LANDLORD TENANT — ILLINOIS™

A Legal Reporter for Illinois Landlords

VOL. 1, NO. 5 ***www.quinlan.com*** **JULY 2006**

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Lease

Courts enforce strict lease compliance

by Sandra Sklamberg, Esq.

Ms. Sklamberg's article this month analyzes the case of *Rubloff CB Machesney, LLC v. World Novelties Inc.*, Appellate Court of Illinois, 2nd Dist., No. 2-05-0673 (2006), which was summarized in last month's bulletin. *Rubloff* is a particularly significant case because both the trial and appeals courts held the tenant to the lease terms strictly.

The summary that follows this article involves a commercial landlord-tenant case in which the appeals court determined that the landlord could enforce the requirements of a lease's cancellation option stringently.

The stated reason for seeking an eviction in *Rubloff* was that the tenant had tendered the rent check two days late. This is significant because the tenant could not have tendered the rent when it was due on Jan. 1, which was a holiday and a Saturday. Also, the tenant could not have tendered the rent on Jan. 2, a Sunday.

The tenant tendered the rent on Monday, Jan. 3, which was the first day that it could have done so. However, the landlord would not accept the check and filed a lawsuit to obtain possession of the tenant's coffee shop.

It is also significant that the landlord had received numerous reports of serious misconduct by the tenant. Those reports prompted the landlord to require the tenant to agree to comply strictly with the lease's terms. The landlord and the tenant entered that agreement a few months before the tenant tried to pay the rent on Jan. 3.

The trial court granted the landlord a judgment without a trial, and the appeals court affirmed that ruling.

Relevancy to residential landlords

Rubloff shows that a residential landlord might be able to evict a problem tenant for: 1) not paying the rent on time; 2) not maintaining the rental unit properly; 3) disturbing the other tenants; or 4) doing something equally onerous that justifies considering him or her to be troublesome. Under those circumstances, the landlord should demand strict compliance with the lease terms.

If the landlord has allowed the tenant to pay rent late or otherwise violate the lease's terms, he or she should hand-deliver a notice or send a certified return-receipt-requested letter that clearly requires strict compliance with the lease in the future.

Sending the letter allows the landlord to seek an eviction if the tenant violates the lease again, even if he or she is paying the rent on time. However, residential landlords should remember that evicting a tenant on a five-day notice for nonpayment of rent is

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easier than seeking possession for a lease violation. The primary issue in a lawsuit based on a five-day notice is whether the tenant tendered the rent within the notice period after the notice was served.

Sandra Sklamberg has practiced real estate and landlord-tenant law in Illinois for more than 24 years.

Improperly exercising a cancellation option precludes ending a lease early

Citation: Thomson Learning Inc. v. Olympia Properties, LLC, Appellate Court of Illinois, 2nd Dist., No. 2-05-0766 (2006)

Under the lease in which Thomson Learning Inc. (Thomson) rented office space from Olympia Properties, LLC (Olympia), Thomson could cancel the lease before its term ended. However, the "cancellation option" required Thomson to pay a cancellation fee and provide written notice of its intent to cancel the lease by Sept. 1, 2004. The term further stated that time was of the essence.

On Aug. 30, 2004, Thomson wired Olympia the cancellation fee and called Olympia to state its intent to exercise the cancellation option. On Sept. 9, 2004, Olympia told Thomson that Thomson's effort to cancel the lease was ineffective because Thomson had not provided written notice of the intent to cancel by Sept. 1. Olympia also returned the cancellation fee.

In response, Thomson alleged that it had sent the cancellation notice via FedEx before calling Olympia on Aug. 30. However, Thomson did not mention sending that correspondence during the Aug. 30 call. Olympia admitted that it received the FedEx envelope but stated that it did not contain a cancellation notice.

Thomson returned the cancellation-fee refund to Olympia and provided a copy of a cancellation notice that was dated Aug. 16. Thomson then filed a lawsuit that sought a ruling that it had effectively exercised the cancellation option and that the lease would end on the date that the cancellation option stated.

Reasoning that Thomson had paid Olympia the cancellation fee and provided actual notice that it was exercising the cancellation option, the trial court granted Thomson's request for judgment without a trial. Olympia appealed.

DECISION: Reversed.

The trial court erroneously determined that strict compliance with the cancellation option's terms was not required. Further, the unresolved dispute regarding whether Thomson provided the required written notice by Sept. 1 precluded granting judgment without a trial.

