

LL/Tenant/Leases Waiver of Non-waiver Clauses

Shields Limited Partnership v. Bradberry

- TX SC case addressing waiver of non-waiver clause <u>and</u> inconsistent treatment of waiver cases by CAs.
- T frequently paid late and LL accepted. Lease provided:
 - Acceptance of late payments *shall not* be a waiver;
 - Waivers must be *in writing* signed by waiving party; and
 - Forbearance of enforcement *could not* constitute a waiver.
- TX strong public policy favoring freedom of contract.
- Waiver requires *intentional* relinquishment of a known right or *intentional* conduct inconsistent with claiming that right.



Rights under a non-waiver provision may be expressly/impliedly waived <u>**but</u>** a **general** or **absolute** non-waiver clause **may** be ineffective...</u>

However, parties can expressly agree (as in this case) that specific conduct will not result in waiver.

WINSTEAD PC

LL/Tenant/Leases Non-Compete Clauses

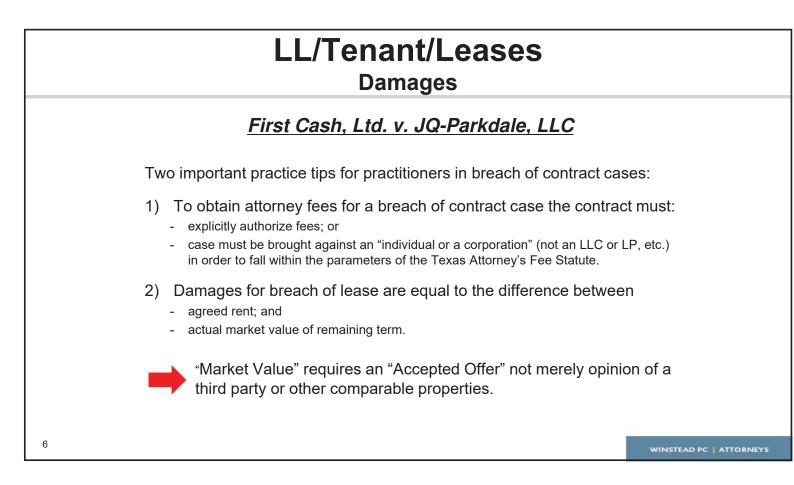
Ho & Huang Properties, L.P. v. Parkway Dental

- T leased office space in shopping center for use as dentist office.
- Lease contained a restrictive covenant prohibiting LL from leasing any other part of the Project to a "Competitive Business".
- "Competitive Business" defined as business practicing general dentistry.
- In 2006, LL sold part of parking lot to 3rd party.
- Building was constructed for a dental practice.
- T sued claiming breach of lease and anticipatory repudiation.
- TC granted summary judgment in favor of LL, Houston CA remanded
- On remand TC found for T and the Houston CA affirmed.

Lesson for all practitioners - be careful with definitions in restrictive covenants!!

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