the ROFR were extinguished because the ROFR was personal in nature, and because the ROFR was a servitude appurtenant to the Purchased Property and Canyon Cove no longer had an interest in the Purchased Property after conveying it to Burns Concrete. On April 27, 2017, the district court dismissed the rest of Mulberry's claims as moot. In July 2017, the district court awarded Mulberry $ 11,447.50 in attorney fees and costs. Burns Concrete and Canyon Cove timely appealed.
Holding:	(1) The court concluded that the ROFR is personal to the parties and the district court erred by ruling that the ROFR was extinguished after Canyon Cove purported to assign it to Burns Concrete. (2) The court remanded for a determination of the other issues raised in the complaint that were previously dismissed as moot. (3) The district court's award of attorney fees and costs to Mulberry was vacated.
ILLINOIS	
Woodfield Grove, LLC v. Schaumburg Building Associates, 2019 IL App (1st) 180565-U, 2019 WL 1368556	
Issue:	(1) Whether Seller breached the Purchase and Sale Agreement as it relates to the construction and repaving of parking lots on the property; (2) Whether Seller's delay in enforcing the Agreement's jury waiver provision constitutes a forfeiture of Seller's ability to strike Buyer's demand for a jury trial; (3) Whether the jury waiver provision can be enforced in claims against third-party defendants who were not parties to the contract.
Facts:	On October 8, 2014, Woodfield Grove, LLC ("Buyer") and Schaumburg Building Associates ("Seller") entered into a Purchase and Sale Agreement ("Agreement") for the purchase of an office complex and adjacent parking lots. The Agreement provided that Seller had constructed and repaved all parking lots in accordance with the Agreement. In relevant part, the specifications provided that any unsuitable subbase material would be removed and replaced "if required by [Seller's] engineer." The Agreement also contained a jury waiver provision. On September 5, 2015, Buyer filed a complaint against Seller, Vengar Construction Corporation ("Vengar"), and Accu-Paving Company ("Accu-Paving"). Buyer alleged breach of contract against Seller, claiming that Seller failed to meet the Agreement's specifications in the construction of the parking lots when the subbase was not replaced. Both Buyer and Seller filed jury demands with the court. On January 4, 2018, Seller moved to enforce the jury waiver provision under the Agreement and to proceed to a bench trial. Buyer argued that Seller forfeited its right to enforce the jury waiver provision due to Seller's own jury demand, its failure to object to Buyer's initial jury demand for over two years, and Seller's submission of proposed jury instructions and motions *in limine*.

	The circuit court granted Seller's motion for a bench trial and held that Buyer failed to establish that Seller breached the Agreement.
Holding:	The appellate court affirmed the circuit court's holding that there was no breach of contract, as the terms of the Agreement were unambiguous and only required Seller to construct a new parking lot in the manner required by an engineer. In affirming the lower court's decision, the appellate court relied on expert testimony presented at trial where Seller's expert opined that the parking lots' subbase did not have to be removed. The appellate court further concluded that Seller did not forfeit the jury trial waiver because the parties freely contracted to waive the right to have a jury settle any dispute under the Agreement. Thus, Buyer's initial jury demand and any reliance upon Seller's acquiescence to the "unfounded demand for a jury trial" was unreasonable. The appellate court relies on case law that suggests that jury waivers are to be viewed favorably. The appellate court also concluded that the jury waiver was enforceable in the claims against Vengar and Accu-Paving, although they were not parties to the Agreement. The court relies on broad provisions in the Agreement mandating a jury trial waiver in the event of *any* litigation arising out of the Agreement or any course of conduct relating *in any manner* with the Agreement.
Chung v. Pham, 2018 Il. App. (3d) 170487-U (Ct. App. Ill. 3d Dist. Nov. 30, 2018)	
Issue:	Whether specific performance of a contract for sale of commercial property was appropriate where the seller claims he was unaware that he signed a contract of sale.
Facts:	Defendant (Pham) owned commercial property in which he operated a nail salon. Plaintiff (Chung) began working at the salon in 2006 as an independent contractor, but took over the business in 2009 when the business license was transferred to her and a business bank account was opened in her name. In 2010, Chung began paying the mortgage, insurance, and utilities; she also paid the real estate taxes from 2009-2015. In 2014, Pham told Chung he would sell her the building. Around this time, the bank informed Chung that it would be a good time to purchase the building because the bank was going to foreclose on Pham's loan or the loan was going to terminate. In November and December of 2014, Chung stopped paying the mortgage based on instructions from the bank. Chung told Pham the bank was going to foreclose on the mortgage and to sign documents she faxed to him. Chung faxed a purchase agreement, Pham signed it and faxed back to Chung. Pham claims he signed the purchase agreement without reviewing it and thought it was a document to stop the foreclosure. Pham did not attend the closing and refused to transfer the property to Chung. At the time, Chung had limited real estate experience (renting herself an apartment, buying a home with her husband from his brother, and loaning Pham money to buy a home), while Pham had purchased, improved or developed, and sold three properties since 2000. Chung brought suit for specific performance. Pham raised affirmative defenses, including fraudulent misrepresentation and duress. The trial court found that specific performance was appropriate and granted the partial summary judgement in favor of Chung.
Holding:	A plaintiff is entitled to specific performance when he establishes (1) the existence of a valid, binding and enforceable contract; (2) he has performed with his

	obligations under the contract or is ready, willing and able to perform; and (3) the defendant has failed or refused to perform his duties under the contract. The court found that Chung established these three elements, therefore the remedy of specific enforcement was appropriate and the trial court did not err in granting such remedy. Pham's claim that he did not understand what he was signing constitutes a unilateral mistake, which is not a defense to a claim of breach of contract. Additionally, since Pham was experienced in purchase and sale of commercial real estate, it was unreasonable for him to rely on statements made by Chung regarding the mortgage and foreclosure, he had the opportunity to review the purchase agreement, he has almost two decades of experience in the purchase, development/improvement and sale of commercial real estate, and it was incumbent on him to keep watch over his own mortgage status, therefore claims of fraudulent misrepresentation, duress, and unclean hands did not negate the purchase agreement.
WLM Retail Tr. v. Tramlaw Remainderman Ltd. P'ship, 99 N.E.3d 116 (Ill. Ct. App. 1st Dist. 2018)	
Issue:	(1) Whether a party that has an option to purchase property upon the expiration of the lease at such property must exercise that option upon the expiration of the initial term of such lease. (2) Whether a purchase option terminated.
Facts:	In 1991, United States Fidelity and Guarantee Group (USF & G) owned a piece of commercial property which it leased to Wal-Mart. The initial term of the lease expired on January 31, 2009. Wal-Mart had the option to extend the lease for 5 successive individual extended terms of 5 years each. USF & G sold the property to Public Service Resources Corporation (PSRC), who was represented by Cornerstone Financial Advisers LP (Cornerstone) as a financial adviser. PSRC created and was the beneficiary of WLM Retail Trust (WLM), a Delaware statutory trust, which purchased the estate for years in the property which would expire at the end of the original lease (January 31, 2009). Several individuals from Cornerstone formed Tramlaw Remainderman Limited Partnership (Tramlaw) to purchase the remainder interest in the property which would commence after the estate of years expired. Pursuant to the contract for sale, WLM and Tramlaw entered into an "Option and Estate for Years Agreement" (the Agreement), which provided WLM with two options. The first, a "Ground Lease Option," granted WLM the ability to lease the property at the conclusion of the estate for years for a term of 5 years, with the possibility to thereafter renew the lease for up to 9 additional 5-year terms. The second, "Purchase Option," granted WLM the option to purchase the property, either before or after the expiration of the estate for years, upon the occurrence of a number of specified events. One of these triggering events was "The Wal-Mart Lease shall expire or terminate for any reason, whether by default or otherwise, and whether or not prior to the expiration of the stated term thereof." The Agreement further stipulated that if WLM sought to purchase the property due to the expiration or termination of the Wal-Mart Lease, then (1) the fair market value of the property had to be determined within 360 days of the date the Wal-Mart Lease ended, (2) WLM would have up to 30 days thereafter to decide whether or not to purchase the property, and (3) WLM and Tramlaw would have up to 90 days thereafter to complete the sale of the property to WLM. This whole process created a window of 480 days to complete the purchase. WLM exercised its first ground lease option, and Wal-Mart exercised its first lease

	option so that the two leases would exist from February 1, 2009 to January 31, 2014. WLM exercised its second ground lease option to extend the lease through January 31, 2019, but Wal-Mart did not elect to extend. Wal-Mart's lease expired on January 31, 2014. On June 16, 2014, WLM notified Tramlaw that since the Wal-Mart lease expired, they would be initiating appraisal proceedings so they could exercise their purchase option. Tramlaw responded that WLM had not timely exercised their purchase option, citing a termination clause in the agreement which states "The Options contained in this Agreement shall terminate and be of no further force or effect upon […] the expiration of the Estate of Years." WLM filed suit seeking a declaratory judgement that they had timely initiated the purchase option proceedings. WLM was granted summary judgement in their favor and Tramlaw appealed.
Holding:	The Agreement contained a choice of law provision for Oklahoma law. Under Oklahoma contract interpretation law, the plain language of a contract is to govern its interpretation. Based on the plain language of the lease and the contract, it would be improper to construe the term "Wal-Mart Lease" to only include the original lease which expired in 2009, and not include the extensions thereof. By initiating appraisal proceedings less than six months after Wal-Mart let their lease expire, WLM was timely in exercising its purchase option. Under Oklahoma law, the whole of a contract is to be taken together, so as to give effect to every part of it, if reasonably practicable, each clause helping to interpret the others. The general intent and purpose of the Agreement as a whole reflects that the limitation imposed by the termination clause must have been a mistake, an accident, or clause so repugnant to and subordinate to the general intent and purpose of the Agreement that it must be rejected and disregarded. Therefore, the termination clause will not apply to preclude WLM from exercising its purchase option upon the expiration of the extension of Wal-Mart's lease.
Jameson Real Estate, LLC v. Ahmed, 2018 IL App. (1st) 171534 (Ill. Ct. App. 1st Div. Sept. 28, 2018)	
Issue:	Whether plaintiff brokerage firm was entitled to reasonable compensation for services rendered to defendant client regarding defendant's purchase of commercial real property.
Facts:	Plaintiff real estate brokerage company employs Art Collazo as a broker. Collazo discovered an off-market commercial property for sale which contained a car wash. Art initially intended to purchase this property himself, and then brought in defendant Ahmed to purchase with him. After analyzing the finances, the two determined it would be unprofitable to purchase the car wash without also purchasing the real estate itself. Before Collazo disclosed the opportunity to Ahmed, he required Ahmed to sign a confidentiality agreement. Ahmed would have never learned of the purchase opportunity if not for Collazo. Eventually Collazo no longer wanted to be a purchaser of the business or property, but continued in the negotiations on Ahmed's behalf. Collazo sent a brokerage agreement to Ahmed which provided for a 5% commission of the purchase price to be paid to Jameson Real Estate. Ahmed said he would "take care of it," but never actually signed the agreement. The car wash declared bankruptcy and the landowner took possession of the assets of the business. Ahmed then purchased the business and the land for the price of $2.3 million. At this point though, Ahmed had stopped involving Collazo. Collazo only found out about the sale when he approached the seller with a new potential buyer and was told the property was under contract. The seller paid itself a $50,000 brokerage fee, but Ahmed never paid any brokerage