Additionally, requiring strict compliance was fair because Olympia did not receive anything for giving Thomson the valuable option of ending the lease early. Along similar lines, Thomson did not show that requiring it to rent the space for the entire lease period would have been unduly burdensome. Further, not timely asserting that the FedEx envelope contained the alleged cancellation letter provided credible evidence that it did not contain that correspondence and that Thomson did not provide the timely notice required.

Ordinance

Chicago encourages rooftop gardens

The Chicago City Council is considering a proposal to match the funds that landlords invest in planting gardens on the roofs of their downtown buildings. The amount of funds that would be matched would be limited.

Rooftop gardens are considered desirable because they soak up rainwater that otherwise would flow into the sewer system. In addition, those gardens reduce temperatures in the surrounding area by absorbing solar heat.

Source: *Chicago Tribune*

Elgin cracks down on landlords

Although missing inspections of rental properties and not renewing rental licenses largely has gone unpunished in Elgin, Ill., this city is considering fining landlords $100 if their license is suspended and $500 if it is revoked. The proposal also calls for charging landlords $50 if they pay their license fee late or if they do not give 24 hours notice of an inability to keep an inspection appointment.

In addition, landlords must attend an eight-hour landlord training course that the police's Crime-Free Housing Unit administers. The course's topics include tips for recognizing gang and drug activity and managing evictions properly.

Elgin will extend the license periods of landlords who obey the rules and pass inspections.

Source: *Chicago Daily Herald*

Public Policy

'No pets' policy does not apply to some assistance animals

The federal housing laws that prohibit discriminating against physically and mentally disabled people require reasonable accommodations for those people with a certified need for an assistance animal. California's 1980 Fair Employment and Housing Act includes broader disability provisions than the federal law.

Because the assistance animal is not considered to be a pet, the landlord cannot charge the tenant a fee for having the animal in the rental unit. However, the landlord can ask the tenant to replace an aggressive or threatening assistance animal. In addition, the tenant is liable for any damage that the assistance animal causes.

The assistance animal's size is another factor regarding whether the reasonable accommodation laws require allowing it to live in the apartment. A tenant's request to allow a large dog to live in a small apartment may be considered unreasonable.

Source: *Los Angeles Times*

Lease

Court rules on whether arbitration is mandatory

Citation: Harris v. Martin, Court of Appeal of California, 4th Appellate Dist., Div. 2, E036814 (2006)

In 2002 and 2003, the tenants and the landlords entered standardized form rental agreements that the landlords provided for tenancies at the Brentwood Apartments (Brentwood) in San Bernardino, Calif. An addendum to the agreement included a clause that allowed a tenant or a landlord to submit certain disputes regarding the rental agreement to arbitration.

In September 2003, the tenants filed a lawsuit that alleged that the landlords' purported failure to adequately maintain Brentwood adversely affected the tenants' health and safety. Specifically, the tenants claimed that the landlords were negligent and had collected rent for uninhabitable apartments.

In December 2003, the landlords asked the trial court to require the tenants to arbitrate their claims. Expressing doubts about the enforceability of the addendum's arbitration clause, the trial court denied the landlords' request. The landlords appealed.

DECISION: Affirmed.

The tenants were not required to submit the dispute to arbitration because the phrase "may be submitted to arbitration" meant that arbitrating a controversy was allowable but not mandatory. However, arbitration would have been mandatory if the word "shall" had been used. Further, the public policy that favored arbitrating disputes did not justify disregarding the arbitration clause's terms.

In addition, not every tenant who participated in the lawsuit signed the addendum, and having one hearing on the tenants' claims made more sense than having the trial court and an arbitrator hold separate proceedings that considered the same claims.

see also: Woodbury v. Brown-Dempsey, 108 Cal.App.4th 421 (2003).

Published by
QUINLAN PUBLISHING
23 Drydock Ave.
Boston, MA 02210-2387
(617) 542-0048
Fax: (617) 507-1079
email: info@quinlan.com
http://www.quinlan.com
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Negligence

Rental property ownership transferred when land-installment contract signed

Citation: Baraby v. Swords, Court of Appeals of Ohio, 3rd Appellate Dist., Allen County, Case Number 1-05-76 (2006)

In 1986, Murphy bought rental property in Lima, Ohio. His renovations included updating the electrical system by installing new wiring.

Subsequently, Murphy and his future wife entered a prenuptial agreement that stated that the rental property would remain Murphy's separate property after they married. The Swords later bought the rental property from the Murphys under a land-installment contract. The Swords formed Swords Property Management Ltd. (Swords Property), a limited liability company, to hold their ownership interest in the rental property.

