5-1-1956

Landlord and Tenant

Thomas A. Wills

PART THREE

Property Law

LANDLORD AND TENANT

THOMAS A. WILLS*

This survey includes Florida Supreme Court cases reported from June 1953 through August 1955. No legislation appropriate to the *Survey* was found.

Liquidated Damages

The author of the previous *Survey*[1] stressed *Stenor v. Lestor*[2] and related cases[3] involving the security deposit-liquidated damages problem. The judges who decided *Kanter v. Safran*[4] and *Hyman v. Cohen*,[5] (discussed in this article), emphasized a similar problem in such a closely related manner that for purposes of continuity and integration the following portion of the previous survey is included:

> The first case to approach this problem was Stenor v. Lester. The facts were as follows: the lessee of a leasehold for a term of five years, at a rental of $11,200 per year, deposited $11,200 as security. The lease provided that the lessor should retain the deposited security as liquidated damages for breach of any of the terms or covenants of the lease, or apply it as a pro tanta amount for the lessor's actual damages from such breach. The court held that where a sum is to be kept as liquidated damages or applying it against actual damages, such provisions will be construed as a penalty. Three cases followed, which presented closely correlative fact situations, and were decided in accord with the *Stenor* case. However, in *North Beach Investment v. Scheikowitz*, the court held a similar provision to be valid as providing for liquidated damages.

In the *Hyman* case the judges referred to a distinction between a provision for forfeiture of the deposit for the breach of *any covenant* in the lease, and a provision for forfeiture upon *termination* of the lease. They indicated that the former should not be construed as liquidated

*Associate Professor, University of Miami School of Law.

1. 8 Miami L.Q. 425 (1954).
2. 58 So.2d 673 (Fla. 1952).
3. Kaplan v. Katz, 58 So.2d 853 (Fla. 1952); Nash v. Bailey, 58 So.2d 680 (Fla. 1952); Glynn v. Roberson, 58 So.2d 676 (Fla. 1952).
4. 68 So.2d 553 (Fla. 1953).
5. 73 So.2d 393 (Fla. 1954).

damages, but that the latter might be so construed. The lease contained a provision for a cash bond to guarantee the performance of all the covenants and for forfeiture of the bond if the lessor cancelled the lease upon default by the lessee. The lease did not provide for forfeiture upon the breach of any *covenant* by the lessee. The judges declared that the rule of the *Stenor* case should not apply because the lease in that case contained a provision for forfeiture upon the breach of any covenant. They attempted to clarify the situation with respect to related cases by the following statement:

> We wish to make clear, then—and will repeat for emphasis—that where a lease provides for a deposit 'to secure the full performance' of all the covenants of the lease, or similar language, without providing for the forfeiture of the deposit for the mere breach of any of the covenants, but only upon the premature termination of the lease by the lessor for the default of the lessee, the cited rule (as to breach of covenants of widely varying importance) has no application to a determination of the question of whether the parties have stipulated for a penalty or for liquidated damages. As noted above, it must be assumed that the lease in the Stenor case provided for forfeiture upon the mere breach of a covenant, so that the rule was properly applied in that case; but insofar as the latter decisions of this court which were decided on the authority of the Stenor case, to wit, Nash v. Bailey, Fla. 58 So.2d 680; Glynn v. Robertson, Fla. 58 So.2d 676 and Kaplan v. Katz, Fla. 58 So.2d 853, may be construed to hold the contrary, they are hereby expressly modified to that extent.

A further point in the decision to the effect that the rule of the *Stenor* case should not apply to the *Hyman* case, involved an interpretation of the *Hyman* case. This case provided for termination at the option of the lessor upon the breach of a covenant by the lessee. Some might consider this provision as tantamount to the *Stenor* provision. The judges argued that, in spite of the provision, the *Hyman* lease was different in that there was only one event, the premature termination of the lease, which would result in forfeiture. They attempted to fortify the point by asserting that an attempted termination for breach of covenant might be enjoined. Some readers may be satisfied by these arguments; others may not.