	fee to Jameson for Collazo's work in facilitating the deal. Plaintiff brought a *quantum meruit* action against defendant for $115,000, or 5% of the purchase price, for the services that Collazo rendered to Ahmed in finding and facilitating this deal. The trial court awarded plaintiff $50,000 as reasonable compensation for the services rendered in facilitating the purchase.
Holding:	To recover under a *quantum meruit* theory, a plaintiff must prove that (1) it performed a service to the benefit of the defendant, (2) it did not perform the service gratuitously, (3) the defendant accepted this service, and (4) no written contract existed to prescribe payment for this service. To recover, the service performed by the plaintiff must be of some measurable benefit to the defendant. In a *quantum meruit* action, the measure of recovery is the reasonable value of work and material provided. A broker who is the procuring cause of a sale is entitled to a commission under the theory of *quantum meruit* where a party receives a benefit which is unjust for him to retain without paying for it. When a broker provides real estate brokerage services to a purchaser, the broker should not be deprived of commission merely because the purchaser completed the sale without the broker's direct involvement, when the broker introduced the parties of the sale and the purchaser would have never known about the existence of the property without the broker's efforts. A trial court may determine that a broker is the procuring cause of a transaction based on the broker's role in negotiations or in disseminating information which leads to the consummated transaction. In a *quantum meruit* claim, the amount awarded to a plaintiff is purely a factual issue. Recovery is limited to the reasonable amount by which the trial court finds the defendant was unjustly enriched at the expense of the plaintiff. In cases concerning the failure to pay the commission of a real estate broker, damages may be calculated based on a percentage of the sale. The court found that plaintiff properly proved its *quantum meruit* claim because Ahmed only had the opportunity to purchase the land and business because Collazo brought the parties together and participated in the negotiations, making Collazo (acting as an agent of Jameson) the procuring cause of the transaction. Therefore, Jameson is entitled to reasonable commission.
INDIANA	
GO Properties, LLC v. BER Enterprises, LLC, 112 N.E.3d 200 (2018)	
Issue:	(1) Whether a subsidiary member of a limited liability company (LLC) had actual or apparent authority to act on the LLC's behalf in selling real estate owned by the LLC.
Facts:	GO Properties, LLC ("GO Properties") owned four parcels of real estate in Indianapolis ("Properties"). GO Properties was formed with two members: Olicorp Properties, LLC ("Olicorp") and Gracie Properties, LLC ("Gracie"). Olicorp was designated as the Member Manager of GO Properties with sole authority to sign agreements on its behalf. Olicorp's sole member was Larry Oliver. Gracie's sole member was Stacy Phillips. Neither Oliver nor Phillips was authorized in an individual capacity to do any business on behalf of GO Properties. On August 1, 2013, without any authority from GO Properties, Phillips filed a Notice of Change of Registered Agent with the Indiana Secretary of State, changing the Registered Agent from Olicorp to Gracie. Phillips also changed GO Properties' principal address to her home address and hand wrote her title as "Owner" on both

	documents. Shortly thereafter, Phillips unilaterally began the process of selling the Properties and hired Best Title Services ("Best Title") to perform the title examination. Best Title relied on Phillips's representations that she was the owner of GO Properties and later acted as the closing agent for the transaction. On August 13, 2013, Phillips conveyed the Properties to Elden Investments by way of warranty deed. Elden Investments later sold the Properties and all defendants in this matter derived their title claims from later deeds stemming from the initial sale. On April 16, 2015, GO Properties filed an action against defendants seeking quiet title to the Properties. Ruling on a Motion for Summary Judgment, the trial court granted quiet title to BER Enterprises, LLC ("BER") and New Field, LLC ("New Field"), purchasers of two of the Properties from Elden Investments. The trial court reasoned that when a deed is procured by fraud, the grantee may still transfer good title to bona fide purchasers for value. As such, because Phillips committed fraud in misrepresenting her authority to make the sale on behalf of GO Properties, Elden Investments still transferred good title to BER and New Field. The trial court further reasoned that voiding the deeds would undermine the interests of stability and predictability in property law.
Holding:	The appellate court reversed the trial court's judgment, holding that the deed that Phillips executed on behalf of GO Properties was void and that all future conveyances of the Properties were also void. The appellate court concluded that Phillips did not have actual or apparent authority to act on GO Properties' behalf. The court found that there was neither direct nor indirect communication from GO Properties' Principal that could have instilled a reasonable belief in Best Title that Phillips was authorized to sell the Properties. First, the appellate court relies heavily on the fact that GO Properties' Operating Agreement listed Olicorp as the sole Member Manager. Second, the court concludes that documents changing the location of GO Properties' business address and the business's registered agent failed to create an apparent agency relationship. Furthermore, the appellate court cautions that to properly insure title from an LLC, it is necessary to obtain a copy of the LLC's operating agreement, including any and all amendments thereto, and a certificate that the operating agreement is in effect at the time of the sale.
Cheng Song v. Iatarola, 120 N.E.3d 1110 (Ind. Ct. App. 2019)	
Issue:	(1) Whether the trial court erred when it denied plaintiff purchaser's request for attorneys' fees after it prevailed in action brought against vendors who falsely advertised that parcel was zoned for industrial use.
Facts:	In 1998, Thomas and Theresa Iatarola ("Defendants") purchased 34 acres of land that was zoned for agricultural use. In September 2010, Defendants hired a real estate agent to assist them in selling ten acres of their land. The initial listing and advertisement indicated the parcel was zoned for industrial use, rather than agricultural use. Defendants identified the error in July 2011 and informed the agent. The agent changed the listing but neither he nor Defendants informed the potential buyer, Cheng Song ("Plaintiff"). In December 2010, Plaintiff signed a purchase agreement entitled "Purchase Agreement Commercial-Industrial Real Estate." In March 2011, a second purchase

	agreement was signed due to concerns of expansion by the nearby airport. After the signing of the second purchase agreement, Plaintiff deposited $150,000 of earnest money into an account. On August 7, 2011 during a final property inspection, Defendants informed Plaintiff that the land was zoned for agricultural use, not industrial use. On August 12, 2011, Plaintiff's attorney informed the real estate agent that unless the zoning was changed to I-2 Industrial zone, Plaintiff would not move forward with the purchase. The Defendants refused to have the land rezoned as industrial. Plaintiff chose to terminate the contract within the 180 days allotted for due diligence. In addition, Plaintiff requested the return of his $150,000 earnest money deposit. The Defendants refused to return the deposit. A jury trial commenced and Plaintiff was awarded $150,000. However, when Plaintiff filed a motion for an award of attorneys' fees, prejudgment interest and postjudgment interest, the trial court denied the motions. The trial court dismissed Plaintiff's motion and held that since Plaintiff did not request attorneys' fees before the verdict, the jury could not grant him the attorneys' fees. Plaintiff appealed. The appellate court held that the trial court erred when it denied Plaintiff's motion for prejudgment interest and declined his motion for attorneys' fees. The case was remanded and on remand the Defendants restated that Plaintiff would not be able to collect attorneys' fees because he repudiated the purchase agreement. The trial court awarded prejudgment interest to Plaintiff but not attorneys' fees. Plaintiff appealed the case again which led to the instant action.
Holding:	The appellate court held that the trial court erred when it denied Plaintiff's request for attorneys' fees. The appellate court held that Plaintiff was entitled to attorneys' fees because he did not repudiate the contract and instead "exercised his right to terminate the agreement under the due diligence provision." The court distinguished between termination based on information obtained during diligence and repudiation which involves breaching or threatening to breach a contract absent legal justification. The court also held that Plaintiff was not required to submit a request of attorneys' fees before the jury. Since the jury had served its duty as fact finder, it was the trial court's role to determine attorneys' fees. The court held that any request made prior to the jury's verdict would have been inappropriate.

IOWA	
Kunde v. Estate of Bowman, 920 N.W.2d 803 (Iowa 2018)	
Issue:	(1) Whether tenant may bring claims for unjust enrichment or quantum meruit based on the cost of improvements made to a property, where tenant entered into an express contract with owner that otherwise allocated the costs of improvements; (2) Whether tenant may bring a claim of promissory estoppel where tenant made improvements to the property based on an alleged promise by owner that tenant could purchase the property at his option; (3) Whether promissory estoppel requires a "clear and definite *agreement*" or may be raised where tenant presents evidence of a "clear and definite *promise*" that owner would understand would cause tenant's reliance.
Facts:	In 2007, Arthur Bowman ("Owner") offered to rent his farm to Ronald Kunde

	("Tenant"). Tenant inquired as to whether Owner would sell the farm, instead. Following price negotiations, Owner told Tenant he could first rent the farm and then purchase it at his option. Owner and Tenant subsequently entered into several written leases, each with similar terms (in 2008, 2009, 2012 and 2013). In the 2008 lease, Tenant requested an addendum which stated that improvements to the farm would be "permissive and at [Tenant's] expense." Tenant claimed he spent at least $52,000 on improvements to the farm in the following years, based on Owner's repeated statements that Tenant could "do whatever [improvements] he wanted since the farm would be his." In 2010, Tenant attempted to exercise his purchase option, but Owner's daughter told Tenant she had discovered a right of first refusal and blocked the purchase. In 2013, Owner entered a nursing home, and Owner's daughter served Tenant with a notice of termination of the farm tenancy, then sold the farm at public auction. Tenant brought an action against Owner's Estate, claiming Owner breached an option contract by failing to sell Tenant the farm, and alternatively Tenant alleged unjust enrichment, quantum meruit, and promissory estoppel.
Holding:	The court first affirmed the district court's grant of summary judgment to Owner on Tenant's claims of unjust enrichment and quantum meruit. The court reasoned that those doctrines are based on the concept of an implied contract, and in the instant matter, the parties had entered into an express, written agreement that considered cost-allocation for improvements to the property. On the question of whether Tenant could bring a claim for promissory estoppel, the court concluded that an option to purchase may exist separately and distinctly from a property lease, and that here, the farm leases did not contain an integration clause limiting the parties' relationship. The court found that Tenant should be able to bring a claim to recover costs for improvements made in reliance on an alleged promise to purchase the farm at his option. Thus, the court reversed the district court on granting Owner's motion for summary judgment on the promissory estoppel claim. The court concluded that a claim for promissory estoppel may be based on a "clear and definite *promise*" rather than a "clear and definite *agreement*" provided the other elements are satisfied. The court based this adjustment on the use of "promise" rather than "agreement" in the Restatement (Second) of Contracts, section 90, as well as Iowa case law that "emphasizes the reliance element in promissory estoppel over the narrower function of merely filling the void of lack of consideration."