In April 2002, Baraby and her three children moved into an apartment at the rental property. Swords Property paid Murphy the last payment on the land-installment contract in June 2002, and Murphy transferred the legal title to the rental property land to Swords Property.

A fire in January 2003 destroyed Baraby's apartment and killed two of her children and a neighbor's child. During the next several months, Baraby filed negligence claims against the Swords, Swords Property, and the Murphys.

The trial court granted the Murphys, the Swords, and Swords Property judgment without a trial regarding Baraby's claims. Baraby appealed.

DECISION: Partially affirmed and partially reversed.

Ohio's Landlord and Tenant Act (Act) requires landlords to comply with all applicable codes that "materially affect[ed] health and safety" and to "make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition." In addition, Lima's building code required installing and maintaining smoke detectors in residential buildings.

While violating Lima's building code proved negligence, only a landlord was accountable. The Murphys, who retained only "bare legal title" to the rental property when they entered the land-installment contract, were not liable for negligence because they were not Baraby's landlords. Additionally, Murphy stated that he did not keep the keys to the rental property after signing the land installment contract and did not enter the property after that date. Further, the Murphys did not enter the lease that governed Baraby's tenancy.

The prenuptial agreement provided another ground for granting Mrs. Murphy judgment without a trial. Murphy had bought the rental property before his marriage, and the agreement stated clearly that the rental property remained his separate property. Although Mrs. Murphy signed the land installment contract, she did so only to release her inheritance rights regarding the rental property.

Further, the Swords' transfer of their interests in the land-installment contract to Swords Property made Swords Property the rental property's owner and the entity that was liable for any breach of a duty owed to Baraby. Consequently, Swords Property should not have been granted judgment without a trial because of the doubt as to whether the number of smoke detectors in the rental property satisfied the standards of Lima's code.

It was undisputed that there was not a smoke detector in the rental property's basement, but there was conflicting evidence as to the number of smoke detectors that were in Baraby's apartment. Uncertainty also existed as to where any smoke detectors were located and if proper smoke detector maintenance procedures were followed.

However, Swords' assignment of his rights to Swords Property might not have insulated him against any liability for not installing and maintaining the smoke detectors properly. He presented himself individually as the rental property's landlord and did not note on Baraby's lease that he was entering it on behalf of a business. Additionally, Swords signed his name where it stated "Owner or agent" on the lease. At the same time, he did testify that he intended to bind Swords Property to the lease. However, Mrs. Swords' lack of personal involvement with the rental property entitled her to the judgment without a trial that she was awarded.

see also: Murphy v. Reynoldsburg, 640 N.E.2d 138 (1992).

see also: Texler v. D.O. Summers Cleaners, 693 N.E.2d 271 (1998).

EDITOR'S NOTE:
Ohio's builder-vendor law, which imposes liability for certain forms of defective workmanship, does not provide a tenant with a claim against a building's former owner who rewired an apartment in which a fire occurred. A residential tenant is not among the class of persons, which includes a building's purchaser, who can seek damages.

Landlord did not owe duty to sublessee

Citation: Bohanna v. Francone, Court of Appeal of California, 5th Appellate Dist., F048146 (2006)

Francone rented a single-family three-bedroom home to Pikul for $700 per month. The tenancy was month-to-month, and the rental agreement stated that only one person could live in the home. The lease further provided that Pikul could not sublet the home or let someone else move in without Francone's written permission.

When Pikul and Francone entered the rental agreement, Pack was a tenant in the home. He remained in the home as Pikul's tenant and paid him rent.

Francone subsequently granted Pikul's request to sublet a bedroom to Williams, who worked for Pikul. Francone did not enter a written rental agreement with Williams and never accepted rent from him directly.

Although Pikul knew that Williams received social security disability benefits because of a bipolar disorder, he only told Francone that Williams was on disability. Violent altercations with Williams caused Pack to make one police report and to move out. Pack also asserted that he had told Francone that Williams posed a danger to the home's other occupants.

After Pack moved, Bohanna moved into the home and shared it with Williams until Williams moved out. Bohanna continued to live in the home.

More than one year after Williams moved, Bohanna sued Pikul and Francone to recover damages for an alleged sexual assault by Williams before Williams had moved out of the house. Bohanna alleged that Francone failed to warn her about Williams' history of violence against women.