Following the usual generalities, the judges concluded that, at the time of leasing, the damages were difficult to ascertain; the amount of deposit ($25,000—rent for one year) was not so high as to be a penalty; and thus the deposit was held to be liquidated damages.

The judges in the *Kanter* case followed the generalization that a provision for additional damages over the amount of the deposit is contradictory to the purpose of liquidation. They cited the *Stenor* case and held that the security fund was not liquidated damages where the lease

provided for a security fund which was labeled "liquidated and agreed upon damages" and provided that the lessor might make the lessee pay any existing damages if the actual damages exceeded the security fund.

Effect of Surrender

Both the *Hyman* and *Kanter* cases involved the effect of surrender by the lessee.

In the *Hyman* case the judges indicated that in the event the lessee failed to pay rent and surrendered possession, the lessor had the choice of three courses of action. He might treat the lease as terminated and resume possession for his own purposes, repossess for the account of the lessee and hold the lessee for general damages, or stand by and sue the lessee either for each rent installment as it became due or for the entire rent when it matured. The lessee was behind in the rent payments. The lessor notified the lessee that he must pay or surrender possession. The lessee gave up possession. The lessor rented the premises to a corporation formed by the lessor for that purpose. The lessor did not notify the lessee that the renting was for the account of the lessee. The judges in a declaratory opinion determined that the lessor had chosen the first option—repossession for his own benefit with the intention that the lease be terminated rather than rescinded so that the lessee remained liable.

In the *Kanter* case the judges reached a conclusion by determining which of the three options the lessor chose and whether or not his subsequent conduct was consistent with his choice. The assignee of the lessee was behind in rent payments. He notified the lessor that he intended to surrender possession. The lessor notified the assignee that the proposed surrender was refused and if it became necessary to re-enter, the lessor would do so for and on the assignee's account, and the assignee would be held in general damages. Subsequently the lessor re-entered. The judges decided that where the assignee was put on notice of the conditions of re-entry, the assignee would be held to have agreed to the express conditions by his act of surrender, and that there was no need to consider implied conditions of surrender by operation of law.

The judges then considered whether or not the lessor subsequently behaved in a contradictory manner by re-entering for the account of the assignee. They considered the evidence insufficient and remanded the case so that additional evidence could be accumulated.

Effect of Lessee Remaining in Possession

In deciding *Painter v. Town of Groveland*,[6] the judges cited, interpretated and applied Florida Statute Sections 83.04 (1953) and 83.06 (1953). Section 83.04 provides:

---

6. 79 So.2d 765 (Fla. 1955).

HOLDING OVER AFTER TERM OF TENANCY AT SUFFERENCE, ETC.

> When any tenancy shall have been created by an instrument of writing and the term of which such tenancy is limited therein shall have expired and the tenant shall hold over in the possession of said premises without renewing the said lease by some further instrument of writing then such holding over shall be construed to be a tenancy at sufferance, and the mere payment or acceptance of rent shall not be construed to be a renewal of the said term, but if such holding over be continued with the written consent of the lessor then such tenancy shall become a tenancy at will under the provisions of this law.

The judges decided that where there was no written consent by the lessor, the effect of the lessee holding over was not to renew the lease but to create a tenancy at sufferance, thus entitling the lessor to possession.

Section 83.06 (1953) provides:

RIGHT TO DEMAND DOUBLE RENT UPON REFUSAL TO DELIVER POSSESSION

> When any tenant shall refuse to give up possession of the premises at the end of his lease, the landlord, his agent, attorney or legal representatives, may demand of such tenant double the monthly rent, and may recover the same at the expiration of every month, or in the same proportion for a longer or shorter time by distress, in the manner pointed out hereinafter.
>
> All contracts for rent, verbal or in writing, shall bear interest from the time the rent shall become due, any law, usage or custom to the contrary notwithstanding.

The judges decided that where the lessee had reasonable grounds to believe, and did believe, that the lease was valid, and the pleadings indicated that there was no demand for double rent, the lessee was not liable for double rent under the statute.