MASSACHUSETTS	
Buffalo-Water 1, LLC v. Fid. Real Estate Co., 111 N.E.3d 266 (Mass. 2018)	
Issue:	Whether a court can invalidate an appraisal intended by the parties to provide a final, binding valuation of a property where there is the appearance of bias.
Facts:	Fidelity Real Estate Company, LLC ("Fidelity") sold a commercial property to Buffalo-Water 1, LLC ("Buffalo") who, in turn, leased the property back to Fidelity with an option to repurchase it in the final year of the lease. The purchase price would be fair market value ("FMV") and the option agreement included a baseball arbitration clause if the parties could not agree on the FVM. Fidelity exercised the option to purchase the property. In accordance with the arbitration clause, because the parties could not agree as to the FMV and the parties' individual appraisals differed by more than five percent, the parties jointly retained a

	third appraiser to determine the appropriate purchase price. The parties retained Cushman & Wakefield ("C&W") as the third appraiser and C&W selected Robert Skinner to serve as the appraiser. The appraisal contract was signed by Skinner and included a provision that required the individual appraiser disclose services previously performed by such appraiser for either party. Skinner did not disclose any previous services. Buffalo subsequently learned that Fidelity and C&W had previously entered into a national representation contract. Once Buffalo became aware of the C&W national representation contract, Buffalo filed suit, seeking to have the appraisal invalidated. Buffalo's complaint did not allege that Skinner was aware of C&W's national representation of Fidelity.
Holding:	The Court held in part that (1) Skinner had no obligation to disclose C&W's national representation of Fidelity to Buffalo, (2) the appearance of bias created by C&W's national representation of Fidelity is not "fraud, corruption, dishonesty or bad faith" and therefore under the common law, the Court could not invalidate the appraisal, and (3) the Court would not expand the common law exceptions to invalidate appraisals to include the appearance of bias. The Court reasoned that Skinner had no obligation to disclose C&W's national representation of Fidelity to Buffalo because the contract only required Skinner to disclose any previous experience he personally had with either party. Massachusetts common law provides that when parties enter into a contract providing that the valuation shall be determined by an appraiser, courts may invalidate the appraiser's finding only if the appraisal process was tainted by "fraud, corruption, dishonesty or bad faith." The Court held that the appearance of bias related to C&W's national representation of Fidelity does not constitute (a) "fraud" because Buffalo failed to show that Skinner had concealed the relationship between C&W and Fidelity, (b) "corruption" because Skinner had no personal interest in the matter, (c) "dishonesty" because there is no allegation Skinner even knew the national representation existed, or (d) "bad faith" because Skinner did not show any evident partiality to either party. The Court further declined to include an appearance of bias as a fifth ground upon which a court may invalidate a contractual appraisal.
Sea Breeze Estates, LLC v. Jarema, 113 N.E.3d 355 (Mass. App. Ct. 2018)	
Issue:	Whether a contract was modified by the parties, and whether the defendants are entitled to attorneys' fees under a "prevailing party" provision of the contract.
Facts:	Developer Sea Breeze Estates, LLC (the "Purchaser") entered into an agreement with John Jarema and Alexander Bove, acting as trustees of the Jarema Family Trust (collectively, the "Vendors") for the sale of a property to develop a multifamily residential community on the property. According to the agreement, Purchaser would purchase the property for $3,735,000 with the intention to develop forty-four units, and if approved for anything beyond the forty-four units, it would pay the Vendors $85,000 for each additional unit. Additionally, Purchaser was required to pay $2,000 per month for a twenty-four-month approval period, which was the anticipated time needed to obtain necessary approvals for the project, and an additional $2,000 per month for any time beyond the initial period as separate consideration to keep the contract in effect. The parties agreed that payments made during the approval period would be credited toward the final purchase price, whereas extension payments would not. After Purchaser was unable to obtain the necessary permits and approvals within the approval period, Purchaser continued to make extension payments. Purchaser then

	sent a letter informing the Vendors that the property had a limited development opportunity of only thirty-three units, which at $85,000 per unit, would result in a total purchase price of $2,805,000. After back-and-forth communications, the Vendors sent a letter (the "Vendor Letter") stating that they were willing to agree to a reduction of purchase price to $2,550,000 (based on thirty units at $85,000 per unit) subject to two specified conditions: First, the purchase price would increase by $85,000 for each additional unit above thirty units; and second, the monthly extension payments would increase from $2,000 a month to $3,000 a month. Purchaser sent an e-mail in response looking to "finalize the addendum to the P&S"; however, no meeting materialized. Instead, Purchaser sent an e-mail proposing four new "options" for Vendors to review, none of which included the terms delineated in the Vendor Letter. The parties never agreed upon any option. Two months later, Purchaser stopped making monthly extension payments and then demanded the Vendors sign an amendment to the contract in accordance with the terms of the Vendor Letter. The Vendors declined, however, and advised Purchaser in writing that the contract was terminated. Purchaser brought suit, alleging, among other things, breach of contract in the Superior Court, and that the Vendors terminated the contract without justification. The Vendors filed various counterclaims alleging that Purchaser breached the contract before termination by failing to make required monthly payments. In response to the Vendors' motion for summary judgment, Purchaser argued that, before its cessation of monthly payments, the parties modified the contract and the Vendors breached it as modified. The Court disagreed and allowed, in part, the Vendors' motion for summary judgment. Under the contract, the Court granted attorneys' fees and costs to the Vendors as the "prevailing parties." Purchaser appealed.
Holding:	The Court held that there are no facts to support a written or oral modification of contract; thus, Purchaser cannot prove the Vendors breached the contract, and summary judgment was properly granted in the Vendors' favor. The Court rejected Purchaser's argument that there was a written modification, reasoning that although Purchaser's initial letter may have constituted an offer, the Vendor Letter rejected that offer by introducing two new conditions – a per unit increase in purchase price on each additional unit above thirty units, and a fifty percent increase in the monthly extension payments. Likewise, Purchaser's e-mail response to the conditions stated in the Vendor Letter never manifested assent, nor even acknowledge such conditions. Purchaser's e-mail rejected the Vendor Letter's terms by proposing four alternative options. Thus, the lower court did not err in allowing partial summary judgment as to the claims predicated on the written communications. The Court also rejected Purchaser's argument that the agreement was orally modified by the conduct of the parties, reasoning that the parties' conduct and attendant circumstances did not support an inference that the parties agreed, or even intended to agree, to modify the contract. To the contrary, the Court noted that the evidence reflected that Purchaser, at every turn, pushed for the parties to meet so that they could reach an agreement as to the terms of a written addendum but never finally agreed. In addition, the Court held that the lower court did not err in awarding attorneys' fees and costs to the Vendors under the contract. Purchaser argued that because of the lower court's "split decision," the circumstances compel a determination that neither

	party prevailed within the meaning of the contract. In rejecting the Vendors' agreement, the Court reasoned that although the lower court ruled in Purchaser's favor as to three of the Vendors' counterclaims, the litigation did not end in a "divided outcome" within the meaning of Massachusetts case law. Furthermore, the Vendors prevailed as to the gravamen of the case, which was (a) whether the contract was subject to an oral modification, and (b) which party breached it. And the claims on which Purchaser prevailed on summary judgment constitute only a small portion of the case and a small percentage of the legal fees and costs incurred as compared to those claims on which the Vendors prevailed.
MICHIGAN	
Sterling Organization, LLC v. Ford Building, Inc., 2018 WL 3446122 (Mich. Ct. App. July 17, 2018)	
Issue:	(1) Whether Broker's failure to state that it did not have the authority to modify a purchase and sale agreement on buyer's behalf constituted an intentional misrepresentation of a false statement of fact; (2) Whether Seller effectively alleged reliance on Broker's statement that Buyer repudiated the sale; (3) Whether Seller suffered recoverable damages in the form of litigation expenses and payment of Broker's commission.
Facts:	Ford Building, Inc. ("Seller") entered into an Agreement of Sale ("Agreement") to sell an office building to Sterling Organization, LLC ("Buyer"). The Agreement also required Ford to pay Exclusive Realty, LLC ("Broker") a broker's commission at closing. The Agreement set forth an inspection period during which Buyer had the option of terminating the Agreement. Prior to closing, Seller backed out of the deal and refused to sell the property. Buyer filed suit alleging that Seller breached the Agreement by refusing to sell the property and requested specific performance. Seller filed a counterclaim, alleging that Buyer was the breaching party. Seller also filed a third-party complaint against Broker, alleging that Seller relied on Broker's fraudulent misrepresentations in its role as Buyer's agent. Seller alleged that Broker stated on the phone and in-person that Buyer was dissatisfied with the building after inspection and would consummate the sale only if Seller reduced the price by $500,000. Seller alleges that in response, it faxed Buyer to confirm Buyer's repudiation. Seller alleges that Buyer then tried to rescind its repudiation and reinstate the Agreement via email. Seller also alleges that, in the case that Broker acts as Seller's agent, Broker breached its fiduciary duties to Seller.
Holding:	The Court of Appeals of Michigan found that Broker did not intentionally misrepresent a false statement of fact. Since Seller did not allege that Broker had the authority to repudiate or terminate the Agreement on behalf of Buyer, Broker's statement that Buyer would only purchase the property for a reduced price did not amount to a false statement of fact. Although Broker failed to disclose its lack of authority to alter the Agreement, Broker does not have a duty to disclose its limits of authority to alter a real estate transaction, and therefore, there is no cause of action for misrepresentation. The court also held that Seller did not suffer damages by relying on Broker's statement. Seller ultimately sold the building at the purchase price in the initial Agreement and therefore suffered no detriment. Even if Seller had suffered damages, it could not have relied on Broker's statements because they were not in writing and the Agreement requires that "all notices to a Party…may be given by

	overnight delivery, certified mail, return receipt requested, or by facsimile, email or hand delivered," The court held that Seller did not suffer damages relating to its litigation expenses or payment of Broker's commission. Seller had a contractual obligation to pay Broker's commission upon close of sale. Damages covering litigation expenses are only available if explicitly provided for in a statute or court rule, which was not present in this case. Exemplary damages are unavailable because Broker's actions did not amount to tortious or criminal conduct.
Shefa, LLC v. Xiao Hua Gong, No. 337629, 2018 WL 4927139 (Mich. Ct. App. Oct. 4, 2018)	
Issue:	(1) Whether the purchaser's failure to timely order title commitment constitutes a material breach and therefore bars him from relief including the return of his deposit. (2) Whether the Purchaser's failure to timely order title commitment constitutes waiver of his right to receive satisfactory title.
Facts:	Shefa, LLC ("Seller") owned a vacant hotel and filed for relief under Chapter 11 of the Bankruptcy Code in February 2014. On December 15, 2015, Seller entered into an agreement (the "Purchase Agreement") to sell the property to Xiao Hua Gong ("Purchaser") for $5,500,000. Pursuant to the Agreement, Purchaser made a $500,000 deposit. On April 10, 2016, when the closing had not been completed as planned, the Purchaser terminated the agreement and requested the return of his deposit. On August 19, 2016, Seller filed a complaint alleging breach of contract and seeking declaratory relief. Purchaser counterclaimed, alleging that Seller breached the contract and seeking the return of his deposit. In January 2017, Purchaser filed a motion for summary disposition, claiming (1) that Seller had made false representations in the Purchase Agreement about its authority to convey title in light of the pending bankruptcy proceeding; (2) that Seller impermissibly sought to impose additional conditions on Purchaser due to the bankruptcy; (3) that the title insurance was not satisfactory; and (4) that Seller could not convey title clear of all liens and mortgages in light of its bankruptcy status and the property taxes and fees owed to the government. The trial court rejected Purchaser's first claim, finding that Purchaser was on notice about the bankruptcy due to a letter attached to the Purchase Agreement. The court granted summary disposition, however, on the second and third claims, finding that Purchaser could cancel the Purchase Agreement due to his dissatisfaction with title commitment and due to Seller's imposition of conditions not present in the original Purchase Agreement.
Holding:	On appeal, the court granted Purchaser's motion for summary disposition and affirmed the trial court's ruling. First, the court concluded that Purchaser's failure to timely order title commitment did not constitute a material breach of the Purchase Agreement. Michigan law prohibits the first party to breach a contract from maintaining an action against another party for that party's subsequent breach, however, the court determined the rule only applies to substantial breaches, such breaches which make further performance of the contract ineffective or impossible. Noting that the parties continued to work toward closing the sale despite Purchaser's failure to timely obtain title commitment, the court concluded that Purchaser had not substantially breached the Purchase Agreement.