The trial court found that Francone did not have any reason to know that Williams had a history of violence against women and granted his request for judgment without a trial. Bohanna appealed.

DECISION: Affirmed.

Francone did not breach any duty that he owed to Bohanna, who did not present any evidence that Francone knew that Williams had a history of violence against women or had struck Pack without provocation.

Pack's alleged warnings that Williams was a "psycho nut" and posed a danger to the other tenants did not create a duty to warn Bohanna about the threat of a sexual assault. It was undisputed that Pack did not tell Francone that Williams had a violent temper and had hit him without provocation. Additionally, Bohanna did not show that Francone knew that she was living in the home before the sexual assault.

see also: Ann M. v. Pacific Plaza Shopping Center, 6 Cal. 4th 666 (1993).

Rent

Management company is not a 'debt collector'

Citation: Reynolds v. Gables Residential Services Inc., U.S. District Court for the Middle Dist. of Florida, Tampa Div., Case No. 8:05-CV-1966-T-17-TGW (2006)

Reynolds' review of her credit report in August 2005 revealed that an unpaid account was reported as delinquent to the credit bureaus and was transferred to Ideal Collection Services (Ideal) for collection. The reported debt allegedly was owed to Gables Residential Services Inc. (Gables) and Hillsborough West Park Villages II Apartment (West Park) regarding an apartment lease.

Reynolds discussed the matter many times with Lake at Ideal and received correspondence from Lake's colleague, Chand. When those efforts failed, Reynolds sued Gables and Chand, alleging violations of the federal Fair Debt Collection Practices Act (FDCPA) and the Florida Consumer Collection Practices Act (FCCPA). Gables asked the court to dismiss the claims against it, arguing that Reynolds did not state a claim against Gables for which she could have been granted relief.

DECISION: Claims dismissed.

Gables was not a debt collector within the meaning of the FDCPA because it was merely acting as the manager of the property at which Reynolds lived when it tried to collect the rent and the fees that she owed. Gables' efforts to obtain those funds were merely incidental to its managerial duties. Also, the rent and fees that Reynolds owed were not in default until they were past due, at which point Gables had referred the debt to Ideal.

Because the FCCPA's definition of a "debt collector" is comparable to the FDCPA's definition, Gables also was entitled to have the state law claim against it dismissed.

Landlord has no role in tenant's guardianship proceeding

Citation: Glass v. Glass, Supreme Court of New York, Appellate Div., 1st Dept., 8058N, Index 91538/02 (2006)

Glass, who allegedly was incapacitated, was a tenant in a New York City apartment building that Brookford LLC (Brookford) owned. Glass' apartment was a rent-stabilized dwelling unit.

In October 2002, Glass' daughter was appointed as a temporary guardian of Glass' property. A May 2003 extension of that order directed the daughter and the other temporary guardian to pay Glass' rent and gave permission to the daughter and her family to move into Glass' apartment.

A report that Glass' grandson was seen in the building prompted Brookford to serve a 10-day notice to cure an illegal subtenancy in March 2004. Glass' daughter responded by showing Brookford the May 2003 court order.

Seeking to cancel the permission for the daughter's family to live in Glass' apartment, Brookford requested a court order to allow it to participate in the proceeding in which Glass' daughter was seeking to expand her guardianship role. The trial court allowed Brookford to participate and determined that allowing the daughter's family to live in the apartment did not create any succession rights or prejudice Brookford. Brookford appealed.

DECISION: Reversed.

The trial court should not have allowed Brookford to participate in the guardianship proceeding; nothing related to that proceeding affected Brookford adversely in a way that justified that intervention. Brookford's only interest was a speculative argument that Glass' daughter or a member of her family might claim succession rights when Glass vacated the apartment.

Because Glass began living in a nursing home before her daughter's family moved into her apartment, the daughter and her family could not have met the succession requirement of living in the apartment with Glass for two years before she vacated it.

Lease

Tenants and landlords cannot evade rent-stabilization laws

Citation: Drucker v. Mauro, Supreme Court of New York, Appellate Div., 1st Dept., 5446 (Index 601879/02) (2006)

Mr. and Mrs. Drucker entered their first lease for a rent-stabilized apartment in New York City in November 1981. They renewed the lease many times before Mauro acquired the building in 1991. When that acquisition occurred, the Druckers' lease was set to expire on Oct. 31, 1992.

