

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
WEST DISTRICT
WEST LOS ANGELES COURTHOUSE, DIVISION 93

ORIGINAL FILED
AUG 30 2005
LOS ANGELES
SUPERIOR COURT

DASSA v. CASAS
Case No. 05X00595

RULING

This case questions the proper method of renewing a commercial lease that was governed, at the inception of the agreement, by the lease that is incorporated as Plaintiff's exhibit 1. At the time of the signing of the lease agreement in June 2000, the tenant had the option of extending the five year lease for an additional five years by complying with the requirements of paragraphs 31 and 24. The Plaintiff's Trial Brief accurately states that case law requires strict compliance by the tenant with the option formalities dictated in the lease. *Bekins Moving & Storage Co. v. Prudential Ins. Co. of America* (1985) 176 Cal. App. 3d 245, 250. Assuming that the agreement had remained unchanged, the required procedure mandated that the tenant provide its notice, exercising its option to extend the term of the lease, "... in writing and served either personally or sent by registered or certified United States mail ..." to the address provided in paragraph 24.

Defendant agrees that the above procedure was not followed. The Defense insists that the Plaintiff unilaterally changed the terms of the lease in a note, dated October 2, 2001, that is reproduced in Plaintiff's exhibit 5 and Defendant's exhibit 101. Furthermore, the Defendant stated at trial that pursuant to the requirements of the changed agreement, she merely sent, through the U.S. mail, a handwritten notice exercising her option with the rent check for February 2005. Plaintiff contends that she never received this notice and claims that it was never sent, although the February 2005 rent was received through the regular U.S. mail service. Defendant acknowledged during her testimony that she had been unaware of the requirements of paragraph 24.

The issues presented are:

1. Does the October 2, 2001 note modify the lease by novation or estoppel?
2. If so, does the Defendant's method of notification comply with the 'changed' requirements?



3. Did the Defendant in fact mail the notification with the February 2005 rent?

The Court reaches question 3 only if the answers to questions 1 and 2 are both yes.

The first sentence of the October 2 note states, "Please refrain from sending or causing to be sent anyone -- your family, employees, etc. -- to my home for any purpose." A plain and logical reading of this statement is that there are to be no personal deliveries of correspondence 'for any purpose'. This would include any official notices contemplated by paragraph 24 of the lease. Whether the rules concerning novation, modification by conduct or estoppel apply is beside the point. It is clear that the landlord required the tenant not to deliver any item by personal service. The tenant complied with this request for the remainder of the life of the lease. The parties in this case are not highly sophisticated in the technical aspects of property law. Their expectations with the regard to this note are fairly obvious. One side says in writing 'Don't come to my door', and the other side responds through its conduct 'I won't come to your door'.

The second sentence, in part, reads, "*All correspondence, rent, etc., shall be delivered through the U.S. Postal Service . . .*"[italics added]. Plainly, this refers to anything that is sent, including 'notices' under paragraph 24. This appears though, to be nothing more than an elaboration of the first sentence, i.e. 'Don't come to the door'. It is difficult to believe that the landlord expected this to be a modification of the registered or certified mail requirements of paragraph 24. It is even more difficult to believe that the tenant had such an interpretation in mind, since her testimony was that she was unaware of paragraph 24. Furthermore, registered mail and certified mail are still part of the U.S. Postal Service. They are simply a subset of the services offered by the U.S. Post Office.

Neither expressly, by implication, nor by the intent of the parties, or either one of them, was the requirement of certified or registered mail modified. Since this Court finds that the requirement of mailing by certified or registered mail was still extant under the lease, the Defendant's admission that the option was not sent by either of these methods ends the enquiry.

The Court finds that the lease has expired and the option to renew has not been properly exercised.

The Court orders possession of the premises to the landlord/Plaintiff.

The Court orders damages at the rate of \$103.86 per day [\$3,115.87 divided by 30]. Damages are to be calculated from July 15, 2005.

Costs and Attorney's fees shall be claimed and determined in the manner provided by law.

Plaintiff to file judgment in 15 days.

Date: August 30, 2005



Norman P. Tarle, Judge

SUPERIOR COURT OF THE STATE OF CALIFORNIA WEST DISTRICT-W.L.A. COURTHOUSE COUNTY OF LOS ANGELES	FOR COURT USE ONLY F I L E D SUPERIOR COURT 8/30/05
PLAINTIFF :DASSA, DANIEL VS DEFENDANT :CASAS, AL	JOHN A. CLARKE, CLERK
CLERK'S CERTIFICATE OF SERVICE	CASE NUMBER 05X00595

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the COURT RULING ON COURT TRIAL TAKEN UNDER SUBMISSION 8/25/05 upon each party or counsel named below by depositing in the United States mail at the courthouse in LOS ANGELES California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid.

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JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK

 _____, Deputy Clerk
 PABILLON BOYD

DATE: 8/30/05