	Second, the court found Purchaser's failure to timely order title commitment did not constitute a waiver of his right to a satisfactory title commitment. The court concluded that Purchaser's failure to timely order title commitment did not demonstrate an intent to relinquish his right to receive a satisfactory title, but rather showed an intent to not seek title commitment in a timely manner.
MINNESOTA	
SM Investments, LLC v. Erickson, 2018 WL 4201178 (Minn. Ct. App. Sept. 4, 2018)	
Issue:	(1) Whether purchaser was entitled to damages for seller's breach of an addendum to the purchase agreement requiring seller to notify purchaser if any of the commercial properties' tenants did not intend to renew their leases prior to the sale's closing; (2) Whether purchaser was entitled to contract reformation of the purchase agreement premised on unilateral mistake.
Facts:	SM Investments, LLC ("Purchaser") agreed in writing on June 11, 2014, to purchase two commercial properties housing four commercial tenants from Roger Erickson ("Seller") for $825,000. The purchase agreement included an addendum requiring Seller to "furnish [Purchaser] any notice of tenants moving out if [Seller] has been notified before closing." The parties closed the transaction on August 18, 2014. Soon thereafter, Details Salon ("Tenant") informed Purchaser that it had given notice to Seller on June 25, 2014 that it did not intend to renew its lease. Purchaser sued Seller for breach of contract, consumer fraud, actual fraud, and reformation due to unilateral mistake. Seller argued that he had notified the broker of Tenant's nonrenewal plans prior to closing and brought a third-party complaint against the broker for failure to communicate the information to Purchaser.
Holding:	The appellate court concluded that the district court did not err by denying Purchaser's motion for judgment as a matter of law following a jury verdict of zero damages for Seller's breach of contract. The appellate court reasoned that the jury was "well within its province" to discredit Purchaser's evidence and testimony that the loss of income from the non-renewing tenant would have caused Purchaser to reduce its purchase price or forego the purchase altogether. The court noted that the purchase agreement and addendum failed to include contingencies for outgoing tenants or renegotiation in the event of a tenant's nonrenewal. It also noted that a reasonable jury could be persuaded by Seller's evidence that absent language in the purchase agreement to the contrary, Purchaser could have intended the commercial property for uses besides income generation, such as redevelopment or resale. The appellate court also concluded that the district court did not abuse its discretion in allowing the Seller's expert to testify in regard to preparation of a bank appraisal for the sale, and the expert witness' opinion that the purchase amount could be based on considerations besides the properties' income-producing potential. Denial of Purchaser's motion for a new trial on the basis of the jury's no-damages verdict was thereby affirmed. Reformation of the purchase agreement due to unilateral mistake. The appellate court determined that the district court did not abuse its discretion in denying the claim, because Purchaser failed to establish a "meeting of the minds" regarding Purchaser's intent for the properties to generate profit through rental income, nor as to Purchaser's contention that the purchase price was based on the number or lease status of tenants. Finally, the appellate court noted that Seller did not receive Tenant's notice to vacate until after Seller signed the purchase agreement, so

	Purchaser failed to establish that Seller engaged in "inequitable conduct."
MISSISSIPPI	
Ing v. Adams, 248 So.3d 881 (Miss. Ct. App. 2018)	
Issue:	Whether Purchaser adequately exercised his purchase option when he gave timely notice of his intent to exercise the purchase option but made no other overt actions towards purchasing the property after Vendor stated that it would not convey the property.
Facts:	Vendor owned a building in Holly Springs, Mississippi and Purchaser, under a five-year lease with Vendor, operated a pizza business in a portion thereof. The lease agreement provided that at the end of the five-year lease, Purchaser would "have the option to extend the lease for an additional five years or to purchase the building at its then appraised value." Four days before the lease expired, Purchaser provided timely written notice to Vendor that he desired to exercise his option at the appraised value. In response, Vendor's attorney sent a letter to Purchaser expressing the following: (1) Vendor did not want to sell the building to the Purchaser; (2) Vendor would, instead, only allow Purchaser to lease on a month-to-month basis; and (3) Purchaser violated the terms of the lease several times. Purchaser continued to operate without paying rent. Vendor filed a complaint seeking "eviction, damages, and other relief." While the complaint acknowledged that Purchaser gave timely notice of his intent to exercise the purchase option, Vendor also alleged that Purchaser "failed to tender any money toward the purchase of the property" and had "made no other overt actions toward purchasing the property." Vendor also alleged that Purchaser violated the lease by "operating a gold-buying business on the premises, residing on the premises, failing to maintain insurance, and failing to pay his share of the property taxes." Purchaser brought a counterclaim alleging that Vendor breached the agreement by refusing to sell the building. Purchaser also stated that he made no overt actions toward the purchase after giving notice because Vendor explicitly refused to sell Purchaser the building. The trial court found that Purchaser failed to exercise his option to purchase the property because he did not tender money to purchase the property or obtain an appraisal. The trial court then found that Purchaser owed Vendor $2,500 for each month he operated in the building after the lease expired.
Holding:	The Court of Appeals of Mississippi reversed and remanded the trial court's holding, finding that Purchaser's actions were sufficient to exercise the purchase option. Vendor argued that the option contract was unenforceable in the first place because it failed to specify a sales price. The Court quickly rejected this argument. Because the option contract between Vendor and Purchaser that is disputed in this case provides that Purchaser buy the land for an appraised value, the Court found that it adequately specified a sales price. In arguing that Purchaser failed to adequately exercise the option contract, Vendor argues that Purchaser did not attempt to have the building appraised, did not tender any cash towards the purchase price, and gave no assurances of his ability to pay Vendor. The Court found that Purchaser did not have to take any of these steps in light of Vendor's express refusal to sell the property.

	Mississippi case law provides that as soon as a purchaser gives written notice of intent to exercise a purchase option to a vendor, the purchaser has legally accepted and converted the option into an enforceable bilateral contract. Mississippi case law also provides that option holders have no obligation to tender cash or show an ability to pay before closing. Lastly, the Court found that Purchaser did not have to obtain an appraisal because "the law does not require one to do a vain and useless thing." Therefore, to adequately exercise the purchase option, Purchaser simply had to provide timely written notice to Vendor, which he did. The Court also found that Purchaser was entitled to specific performance of the option to purchase as there was no valid basis for Vendor's refusal to convey the property. The appellate court further concluded that Purchaser was not entitled to reformation of the purchase agreement due to unilateral mistake. The appellate court determined that the district court did not abuse its discretion in denying the claim, because Purchaser failed to establish a "meeting of the minds" regarding Purchaser's intent for the properties to generate profit through rental income, nor as to Purchaser's contention that the purchase price was based on the number or lease status of tenants. Finally, the appellate court noted that Seller did not receive Tenant's notice to vacate until after Seller signed the purchase agreement, so Purchaser failed to establish that Seller engaged in "inequitable conduct."
NEBRASKA	
Burklund v. Fuehrer, 911 N.W.2d 843 (Nebraska 2018)	
Issue:	(1) Whether a property inspection that ultimately identifies damage forecloses a claim that such damage was not "reasonably" ascertainable by purchaser.
Facts:	Todd and Shelly Burklund (collectively "Purchaser") entered into a real estate purchase agreement on August 11, 2016 with Brad Fuehrer and Structure Technologies, LLC (collectively "Seller") for real property that included a building. An addendum to the purchase agreement noted that Purchaser intended to qualify the transaction for an in-process like-kind exchange. To complete that like-kind exchange, Purchaser needed to close on the property by November 1, 2016. On September 29, 2016, Seller first informed Purchaser that the building's roof had been damaged by hail the previous year and had not been repaired. Subsequent inspections by Purchaser confirmed that the roof was damaged. However, because of the like-kind exchange deadline, Purchaser asked to proceed with the closing, contingent on Seller either replacing the roof or placing recovered insurance funds in escrow for the repairs. The repairs did not occur, nor did the closing, and Purchaser brought an action against Seller for damages. The district court found that the Purchase Agreement "clearly states it is based upon [Purchaser's] inspection or investigation of the property," and that "the damage was obviously reasonably ascertainable as a subsequent roof inspection disclosed the hail damage."
Holding:	Reversed lower court's granting of Seller's motion to dismiss finding that a subsequent inspection of the roof identifying the damage amounted to an admittance of the "fact" that the damage was "reasonably ascertainable." Rather, the court concluded that Purchaser only alleged that the damage was "ultimately ascertained" and that the subsequent inspection could have been "beyond what would ordinarily be conducted by a buyer of commercial property."
NEW YORK	

Clifton Land Company LLC v. Magic Car Wash, LLC, 86 N.Y.S.3d 233 (N.Y. App. Div. 2018)	
Issue:	Whether Purchaser's right of first refusal was valid when Seller solicited a "poison pill" offer from a third party in order to sell such property to the third party and avoid Purchaser's right of first refusal.
Facts:	Purchaser entered into a contract with Seller to purchase a car wash business and the land that it was located upon. The contract gave Purchaser rights of first refusal on another car wash business and property owned by Seller (the "Vestal Property"). The agreement provided that Seller would give written notice to Purchaser of any offer to purchase the property and Purchaser would then have five days to notify Seller of its agreement to purchase the property on the same terms as the third-party offer. Seller entered into a contract with a third-party buyer for the purchase of the real estate at the Vestal Property, subject to Purchaser's right of first refusal. The contract between Seller and third-party included a restrictive covenant which prohibited the location of a car wash on the property for ten years. When Seller provided a copy of the third-party agreement to Purchaser, Purchaser responded that it wished to exercise its right of first refusal by purchasing the property at the price agreed upon with the third-party, but that it would not accept the restrictive covenant. Seller was not sure whether Purchaser could still exercise the right of first refusal and did not sell the property. Subsequently, Purchaser sought specific performance and a declaration that its right of first refusal is enforceable. Seller moved for a declaration determining which party is entitled to purchase the property. The trial court found that Purchaser's attempted exercise of its right of first refusal was invalid and that Seller was free to complete the sale of the property with the third-party. Purchaser appealed.
Holding:	The appellate court reversed the ruling of the trial court, and held that: Seller improperly structured the agreement with the third-party to defeat Purchaser's first refusal rights. The purchase agreement between Seller and third-party was entered into in bad faith as Seller knowingly participated in the transaction that would prevent Purchaser from carrying out their original agreement.
Whitney Lane Holdings, LLC v. Don Realty, LLC, 72 N.Y.S.3d 213 (N.Y. App. Div. 2018)	
Issue:	Whether Sellers are liable for damages sustained by Purchasers for deliberately failing to disclose material information.
Facts:	Purchasers entered into a contract with Sellers to purchase a commercial property. The contract included a representation that there was no known or expected governmental investigation pertaining to the property and an addendum that all representations would survive the closing for a period of one year. Prior to closing, Sellers learned that the town planned to condemn a portion of the property to construct a road. Sellers did not share the information with Purchasers and closed the agreement. Two years following the closing of the agreement, Purchasers brought suit against Sellers for damages sustained as a result of the material representation made by Sellers, but did not characterize their claim as a breach of contract or fraud. The trial court originally characterized Purchasers' claim as a breach of contract premised upon Sellers' failure to inform Purchasers of the town's intent to take a portion of the property and entered summary judgement for Sellers. Upon re-argument, the trial court rescinded its original ruling and held that whether or not Sellers had superior knowledge about the property that they used to their