In January 1992, Mauro asked the Division of Housing and Community Renewal (DHCR) for a ruling that the apartment was not subject to rent-stabilization. Although Mauro was required legally to offer the Druckers a renewal lease that was effective Nov. 1, 1992, he and the Druckers negotiated extensively about the building's rent-regulated status, completed repairs and renovations, and certain personal property that was in the apartment. Mauro and the Druckers incorporated the settlement of the disputed items into a rider to a lease that began on March 1, 1995.

Although $1,529 was the lawful regulated monthly rent for the apartment, the rider stated that the monthly rent was $1,700. In February 1996, the DHCR determined that the rent-stabilization law applied to the apartment.

The rider also provided that the lease would renew perpetually for two-year terms with a rent increase that equaled the percentage that the New York City Rent Guidelines Board authorized. The lease was last renewed in November 2000, and Mauro sent the Druckers a DHCR income certification form in April 2002 because the monthly rent exceeded $2,000.

The Druckers subsequently sued Mauro, seeking a judicial declaration that they did not have to respond to his notice. The Druckers also alleged that the 1995 lease and the rider governed the tenancy and that Mauro was not entitled to the requested luxury deregulation.

After the trial court partially denied the request not to allow the luxury deregulation, Mauro obtained a ruling from the DHCR that stated that the apartment was deregulated based on luxury decontrol.

The trial court granted the Druckers' request for judgment without a trial. Mauro appealed.

DECISION: Reversed.

Landlords and tenants who enter a lease for a rent-stabilized apartment cannot agree to lease terms that adversely affect the rent-stabilization laws. Further, allowing Mauro to exceed the legally regulated rent under the reasoning that the negotiated lease represented the settlement of his dispute with the Druckers would unduly endanger the rent-stabilization law's effectiveness and be contrary to the law's purpose of

providing adequate affordable housing in New York City.

In addition, the Druckers' agreement to pay more than the legally allowed rent could have impacted the legal rent for their apartment and its regulated status regarding future tenants negatively. Also, paying the higher rent prematurely subjected the apartment to luxury-decontrol.

Further, the fact that the Druckers sought to enforce the unlawful lease provision to evade the rent-stabilized law's effect was unimportant. The law's purposes include protecting individual tenants and guaranteeing that the rent-regulation system remained viable and protected tenancies in general.

Ordinance

Landlord seeks 'premium-based' return

Citation: Los Altos El Granada Investors v. City of Capitola, Court of Appeal of California, 6th Appellate Dist., H027860 (2006)

In July 1987, Los Altos El Granada Investors (Los Altos) bought Castle Mobile Estates (Castle), a mobile home park in Capitola, Calif., for $1.7 million. Castle was built in the 1970s and was within walking distance of the Santa Cruz, Calif., beach. Castle's amenities included laundry facilities, asphalt roads, and streetlights.

Capitola regulated mobile-home rents through a mobile-home park rent stabilization ordinance.

The ordinance at the relevant time allowed park owners to increase space rents by the lesser of 60 percent of the change in the applicable Consumer Price Index (CPI) or 5 percent of the existing base rent. The ordinance also presumed that the allowed rent increases would provide a fair return but allowed additional increases to recover capital improvement costs. However, a park owner could seek a hearing of a claim that it was not receiving a fair return.

When Los Altos bought Castle, rents were approximately $156 per month. At that time, Los Altos successfully requested an increase to $180 per month.

Capitola was enjoying prosperity in 2000, and Los Altos asserted that the average cost of housing was $500,000. At that time, Los Altos was receiving approximately $203 per month for each of its spaces. Arguing that market space rents were approximately $1,200 per month, Los Altos sought a rent increase of at least $148 per month in March 2000.

Los Altos also contended that the resale prices of mobile homes on rent-controlled spaces had soared because "full vacancy control" created a "premium" by not allowing a rent increase when a mobile home was sold. Los Altos argued alternatively that the increase was needed to allow a "fair and reasonable return" on Castle's inflation-adjusted acquisition value.

The homeowners opposed the requested increase on the ground that Los Altos was seeking the increase to improperly coerce them to buy Castle. The homeowners also alleged that the proposed sale would have profited Los Altos greatly. Additionally, the homeowners presented evidence that the resale price of mobile homes in Capitola was the same as the price in municipalities without mobile-home rent control.

Using the applicable CPI as a base, and considering the number of spaces in Castle and a previously allowed rent increase, the City of Capitola Mobile Home Rent Review Board (board) recommended granting Los Altos a nearly $6 rent increase. The board reasoned that any resale premium was irrelevant because Los Altos' return on what it paid for the park was the proper consideration. Capitola adopted the board's recommendation.

