

# Texas Case Law Update

## Mortgage Lending Institute

September 13-14, 2018

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## LL/Tenant/Leases

### Security Deposits

#### *Schneider v. Whatley*

- El Paso CA addressed bad faith element of § 92.109 Tex. Prop Code which requires LL to “refund a security deposit to the tenant on or before the 30<sup>th</sup> day after the date the tenant” moves out.
- Bad faith presumed if deposit not returned within 30 days.
- T moved out June 30, 2013; LL sent letter to T on July 10, 2013 itemizing repairs and demanding an additional \$492.56.
- T sued and TC entered judgment against the LL finding them liable for 3x the amount wrongly withheld.
- El Paso CA upheld TC holding.
- LL withheld money for repairs required for improvements LL had approved and normal wear and tear – no “real” damage incurred.


 **Both** damages claimed **and** amount withheld by LL must be reasonable or LL bad faith = 3X damages


# LL/Tenant/Leases

## Waiver of Non-waiver Clauses

### **Shields Limited Partnership v. Bradberry**

- TX SC case addressing waiver of non-waiver clause **and** 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 **but** a ***general*** or ***absolute*** non-waiver clause ***may*** be ineffective...

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

# 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 3<sup>rd</sup> 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!!***

# LL/Tenant/Leases

## Jurisdiction of the Justice Courts

### *Midway CC Venture I, LP v. O&V Venture, LLC*

- In 2015 parties mutually agreed to amend a Lease and allow T to move to temporary space while the original space was converted to a wine bar.
- LL and T disagreed over rent credit.
- T filed and was granted a temporary injunction from Harris County Court.
- Houston CA overturned relying on TX SC Holding in *Mcglathin v. Kliebert*:



***In Texas, the right to possession of real property, if there is no unlawful entry, is determined by the action of forcible detainer. Jurisdiction to hear forcible detainer is expressly given to the justice court of the precinct where the property is located.***

# LL/Tenant/Leases

## Damages

### *First Cash, Ltd. v. JQ-Parkdale, LLC*

Two important practice tips for practitioners in breach of contract cases:

- 1) To obtain attorney fees for a breach of contract case the contract must:
  - explicitly authorize fees; or
  - case must be brought against an "individual or a corporation" (not an LLC or LP, etc.) in order to fall within the parameters of the Texas Attorney's Fee Statute.
- 2) Damages for breach of lease are equal to the difference between
  - agreed rent; and
  - actual market value of remaining term.



**"Market Value" requires an "Accepted Offer" not merely opinion of a third party or other comparable properties.**

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First appeared as part of the conference materials for the  
52<sup>nd</sup> Annual William W. Gibson, Jr. Mortgage Lending and Servicing Institute session  
"Texas Case Law Update 1"