	advantage was a question for the jury. Eight years following that ruling, Sellers moved for summary judgement, arguing that the claims made by Purchasers were time-barred under the addendum, that Sellers had no legal duty to disclose, and that the property had appreciated in value such that Purchasers sustained no damages. The trial court granted the motion for summary judgement. Purchasers appealed.
Holding:	The appellate court reversed the ruling of the trial court, and held that: Purchasers' complaint is one for breach of contract and that the survival provision in the addendum did not limit the time to commence a breach of contract action to one year. There was no express language in the addendum limiting Purchasers' time to commence an action. Whether or not Purchasers sustained damages and to what extent are questions of fact for resolution at trial.
Rodrigues NBA, LLC v. Allied XV, LLC, 83 N.Y.S.3d 650 (N.Y. App. Div. 2018)	
Issue:	Whether the time-of-the-essence letter provided to Purchaser by Seller provided Purchaser with a reasonable amount of time to tender performance.
Facts:	Seller and Purchaser entered into a contract for the sale of real property and Purchaser made a down payment. Seller and Purchaser agreed to move the original closing date to a later time. Eventually Seller delivered a time-of-the-essence letter to Purchaser, setting forth a new closing date, which was nine days from the date of the letter. Purchaser rejected the closing date. Seller brought suit against Purchaser to recover damages for breach of the sales contract, seeking to retain the down payment made by Purchaser. Purchaser brought counterclaims and sought the return of the down payment, alleging Seller breached the contract of sale. The trial court held that the time-of-the-essence letter was void because it did not provide Purchaser with a reasonable amount of time to act and Seller failed to demonstrate that that it was able to perform by the scheduled date. Seller appealed.
Holding:	The appellate court affirmed the ruling of the trial court and held that Seller failed to establish that the time-of-the-essence letter provided Purchaser with a reasonable amount of time to close, failed to eliminate issues of fact as to whether the property was subject to ongoing proceedings which would be resolved by scheduled closing or within a reasonable time, and failed to demonstrate that it was ready to convey title in accordance with the contract of sale.
Metropolitan Lofts of NY, LLC v. Metroeb Realty 1, LLC, 75 N.Y.S.3d 271 (N.Y. App. Div. 2018)	
Issue:	Whether a contract for the sale of real property is valid and enforceable when negotiations continue after the contract has already been signed by both parties.
Facts:	Seller and Purchaser negotiated terms of the sale of real property. Purchaser presented a 22-page long contract which both Purchaser and Seller signed after negotiating and initialing hand marked changes. Seller testified that he believed that the contract would be sent to an attorney to be put in "proper form" and then signed. Purchaser provided checks for a down payment which were not cashed. After signing the contract to sell the property to Purchaser, Seller received a larger offer from a third-party and entered into a contract of sale for the property with the third-party. Seller continued negotiations with Purchaser until Seller proposed an agreement for the termination of the contract with Purchaser. Purchaser did not sign

	the agreement to terminate. When Seller then attempted to deposit the down payment, Seller received notice that the down payment checks from Purchaser were not good. Seller informed Purchaser that it was terminating the contract because Purchaser did not have sufficient funds in the account. Purchaser brought suit against Seller to recover damages for breach of contract, specific performance and declaratory relief. Seller counterclaimed for a declaration that the contract was not valid and enforceable due to ongoing negotiations. The trial court held that Purchaser and Seller did not come to a meeting of the minds because the parties continued with ongoing negotiations and that the contract was not valid and enforceable.
Holding:	The appellate court reversed the trial court's ruling, and held that the contract for sale was valid and enforceable because the original contract, despite the ongoing negotiations, contained all of the essential terms of a contract for the sale of real property, designated the parties, and identified the subject matter. It remanded the case to the trial court to determine adequate damages given the property had been sold to the third-party.
Second Ave. Realty LLC v. 1355 Second Owner LLC, 84 N.Y.S.3d 121 (N.Y. App. Div. 2018)	
Issue:	Whether or not Purchaser breached the contract of sale when Seller presumed that Purchaser waived the condition precedent contained within the contract.
Facts:	Seller and Purchaser entered into a purchase agreement for a multi-purpose building and Purchaser provided a cash deposit as security. The agreement included a condition which provided that Purchaser's obligation to close was contingent on Seller delivering the premises to Purchaser vacant and clear of all residents. Seller was unable to get one holdover tenant to vacate the premises, however, Purchaser continued to take the steps to close the transaction. Purchaser stated its intentions to fulfill its obligation to close during correspondence with Seller. On the date of closing, Purchaser delivered written notice to Seller that due to Seller's failure to satisfy the condition, Purchaser was terminating the agreement and requesting a refund of the full deposit. Seller brought suit against Purchaser claiming that Purchaser waived the condition in the agreement and breached the contract. The trial court found for Purchaser and held that Purchaser did not waive the condition precedent in writing.
Holding:	The appellate court affirmed the trial court, and held that: Seller's failure to meet the condition precedent that it deliver real property vacant and free of all occupancies relieved Purchaser of its obligation to purchase the property. The evidence from the correspondence between Seller and Purchaser does not establish a waiver of the condition precedent because the agreement required that any waiver be express and in writing which it was not.
New York Center for Esthetic & Laser Dentistry v. VSLP United LLC, 73 N.Y.S.3d 52 (N.Y. App. Div. 2018)	
Issue:	Whether Purchaser breached a contract for sale when it did not obtain a loan as directly stated within the contract.
Facts:	Sellers entered into a contract with Purchaser to sell real property. The contract was contingent on Purchaser making a good faith effort to obtain financing at a set amount. Purchaser applied for loans at a greater dollar amount than the amount

	contemplated by the contract. After the parties failed to close, Sellers refused to return the down payment and sold the property to a third-party for less then what it contracted for with Purchaser. Purchaser brought action against Sellers for the return of the down payment. Sellers filed a motion for summary judgement and sought to retain the down payment, alleging that Purchaser breached the contract when they received a larger loan amount. The trial court granted Sellers motion for summary judgement and ordered that Sellers were entitled to the deposit and other damages. Purchaser appealed.
Holding:	The appellate court affirmed the trial court's ruling, and held that: Purchaser breached the contract for the purchase of real property by failing to apply for financing in the required amount and was not entitled to recover down payment. Damages were properly calculated by using the difference between the contract price and the fair market value of the property at the time of the breach.
FranPearl Equities Corp. v. 124 West 23rd Street, LLC, 85 N.Y.S.3d 3 (N.Y. App. Div. 2018)	
Issue:	Whether Purchaser breached a contract for sale of land when it did not obtain a temporary certificate of occupancy by the time specified within the contract.
Facts:	Seller entered into a contract for the sale of land with Purchaser's predecessor-in-interest. Purchaser failed to construct a building on the property and did not obtain a temporary certificate of occupancy by the specified date in the contract of sale. Purchaser obtained the temporary certificate of occupancy thirteen and a half months after the stated deadline. Seller argued that due to zoning regulations, Seller could not begin constructing on its own property, which sat adjacent to Purchaser's property, until Purchaser obtained the temporary certificate of occupancy and began construction. Seller brought suit against Purchaser for breach of contract, alleging that it was harmed by Purchaser's delay in obtaining the certificate and in constructing the building. The trial court granted summary judgement in favor of Purchaser. Seller appealed.
Holding:	The appellate court affirmed the trial court's ruling, and held that Seller failed to demonstrate it was ready to construct its building or actually harmed by the delay, and thus, Purchaser was not liable for breach of contract.
Jobin Organization, Inc. v. Bemar Realty, LLC, 86 N.Y.S.3d 166 (N.Y. App. Div. 2018)	
Issue:	Whether Seller breached a contract of sale when it failed to provide a lease which was a condition precedent to closing.
Facts:	Seller and Purchaser included as a condition precedent to closing that Seller would provide a lease for a portion of the property to be leased by a company affiliated with Seller. Seller sent Purchaser a time-is-of-the-essence letter setting forth a closing date. Purchaser did not attend the closing and Seller did not provide the lease for the electronics company in the documents tendered for closing. Seller advised Purchaser that the contract was terminated and that Seller would retain the down payment. Purchaser brought suit against Seller and the third-party electronics company to recover damages for breach of contract. Seller moved for summary judgement. The

	trial court dismissed claims asserted against the third-party company because they were not a party to the contract. The court denied both Purchaser's and Seller's motion for summary judgement. Purchaser appealed and Seller cross-appealed.
Holding:	The appellate court affirmed the trial court's ruling, and held that: Seller failed to establish that it was entitled to summary judgement because it had failed to tender the lease at closing and therefore was not ready, willing and able to close on the date due to its failure to satisfy a condition precedent. Factual issues existed regarding the reasonableness of the notice period in the time-is-of-the-essence letter, precluding Purchaser's claim for summary judgement.
NORTH CAROLINA	
Anderson v. Walker, 818 S.E.2d 144 (N.C. Ct. App. 2018)	
Issue:	Whether Purchaser's first right of refusal in a lease agreement for a property trumps Vendor's subsequent agreement to sell said property to a Third Party.
Facts:	In December 2010, David Anderson ("Purchaser") entered into a lease with Christopher David Walker ("Vendor") to lease 1022 Haywood Road ("Property"). In January 2013, Vendor and Purchaser entered into a new lease agreement that included a notarized right of first refusal for purchase of the Property ("the ROFR Agreement"), effective until December 31, 2014. Purchaser did not record the lease or the ROFR Agreement. However, in December 2013, George Tsiros and Curtis T, LLC (collectively, "Third Party") entered into a purchase agreement to purchase the property from Vendor (the "Third Party Agreement"). The Third Party was aware of the ROFR Agreement. After learning of the Third Party Agreement, Purchaser filed suit to exercise its ROFR Agreement.
Holding:	The court held for Purchaser, reasoning that rights of first refusal do not need to be recorded and that the protections provided under North Carolina's recording statute only applies to "innocent" purchasers for value. Because the Third Party had knowledge of the ROFR Agreement, the Third Party could not claim the protection of the recording statute. The court instructed Vendor to convey the property to Purchaser pursuant to the ROFR Agreement, with the same terms and conditions and concluded that the Third Party had no rights to the Property.
OHIO	
Cairelli v. Brunner, 2019 WL 2005922, (Ohio. Ct. App. May 7, 2019)	
Issue:	(1) Whether the trial court erred by dismissing the Lessor's motion for summary judgment based on Lessor's cause of action for slander of title and tortious interference of contract.
Facts:	In June of 1984, Sandra Cairelli ("Lessor") entered into a lease agreement with Richard and Jennifer Brunner ("Lessees") and the property was leased until October 1987. Upon entry into the leasing agreement, the Appellees were granted Right of First Refusal ("ROFR") in purchasing the property. The ROFR was recorded with the local county recorder. In June 2014, the Lessor entered into a purchase agreement with Andrew and Deidre Allman (the "Allmans") for the sale of the previously leased property. Upon completion of the title search, the ROFR was discovered. In July 2014, the Lessor contacted the Lessees with a request to release the ROFR from the title, but they refused. About two