Los Altos subsequently sued Capitola and the board, arguing that the ordinance was unconstitutional as it applied to Los Altos and resulted in taking Los Altos' property without providing due compensation. It also sought a court order that would have required Capitola to grant Los Altos "a fair hearing and a rent increase sufficient to allow for a just and reasonable return." Los Altos based those arguments largely on the alleged premium that the ordinance gave the homeowners.

The trial court denied Los Altos any relief, and Los Altos appealed.

DECISION: Reversed.

Essentially challenging the ordinance's validity required that Los Altos assert that claim within a set period after the ordinance's enactment, but it filed its lawsuit beyond that time. However, a reversal still was necessary.

The trial court based its conclusion that no uncompensated taking occurred erroneously on the reasoning that the ordinance reasonably related to its stated purpose of ensuring a supply of affordable housing and that the ordinance "substantially advanced" that goal. That error entitled Los Altos to a chance to file an amended complaint.

State law allows competing subscription television services

Citation: Viking Communications Inc. v. SAS-1600 Arch Street, L.P., Common Pleas Court of Philadelphia County, Pennsylvania, Civil Trial Div., No. 02975 (2006)

In March 2002, SAS-1600 Arch Street L.P. (SAS) entered a contract with Viking Communication Inc. (Viking) for Viking to provide satellite master antenna television service (SMATV) to the tenants of SAS's Philadelphia apartment building. That contract granted Viking "the exclusive right to provide to Residents microwave, satellite, cable, or any other type of subscription or pay television programming insofar as such right and services are permissible by law."

The contract also stated that Viking would keep ownership of the "system" and its elements. The contract defined the system as "certain equipment and facilities for the reception and delivery of all RF, video, or data signals over coaxial cable, Cat 5, Cat 7 or ... a distribution system which may consist of Fiber Optics, satellite dishes, antennas, earth stations, head end electronics, and other equipment." SAS subsequently installed all of the building's SMATV/cable television (CATV) wiring and cable, which SAS sold to Viking under the agreement.

A tenant, who was an executive with Comcast of Philadelphia Inc. (Comcast), later asserted that the state Tenants' Right to Cable Television Act (Act) required that SAS allow him to receive CATV services from Comcast. The Act was enacted before SAS and Viking entered their contract.

In November 2002, Comcast and SAS entered an agreement that allowed Comcast to provide the tenants with CATV. That agreement limited Comcast's right to provide service to the scope that the Act allowed. The agreement also granted Comcast the right to use "certain coaxial cable or outlets" that SAS owned that another service provider was not using. The agreement also acknowledged that SAS's contract with Viking required that Comcast limit its marketing efforts to advertising on the Comcast CATV system, telephone sales, and direct mail. Although Comcast installed its own vertical wiring for its CATV system, it used the hallway wiring that SAS installed to provide CATV to the tenants who requested that service.

Viking then sued SAS and Comcast, claiming that SAS had breached its contract with Viking and interfered intentionally with Viking's exclusive relationship with the tenants. Viking also asserted that SAS and Comcast conspired to commit the offenses described above.

SAS and Comcast asked the court to declare that the Act voided the exclusivity provisions in SAS's contract with Viking. SAS and Comcast then asked the court for judgments without a trial regarding Viking's claims and the Act's impact on the contract with Viking.

DECISION: Granted.

The Act expressly states that if a tenant of a "multiple dwelling premises" requests CATV services and the operator agrees to provide such services, the operator must notify the landlord in writing within 10 days of agreeing to provide the service.

In addition, the Act prohibits SAS, or any landlord, from preventing a tenant from asking an operator to provide CATV. The Act, including the provisions that relate to providing services, limits the rights under SAS's contract with Viking because the Act was effective when that contract was entered.

In addition, the Act authorizes Comcast to install an entire CATV system that could reach each tenant and that competed with the system that Viking installed. Requiring Comcast to install just enough wiring that would have met the needs of the tenants that requested its services would have been unreasonable.

Also, allowing Comcast to use the hallway wiring did not violate SAS's agreement with Viking. That wiring was part of the "existing system" that SAS owned and granted Viking the right to use. Similarly, neither Viking nor SAS could prohibit Comcast from using its own resources to advertise to the tenants.

see also: Cablevision of Pennsylvania Inc. v. The Klein Company, 130 Montg. Co. L.R. 217 (1993).