The judges in *Rosamond v. Mann*[7] were concerned with whether or not Section 83.04 modified the generalization, that in the absence of agreement to the contrary, the character and terms of holdover are governed by the original lease in so far as applicable. They decided that limitations in the original lease relative to transfer of a liquor license were applicable to the holdover and that Section 83.04 did not relieve the lessee of the limitation.

The judges in *Leibowitz v. Christo*[8] stated that: "There are no decisions in this State on this subject." The lessee had remained in possession past the term of the lease, had notified the lessor of his intention to renew, but did not execute a new lease since the original written lease provided for "additional annual renewals." They observed that generally where a

7. 80 So.2d 317 (Fla. 1955).
8. 75 So.2d 692 (Fla. 1954).

lease provides for an *extension*, a new lease is not required, but that where the lease provides for *renewal*, the judges in different jurisdictions do not agree. In a declaratory opinion, the judges here concluded that the distinction between renewal and extension is too refined to be practical, and that a written lease was not required.

Formation of Lease

In *Waldo v. U. S. Ramie Corp.*[9] the question of lien rights involved the determination of whether or not a lease had been formed. The judges decided that allegations of "belief" that a written agreement had been executed were insufficient without production of the instrument or specification of the terms.

In *South Dade Farms v. Peters*[10] the original lease had six documents attached which comprised letters exchanged between the lessor and lessee wherein they agreed to renew the lease. The lessee prepaid the rent under the renewal. The judges held a renewal modifying the original lease was formed which would support specific performance.

Covenants that Run with Land—Option to Buy

In *Rosello v. Hayden*[11] the assignee of the lessee obtained a decree for specific performance of an option to purchase on credit. The judges held that where the option to purchase is on credit, but the full cash price is tendered, the covenant runs with the land.

Easements

In *Robinson v. Feltus*,[12] the decision relative to an injunction was resolved by an interpretation of the words "the south 12'." The words were interpreted as descriptive of the location rather than limiting the area, and thus an encroachment which did not prevent ingress and egress would not be enjoined.

Proportionment and Reconstruction in Receivership Proceedings

Beach Resort Hotel Corporation v. Wieder[13] was an action to enjoin cancellation of a hotel lease and for other relief. A receiver was appointed. The lease provided that the lessee would make improvements not to exceed $200,000 in cost. The improvements were to be paid by the lessee partly in cash and the balance from profits. The judges decided that in order to distribute the profits between the parties in receivership proceedings, a determination must be made as to the amount of permanent improvements beneficial to the lessor and the amount of other improvments

9. 74 So.2d 106 (Fla. 1954).
10. 69 So.2d 890 (Fla. 1954).
11. 79 So.2d 682 (Fla. 1955).
12. 68 So.2d 815 (Fla. 1953).
13. 79 So.2d 659 (Fla. 1955).

contracted by the lessor separately. They ruled out in absence of fraud, or other equitable grounds, the lease would not be reconstructed. Three judges dissented on the basis that by the majority decision, if the lessee did not pay for sums contracted by the lessor, the lessor could use the failure as an excuse to cancel the lease and still own the improved property.

Breach of Covenant and Right of Termination

The judges in *Sunny Isles Boat Works v. North Miami Beach Yacht Basin*[14] decided that gradual depreciation does not constitute a breach of covenant to maintain docks and piles in a good and safe condition and good repair.

Negligence

Several cases[15] involving alleged negligence by the lessor were decided according to the usual principles of tort law, and did not involve aspects particularly pertinent to this *Survey*.

14. 70 So.2d 899 (Fla. 1954).

15. Sampson v. Stanley Corp., 75 So.2d 186 (Fla. 1954) (ceiling plaster); Sellers v. Kilis, 74 So.2d 71 (Fla. 1954) (stairs); Nussbaum v. Sovereign Hotel Corp., 72 So.2d 814 (Fla. 1954) (lighting); Wilensky v. Perell, 72 So.2d 278 (Fla. 1954) (floor); Donin v. Goss, 69 So.2d 316 (Fla. 1954) (venetian blind); Gonet v. Evans, 66 So.2d 53 (Fla. 1953) (stairs).