	weeks later the Lessor offered the Lessees the opportunity to purchase the property and the Lessees did not accept. On July 25, 2014, the Lessor filed a Complaint to Quiet Title, For Injunctive Relief, Slander of Title, Tortious Interference with Contract and Fraud. Lessor also filed a Motion for Temporary Restraining Order and Preliminary Injunction in order to get the ROFR removed from the local county's office so that Lessor could sell the property. On July 31, 2014 the trial court denied the Lessor Motion for Temporary Restraining Order. In February 2015, the trial entered a favorable judgement to the Lessor and denied as Moot the Lessor's Motion for Temporary Restraining Order and Preliminary Injunction. The Lessees appealed and this court affirmed the trial court's decisions. On remand the trial court addressed competing motions for summary judgment and granted the Lessees' motions for summary judgment that pertained to the Lessor's claims of Slander of Title and Tortious Interference. The Lessor's appealed the trial court's granting of summary judgment to the Lessees on the claim for slander of title and tortious interference. The Lessor raised three assignments of error by the trial court: (1) the trial court erred by granting summary judgment to the Lessees on the Lessor's claim for slander of title; (2) the trial court erred by granting Lessees' motion for summary judgment and dismissing Lessor's claim of tortious interference with contract by mistreating the Lessees' refusal to lift the ROFR; and (3) the trial court erred by granting Lessees' motion for summary judgment and dismissing Lessor's claim of tortious interference with contract without considering the alternative interference tort of "interference with prospective business."
Holding:	The appellate court held that the trial court did not err in granting the motion for summary judgement and the Lessor's three assignments of error were overruled. The court rejected Lessor's claim for slander of title, which requires a showing that: "(1) there was a publication of the slanderous statement disparaging claimant's title; (2) the statement was false; (3) the statement was made with malice or made with reckless disregard of its falsity; and (4) the statement caused actual or special damages." The court goes on to explain that the relevant time period for a claim of slander of title is at the time the document is recorded. Accordingly, because it was not slanderous or false in 1987 for the Lessees to sign the ROFR the first assignment of error was overruled. The court jointly discussed the Lessor's second and third assignments and disagreed with the Lessor's claims that the trial court erred by granting summary judgment in favor of the Lessees on the Lessor's claim of tortious interference. The court explains, that five elements must be satisfied in order to sustain a claim for tortious interference, "(1) the existence of a contract, (2) the wrongdoer's knowledge of the contract, (3) the wrongdoer's intentional procurement of the contract's breach, (4) [a] lack of justification, and (5) resulting damages." Applying these factors, the court found that the Lessor and the Allmans never formed a contract because the agreement was based on the Lessor's ability "to convey free and clear title to the real property," which never occurred due to the ROFR. Thus, there was no contract, which was fatal to the tortious interference claim.
North Canton City School District Board of Education v. Stark County Board of Revision, *152 Ohio St.3d 292, 95 N.E. 3d 372 (2018)*	
Issue:	(1) Whether the sale price of real property, when sold through an auction or forced sale, can be evidence of the property's value;

	(2) Whether post-sale repair costs should be included in the property value of real property.
Facts:	Ohio Rev. Code Ann. § 5713.04 (West) is an Ohio "forced sale" provision that gives rise to a presumption that the sale price of real property, when sold through an auction or forced sale, is not the property's true value. An earlier version of Ohio Rev. Code Ann. § 5713.03 (West), effective as of the tax-lien date in this case, allowed the presumption created by § 5713.04 to be rebutted if a proponent of the sale presented "evidence showing that the sale occurred at arm's length between typically motivated parties." A 36-unit apartment complex ("Property") in North Canton went into foreclosure. The Property was appointed a receiver and was set for sheriff's sale with a minimum bid of $1,400,000, however, no bids were made and the Property did not sell. The receiver then marketed the Property through a real estate firm which listed a price of $1,325,000. The real estate firm received 17 inquiries and at least six offers, the highest of which was $1,200,000, which was submitted by LFG Properties, L.L.C. ("LFG"). After the Property was purchased by and transferred to LFG, LFG filed a valuation complaint with the Stark County Board of Revision ("BOR") seeking to reduce the Property's 2012 tax valuation from $1,841,300 to the sale price of $1,200,000. The BOR found for LFG, ruling that there was evidence that the Property was marketed over time such that the sale price of $1,200,000 was the fair market value. The BOR then added $101,500 to account for repairs made by LFG, thus establishing a total value of $1,301,500. On appeal, the Board of Tax Appeals ("BTA") reversed the BOR's ruling, finding that the sale was a forced sale under § 5713.04, and therefore, the sale price was not evidence of the Property's true value. The BTA reinstated the auditor's valuation of $1,841,300.
Holding:	The Supreme Court of Ohio held that the arm's length sale price, minus the cost of repairs, was the proper value of the property for tax purposes. The court reasoned that there was sufficient evidence to demonstrate that the sale was at arm's length, thus rebutting the presumption that the sale price of the property was an improper criterion for establishing its tax value. In reaching its conclusion the court explained that a transaction occurs at arm's length if the sale is voluntary, takes place on the open market, and the parties act in their own self-interest. Here, the court found that LFG presented substantial evidence in support of all of these criteria: the Property was aggressively marketed by a qualified professional, there was interest in the Property from a number of buyers, the buyer was unrelated to the receiver or former owner of the Property, the buyer was not aware of the sheriff's sale, the highest and best offer was accepted, and a lower court found the sale price to be "commercially reasonable." The court also held that the post-sale repair costs of $101,500 should not be included in the Property's value. Although the court noted the intuitive appeal of adding in repair costs, it read § 5713.03 to require the sale price of an arm's-length transaction to be the true value for taxation purposes.
JDS So Cal, Ltd. v. Ohio Department of Natural Resources, *110 NE.3d. 657 (Ohio Ct. App. Mar. 29, 2018)*	
Issue:	(1) Whether ODNR breached the contract by failing to work cooperatively with JDS to

	obtain a release of the public-use restriction; (2) Whether ODNR committed an anticipatory breach of the contract by refusing to transfer Sawmill to JDS prior to the date of transfer set in the transfer agreement; (3) Whether ODNR breached its implied duty of good faith and fair dealing.
Facts:	In 1996, Morno Holding Company ("Morno") deeded a parcel of undeveloped property ("Sawmill") to the Ohio Department of Natural Resources ("ODNR") with a restrictive covenant requiring that Sawmill be "used and occupied solely for public purposes." In 2012, ODNR entered into a contract to provide Sawmill to JDS So Cal, Ltd. ("JDS") in exchange for a property along the Olentangy River ("Olentangy Property"). JDS wanted Sawmill in order to develop it for commercial use. Section 4(d)(1) of the contract provided that JDS agreed to obtain a release of the public-use restriction prior to the property transfer and that ODNR would work with JDS to obtain that release. If JDS did not obtain a release, it could either terminate the contract or waive the release requirement under Section 4(d)(1). If JDS chose to waive the release requirement, it was required to indemnify ODNR for any breach of the public-use restriction. The contract also specified that the closing date must occur no later than May 7, 2013. Once news of the deal between ODNR and JDS became public in June 2012, environmental groups expressed opposition. At the same time, JDS learned that its title insurer would issue a title commitment without a release of the public-use restriction from Morno provided that ODNR agreed to release the restriction. JDS then drafted an amendment to the contract and presented it to ODNR. The amendment included a restrictive covenant to preserve a small portion of Sawmill for environmental purposes as well as a requirement that ODNR release the public-use restriction. ODNR's director and the attorney general signed the amendment, however, it was not binding without the governor's signature. Meanwhile, the City of Columbus ("City") expressed interest in acquiring Sawmill instead of JDS. ODNR agreed to entertain the City's interest, but stated that it needed an "official offer very soon." On January 4, 2013, the City and The Nature Conservancy joined to make a formal offer for Sawmill. Environmental groups also appealed to Morno, asking it to enforce the public-use restriction to prevent the commercial development of Sawmill. In response, Morno stated that it wanted nothing to do with Sawmill and would not enforce or release the public-use restriction. As a result, JDS further pressed ODNR to sign the amendment releasing the public-use restriction. In late 2012 or early 2013, in a meeting between representatives of ODNR and JDS, ODNR told JDS that it was conducting a legal analysis to determine whether ODNR had legal authority to release the public-use restriction. The managing member of JDS alleged that during this meeting, ODNR stated that it no longer wanted the Olentangy Property and that they were "killing the deal." In contrast, a lobbyist hired by JDS alleged that while the meeting did cast doubt on a successful closing of the deal, ODNR did not state that it no longer wanted the Olentangy Property. In a March 14, 2013 letter, ODNR told JDS that it was unwilling to release the public-use restriction, however, it was willing to consummate the transaction according to the original agreement. Additional letters were exchanged between ODNR and JDS, but the two could not agree to either both sign the amendment or both consummate the

	original agreement. JDS did not give ODNR written notice of the closing by April 27, 2013, as required under the contract. As a result, ODNR wrote a letter to JDS on May 1, 2013, stating that JDS breached the contract and therefore the agreement was foreclosed. Over a year later, JDS filed suit against ODNR alleging breach of contract and sought specific performance.
Holding:	The Court of Appeals of Ohio held that ODNR did not breach the contract by failing to work cooperatively with JDS to obtain a release of the public-use restriction. Morno, not ODNR, had sole legal authority to release the restriction and JDS was only required to cooperate with JDS in connection with its request to Morno to release the restriction. Additionally, ODNR did not breach the contract when it encouraged the City to make an official offer. Section 4(d)(1) required ODNR to cooperate with obtaining a release from Morno, but did not require ODNR to abstain from fielding additional offers for Sawmill. JDS argued that ODNR committed an anticipatory breach in five instances: (1) the governor's decision not to go forward with the land swap; (2) ODNR's indication that it was open to an official offer from the City to acquire Sawmill; (3) ODNR's internal investigation as to whether all parties had performed under the contract; (4) ODNR's refusal to release the public-use restriction and ODNR's statement that it would protect the deed if JDS acquired Sawmill "as is"; and (5) ODNR's statement to JDS that it did not want to proceed with the land swap. The court found that allegations (1-4) did not demonstrate anticipatory breach by ODNR because none of them are clear and unequivocal refusals to perform its obligations under the contract. In analyzing JDS' fifth claim, the court found that although a question of fact exists as to whether ODNR clearly and unequivocally expressed its intention to repudiate the contract, ODNR later retracted its repudiation after JDS decided to continue with the contract, the court found that ODNR's anticipatory breach was nullified. Finally, the court held that JDS presented no facts that could establish a breach of the implied duty of good faith and fair dealing on the part of ODNR, and therefore, found that ODNR did not breach its implied duty.
Watts v. Fledderman, 2018-Ohio-2732, 2018 WL 3414375 (Ohio Ct. App. 1st Dist. July 13, 2018)	
Issue:	(1) Whether tenant's payments in excess of rent for a property which are used to pay the property's mortgage and payment of maintenance and expenses for the property are sufficient to establish part performance of an oral land contract in contravention of the terms of a promissory note and commercial lease agreement. (2) Whether a commercial lease was actually a residential lease requiring compliance with Ohio landlord-tenant law because it lacked a purpose clause and because the commercial tenant resided on the property.
Facts:	In 1998, John and Louise Watts purchased a commercial storefront in Cincinnati and agreed to lease it to their friend, Thomas Fledderman. To make the purchase, the Wattses obtained a $48,000 mortgage from a bank, and a $20,000 interest-free loan from Fledderman's parents. The loan was memorialized in a promissory note that required payment only on the sale of the property to someone other than Fledderman, and stated that if Fledderman purchased the property for $40,000 at a later date, the note would be rendered void. On March 26, 1998, the Wattses and Fledderman entered into a commercial lease agreement, requiring Fledderman to maintain the property and to pay rent of $650 per month. The lease also gave Fledderman a right of first refusal to purchase the property for $40,000.

	Thomas Fledderman died on October 5, 2015. In early 2016, Louise Watts listed the property for sale, and on March 10, 2016 she accepted a purchase contract for $65,000. On February 16, 2016, Anne Fledderman, Thomas' sister, recorded an affidavit asserting that Thomas Fledderman had held an equitable interest in the property pursuant to an oral land contract with the Wattses. To complete the sale on April 13, 2016, Louise Watts and Anne Fledderman agreed to deposit $52,949 in net sale proceeds into an escrow account, pending declaratory judgment. On June 10, 2016, Anne Fledderman demanded immediate payment of the $20,000 due on the promissory note, stating the return had been triggered by the April 13 sale. Louise Watts agreed to the disbursement. On July 5, 2016, Watts filed a complaint seeking declaratory judgment on the remaining $32,949. Fledderman filed an answer and counterclaim, asserting a right to the remaining proceeds due to the oral land contract between Thomas Fledderman and the Wattses, asserting that rental payments made by Thomas Fledderman were in excess of the value of the property, which Watts used to pay the mortgage and that Thomas paid maintenance and expenses for the property. In the alternative, Fledderman sought a monetary judgment for the amounts collected by the Wattses, amounts Fledderman alleged contravened Ohio's Landlord-Tenant Act. Anne Fledderman argued that the lease Thomas signed was actually a residential lease because Thomas lived upstairs of the antique store, and that as a residential lease, certain payments were statutorily improper. The trial court adopted Watts's proposed findings and dismissed Fledderman's counterclaims. Fledderman appealed.
Holding:	(1) The appellate court affirmed judgment in favor of Watts, finding no enforceable oral land contract. While contracts involving the sale of real estate must generally be in writing to satisfy the statute of frauds, the court explained that an oral land contract could be enforceable if a party were able to establish its existence and part performance of it by clear and convincing evidence. The court did not consider Thomas Fledderman's payment of rent in excess of the property's value as evidence of part performance of an oral land contract. Instead, the court found this action to be consistent with the clear and unambiguous terms of the promissory note and lease agreement. (2) The court found that the lease's terminology was consistent with a commercial lease, and that the duties and actions taken by the parties to the lease, including Fledderman's purchase of public liability insurance and maintenance of the property at his own expense were consistent with duties in a commercial lease. Additionally, the Wattses, as landlords, applied for and received a grant to renovate the building's façade, a grant only given to owners of commercial buildings. The court affirmed the trial court's finding that Fledderman's use of the second-floor apartment within the commercial building was secondary and incidental to the commercial purposes of the lease.

Kennedy v. Kunze, Court of Appeals of Ohio, *2019 WL 468767 (Feb. 6, 2019)*

Issue:	(1) Whether trial court erred in finding that cancellation of contract indicating it was "cancelled and null and void" terminated all of the parties' rights and obligations related to the agreement.
Facts:	In October 2013, the appellant Elizabeth Kennedy ("Seller") entered into a written contract with appellee Russell Kunze ("Buyer"). The contract called for Seller to receive $160,000 plus interest from Buyer in exchange for the property on which Buyer lived in Tallmadge, OH. Pursuant to the contract, Buyer made a $2,000 down payment and agreed to pay $1,000 a month plus a balloon payment of the

	remaining balance on or before May 1, 2015. Buyer did not pay the outstanding balance by May 1, 2015, but was allowed to stay on the premises and continued to pay the $1,000 a month. In June 2016 Seller's lawyer sent Buyer a forfeiture letter that demanding Buyer either make the balloon payment or leave the property. Notably, Seller did not initiate forfeiture proceedings pursuant to *Ohio Rev. Code Ann.* § 5301.331 (West). Seller left the property in July 2016. In September 2016, after identifying another buyer for the property, Seller contacted Buyer in order to terminate the contract. Buyer agreed and the contract cancelled via handwritten note on the document itself which read, "cancelled and null and void as of * * * September 19, 2016." On June 23, 2017 Seller filed a complaint against Buyer for breach of contract and unjust enrichment. Seller argued that the cancellation of the contract, pursuant to *Ohio Rev. Code Ann.* § 5301.331 (West), did not constitute a release from the agreement and that she was entitled to damages in connection with Buyer's breach. Seller based her argument in part on § 5301.331's language which indicates that when a vendor brings a forfeiture action, the court "may also grant any other claim arising out of the contract." Buyer filed his answer to the complaint along with affirmative defenses. On December 8, 2017 Seller filed a motion for partial summary judgement. Buyer filed a brief in opposition to partial summary judgement and cross moved for summary judgement. In February 2018, the trial court denied Seller's partial summary judgement motion and granted Buyer's motion for summary judgement. Seller challenged, *inter alia*, the court's grant of summary judgment for Buyer on the breach of contract issue and related damages claims.
Holding:	The court rejected Seller's argument that she did not relinquish the right to recover under the written agreement when the parties mutually cancelled the contract and further declared it null and void. The court found the language unambiguous and declined to "create a new contract by finding an intent not expressed in the clear language employed by the parties." The court also noted that Seller never initiated forfeiture proceedings under § 5301.331 and that instead the parties came together on September 19, 2016 and mutually agreed that "[the] contract [was] cancelled and [was] null and void as of [that] date[.]" The court acknowledged that, "[g]enerally speaking, a vendee's failure to make a required payment under a land installment contract does not render the contract 'null and void.'" However, the court went on to explain that a default by the buyer may subject him or her to the forfeiture and foreclosure provisions set forth in § 5301.331 and a seller may bring an action for forfeiture of a buyer's rights in a land installment contract. In such actions, the court notes, a court may also grant any other claim arising out of the contract. However, because no such forfeiture procedures had been initiated the exceptions and remedies available under § 5301.331 were inapplicable to Seller's claims.
TENNESSEE	
Elliott v. Robbins, 2018 WL 3084300 (Tenn. Ct. App. June 21, 2018) *appeal denied* (Oct. 10, 2018)	
Issue:	(1) Whether the trial court erred in reforming a deed based on mutual mistake or fraud when Sellers sold the Property to Buyer without discussing the disputed

	land and did not raise the issue until months after the sale.
Facts:	Mike Robbins and Treva Robbins (the "Sellers") jointly owned 32.7 acres of real estate property in Tazewell, Tennessee from September 18, 1996 to May 23, 2013. They first purchased 31.7 acres and subsequently purchased an additional acre. The local county taxed the property as one unit, despite the couple living on the 31.7 acres and not developing the subsequently acquired acre. The one acre contained a well and unlivable mobile home. In 2012 Mr. Robbins filed for divorce and listed in the divorce complaint that they jointly owned 33 acres of land without a distinction between the two properties. Gillis Elliott ("Mr. Elliott") expressed an interest in purchasing the property. When Mr. Elliott toured the property with Mr. Robbins, there was no mention of a separate acre, even though Mr. Robbins discussed the well it contained. Mr. Elliott agreed to purchase the property which he believed to be 32.7 acres. No written agreement was created to formalize the purchase. Mr. Elliott began improving the property with the help of two of the Seller's sons, the three never discussed the disputed acre. During this time, Mr. Elliot commissioned a title search which indicated that the property consisted of 31.7 acres. A formal survey was not conducted before the closing. The deed described the property as 31.7 acres. The dispute arose when Elliott began working on the disputed one acre, which the Sellers claimed that the one acre was their son's inheritance. On September 18, 2014, Mr. Elliott filed suit against the Sellers in order to establish him as the owner of the disputed acre. Mr. Elliott claimed that the Sellers misrepresented the boundaries of the property and that he relied on their misrepresentations. The Sellers argued that they never intended to sell the one acre to Mr. Elliott and that the oral agreement was unenforceable under the Statute of Frauds. On March 10, 2015, Mr. Elliot amended his complaint to include a claim of mutual mistake and fraud concerning the description property's boundaries. Sellers counterclaimed that Mr. Elliott agreed to give the Sellers five acres upon the conclusion of their son's legal issues. The trial court denied Mr. Robbins' motion to dismiss and held that there was a mutual mistake. The court entered a judgement in favor or Mr. Elliott and ordered that the deed for the property be reformed to include the disputed acre. The Sellers appealed.
Holding:	The court affirmed the trial court's decision that Elliot had sufficiently established mutual mistake sufficient to warrant reformation of the deed. The court explained mutual mistake requires: "(1) the parties reached a prior agreement regarding some aspect of the bargain; (2) they intended the prior agreement to be included in the written contract; (3) the written contract materially differs from the prior agreement; and (4) the variation between the prior agreement and the written contract is not the result of gross negligence on that part of the party seeking reformation." In reaching its holding the court found that (1) the parties reached an agreement based on a description of the land that did not exclude the disputed acre; (2) the parties intended for the prior agreement to be included in the written contract; (3) the agreement differed from the initial agreement; (4) there was no evidence suggesting gross negligence.

TEXAS	
Tarr v. Timberwood Park Owners Association, Inc., 556 S.W.3d (Tex. 2018)	
Issue:	Whether short-term vacation rentals violate certain restrictive covenants that limit tracts to residential-purposes and single-family-residences.
Facts:	Homeowner owns a single-family home that he advertises for rent on Vacation Rentals by Owner (VRBO) and similar websites. During 2014, he entered into thirty-one short-term rental agreements and rented out his home for an aggregate of 102 days. Under the short-term rental agreements, rental parties can be any size and do not have to be members of the same family. Those who rent the home have access to the entire home. Although Homeowner pays the Texas Hotel Tax, renters do not get hotel-like amenities such as housekeeping. Additionally, Homeowner formed a limited-liability company called "Linda's Hill Country Home LLC" to manage the rental of the home. Homeowner was notified by the Timberwood Park Owners Association ("POA") that by renting out his home he violated two deed restrictions: (1) the residential-purpose covenant, and (2) the single-family-residence covenant. The residential-purpose covenant states that "all tracts shall be used solely for residential purposes" and the single-family-residence covenant states that "no building, other than a single family residence… shall be erected or constructed on any residential tract in Timberwood Park Unit III." Homeowner sought a declaratory judgment stating that the deed restrictions do not impose a minimum duration on occupancy. The trial court enjoined Homeowner from "operating a business on his residential lot" and "engaging in short-term rentals to 'multi-family parties.'" The Fourth Court of Appeals affirmed in light of the fact that Homeowner both created a limited-liability company to manage the property and paid the Texas Hotel Tax. Homeowner sought Supreme Court review.
Holding:	The Court separately analyzed whether or not Homeowner violated either the single-family-residence covenant or residential-purpose covenant. With respect to the single-family-residence covenant, the Court reasoned that a covenant limiting property to a *single-family residence* requires that a certain type of structure is built on the property, not that the owner of the property refrain from taking certain actions on the property. The parties did not dispute that Homeowner's tract contained a single-family-residence. Therefore, the Court concluded that Homeowner did not violate the single-family-residence restriction. With respect to the residential-purpose covenant, the Court reasoned that a covenant limiting property to a *residential purpose* requires that the property is used for living purposes. In order for the Court to decide whether or not Homeowner violated the residential-purpose covenant, the Court had to give meaning to the covenant. First, the Court found that the residential-purpose covenant forced the Court to inquire about activity that takes place on the physical property itself, not how the owner uses the property. The Court looked to language of the residential-purpose covenant that refers to activities "conducted on" the tracts in making this conclusion. Secondly, the Court defined "residential purpose" by looking to Texas case law that defines

	"residence purpose" and by contrasting residential purpose and business purpose. Ultimately, the Court found that the residential purpose covenant requires that one conduct activities on the land that are generally associated with a personal dwelling, like "eating, sleeping, praying, and watching TV." Because the residential-purpose covenant merely requires that the activities on the property are commensurate with activities generally associated with a personal dwelling and does not mention leasing, short-term rentals, or owner occupancy, the Court found Homeowner did not violate the residential-purpose covenant. The Court held that "so long as occupants to whom Homeowner rents his single family residence use the home for a residential purpose no matter how short lived, neither their on-property use nor Homeowners' off-property use violates the restrictive covenants in the Timberwood deeds." The Texas Supreme Court found that the trial court should not have entered summary judgment for POA and that the Court of Appeals erred in affirming the trial court's judgment. The Court reversed and remanded the case to trial court.
VIRGINIA	
RECP IV WG Land Inv'rs LLC v. Capital One Bank (USA), N.A., 295 Va. 268, 811 S.E.2d 817 (2018)	
Issue:	Whether the parties are bound by an agreement contained in their predecessors' purchase agreement to allocate the maximum floor space permitted under a zoning law when the allocation formula in the agreement incorporates the applicable cap on floor area ratio ("FAR") for the properties based on local zoning laws.
Facts:	In 2000, an office park in the Tysons Corner area of Fairfax County was subdivided. Following such subdivision, 29 acres of the park were sold to a purchaser pursuant to a purchase agreement (the "Purchase Agreement"), and such purchaser in turn assigned its interest in the property to Capitol One ("Purchaser"). The entire office park was subject to a numerical cap on FAR per Fairfax County's Comprehensive Plan. As a result of the limited amount of FAR available to the property and the anticipated growth of the area's DC Metrorail System, the parties included a specific mathematical formula (the "FAR Formula") in the Purchase Agreement to apportion between the parties any additional FAR that might become "available" to the Capital One Property. The agreed upon formula stipulated that the purchaser would receive the first 200,000 square feet of any additional FAR and the remainder would be fractionally divided between the parties. In 2010, Fairfax County revised its Comprehensive Plan which lifted the FAR cap on the property owned by Purchaser and other nearby properties. Subsequently, Purchaser filed rezoning requests with the County for additional FAR and in 2012 received approval to develop an additional 3.8 million square feet of FAR. Vendor subsequently filed suit against Purchaser alleging Purchaser breached its obligations under the FAR Formula in the Agreement by developing the property without allocating and conveying a portion of FAR rights to Vendor. Purchaser responded that the removal of the cap rendered the FAR formula impossible to calculate, thus, Purchaser's performance of an allocation of the addition 3.8 million square feet of FAR should be excused due to impossibility.
Holding:	The court concluded that that the FAR formula "can only reasonably be construed as requiring the allocation of FAR in reference to the County Plan's Metro Overlay" and that because the cap on FAR had been lifted, it resulted in the initially agreed upon terms in the Purchase Agreement being impossible to calculate and or perform by Purchaser.

WISCONSIN	
Dow Family, LLC v. Sawyer Cty. Abstract & Title Co., 383 Wis. 2d 601 (2018)	
Issue:	(1) Whether the trial court erred in dismissing the Dow Family's claim of legal malpractice against CNA Insurance Company ("CNA") for failure to demonstrate actual damages. (2) Whether the trial court erred in dismissing the Dow Family's various claims against William Sullivan for lack of evidence and failure to demonstrate actual damages.
Facts:	For almost thirty years, William Sullivan ("Sullivan") owned property and an adjacent vacant lot on two adjacent islands, the "Island of Happy Days," in Red Cedar Lake, Wisconsin. In 2008, Sullivan decided to sell his interests in the property. On May 20, 2009 Sullivan and the Dow Family reached an agreement in which the Dow family would pay Sullivan $276,000 for all of his interests in the Island of Happy Days, condominiums four and five, and the east island lot as well as some personal property. In connection with this agreement, Dow agreed to indemnify Sullivan and hold him harmless for any other debts he owed relating to the properties. The Dow Family was represented by attorney David Anderson of the Ruder Ware law firm. Before closing, Dow learned through a title commitment that one of the condominiums was the subject to two U.S. Bank mortgages, one from 2001 and the other from 2003. Sullivan represented in the purchase agreement that the 2001 mortgage secured the same debt as the 2003 mortgage. Based on this representation Dow secured a $143,000 mortgage with U.S. Bank. However in November 2009, the lender claimed that the 2001 mortgage was outstanding and delinquent and started foreclosure proceedings on the property. The Dow Family settled the foreclosure for $211,000. In 2015, the Dow Family sought legal action against numerous parties, including Sullivan and CNA. The Dow Family alleged among other things that it had been damaged by CNA's legal malpractice and Sullivan's misrepresentations. CNA was Ruder Ware's malpractice insurance company. The Dow Family claimed that their Ruder Ware attorney failed to exercise the degree of expertise expected by his experience level. The circuit found that the Dow Family had failed to provide sufficient evidence proving their damages. The court also held that the Dow Family had failed to establish an essential element of its cause of action for malpractice against CNA – "namely, it had failed to provide any evidence from which it could be concluded that the alleged malpractice caused it to incur any damage." As to Sullivan, the court concluded that not only had Dow Family failed to demonstrate any damage, there was also no evidence of actual fraud committed by Sullivan." Dow Family appealed this decision.
Holding:	The appellate court affirmed the circuit court and held that the Dow Family failed to present sufficient evidence supporting their damages claim. The court stated that in order to prove damages in a legal malpractice suit, the court must compare the plaintiff's current standing against where the plaintiff would have been "but for the alleged negligence." The court rejected the Dow Family's arguments that they were damaged by: (1) the unsatisfied mortgage; and (2) the loss of $500,000 based on their assertion that they would not have entered in transaction had they known about the 2001 mortgage. In reaching its conclusion the court explained: (1) the Dow family failed to demonstrate how they were damaged by the alleged negligence; and (2) the Dow Family ignored

	the benefits they received in connection with the property.
Talmer Bank and Trust v. Jacobsen, 380 Wis.2d 171 (2018)	
Issue:	(1) Whether a breach of contract leading to third-party litigation is a wrongful act that would entitle third-party defendants to attorneys' fees under the third-party litigation exception to the American Rule for attorneys' fees.
Facts:	Talmer Bank and Trust held a mortgage on real property owned by the Jacobsens. In 2006, the Jacobsens entered into a land contract (the "Contract") with the Gomezes, who wanted to purchase commercial property to operate their business. Pursuant to the Contract, the Gomezes made monthly payments to the Jacobsens and continued to operate their business on the property. The Contract required that Talmer Bank's "mortgage payments be made" and stated that a failure to make such payments would constitute a breach of the Contract. Despite the Gomezes continued payments to the Jacobsens, the Jacobsens failed to make 15 separate payments on the mortgage between 2012 and 2015. Talmer Bank initiated foreclosure proceedings against both the Jacobsens and the Gomezes. The Gomezes filed a cross-claim against the Jacobsens, alleging breach of the Contract by failing to make the mortgage payments and that this breach forced them to hire counsel "to preserve their equitable interests as vendees to the subject property." The Gomezes sought reasonable attorneys' fees as damages. The circuit court entered a default judgment against the Jacobsens in the foreclosure action. Talmer Bank and the Gomezes settled their dispute whereby the Gomezes retained title to the property. The circuit court issued a summary judgment in the Gomezes' cross-claim, and denied the Gomezes' motion for reasonable attorneys' fees. The court held that a breach of contract was not a wrongful act that would fall under the third-party litigation exception to the American Rule. The Gomezes appealed this ruling.
Holding:	The appeals court held that a breach of contract is a wrongful act that can be grounds for seeking attorneys' fees under the third-party litigation exception to the American Rule. The court relies on a Wisconsin Supreme Court decision, which has been affirmed by Wisconsin courts in recent cases, as well as the First and Second Restatements of Contracts. The appeals court further reasons that its interpretation of the third-party litigation exception to the American Rule that each party is responsible for their own attorneys' fees is not overbroad as it only applies when the wrongful act of the defendant has wrongfully drawn a third party into litigation.

STATUTORY CHANGE	
VIRGINIA	
Va. Code Ann. § 55-2, as amended (effective until 10/1/2019); Va. Code Ann. § 55.1-101 (effective 10/1/2019)	
Summary:	The Virginia General Assembly amended § 55-2 in response to the 2018 Virginia Supreme Court decision in the case of *The Game Place, L.L.C. v. Fredericksburg 35, LLC*, 813 S.E.2d 312 (Va. 2018). In *Game Place*, the Supreme Court held that because a fifteen-year lease was not in the form of a Deed of Lease as required by the Virginia Statute of Conveyances, the lease was unenforceable as a lease of more than five years. The Supreme Court found the lease to be a month-to-month lease, which the tenant was then able to terminate. The amendment to the statute, which applies both prospectively and retroactively, eliminates the deed of lease requirement by providing that: "Any lease agreement or other written document conveying a non-freehold estate in land, which was entered into before, and which remains in effect as of, February 13, 2019, or which is entered into after February 13, 2019, shall not be invalid, unenforceable, or subject to repudiation by the parties to such agreement on account of, or otherwise affected by, the fact that the conveyance of the estate was not in the form of a deed." The amended § 55-2 will be repealed effective October 1, 2019 and replaced with a new § 55.1-101, which contains identical language, effective October 1, 2019.