LANDLORD AND TENANT

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The relatively small number of cases presented for judicial review in Florida on the subject of landlord and tenant has not been increased appreciably during the 1951 to 1953 period. Neither the statutory nor the case law has undergone any substantial changes. However, notably unique factual situations have been presented for interpretation and the perplexity of the "security deposit" problem has increased.

LIQUIDATED DAMAGES

Validity of liquidated damage provisions.—The decisions involving provisions for liquidated damages are difficult to resolve. Courts agree as to the general principles of law to be applied; however, the difficulty of applying them to specific factual situations has resulted in the same anomalous situation that exists in the field of negligence, i.e., decisions which, though applying the same reasoning to non-distinguishable fact situations, reach opposite results. This is the present state of the law in Florida. 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 a 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 for the breach of any of several covenants of unequal import, or where the lessor has the option of retaining such sum 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 Investments v. Scheikowitz, the court held a similar provision to be valid as providing for liquidated damages. The court distinguished this case from those preceding by holding that the damages were unascertainable, whereas they were readily ascertainable in the other cases. The court has apparently strayed from the real issue. The intent of the parties is, nominally at least, the decisive factor in these cases. While courts will not effectuate a mere verbal intent to provide

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1. 58 So.2d 673 (Fla. 1952).
2. 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).
3. 63 So.2d 498 (Fla. 1953).
for liquidated damages when it appears that the damages are readily capable of ascertainment and the stipulated sum is out of proportion thereto, i.e., where a penalty would actually result, it does not follow that the mere factor of unascertainable damages will be treated conversely in connection with an intent to provide for a penalty. Having held that such provisions clearly show an intent to provide a penalty, how can the court hold such a provision valid as providing for liquidated damages?

In any event, the dicta of the court in these cases leads one to believe that damages flowing from the breach of an ordinary lease will never be considered unascertainable, within the meaning of that term necessary to support a liquidated damages provision.

**CONSTRUCTIVE TRUST**

*Acquisition of adverse title by tenant.*—The Supreme Court in overruling the chancellor's finding of fact, held that a landlord-tenant relationship existed, and consequently a tax deed to the leasehold acquired by the tenant without the landlord's knowledge was subject to a constructive trust in favor of the landlord. Two justices dissented on the grounds that a constructive trust may be proved by parol only where the evidence is so clear and unequivocal as to remove any doubt that the chancellor may have as to the existence of the trust. Since the formation of a constructive trust was dependent upon the fact of the existence of the landlord-tenant relationship, and the evidence on this point was conflicting, it would appear that the dissent had a cogent argument for upholding the chancellor's decree.

**LEASE PROVISIONS**

*Interpretation.*—A lease specifying the term to be "for and during the war with the 'Axis Nations' and for 6 months after the final treaty of peace" (italics supplied), was held terminated. Many cases have been presented for judicial review involving clauses specifying the term to be "duration of the war" or "termination of the war." Though the courts tend towards a strict interpretation of these terms when construing statutes, the tendency in cases involving private contracts has been to

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8. Id. at 726.
9. See Quinn v. Phipps, 93 Fla. 805, 113 So. 419 (1927) and cases cited therein at p. 426.
accord such terms their popular meaning, i.e., cessation of hostilities.\textsuperscript{12} The theory upon which these latter decisions are based is that these terms have no definite legal meaning; therefore, they are to be interpreted in accord with the probable intent of the parties.\textsuperscript{13} In the instant case, the court holds, in effect, that the term "final treaty of peace" is of the same nature as "duration of war," i.e., admits of no exact legal meaning. The whole decision is based upon this contention. It is opined that the result reached in this case is desirable, and actually the only feasible one. However, it would have been better to have arrived at it on the equitable theory of mutual mistake, rather than hold that the term "treaty of peace," especially with the adjective "final" prefixed, does not have a definite legal meaning.

A covenant to "use and occupy for and during the term hereinafter set forth" in connection with a covenant "not to use said premises for any other than as a theatre and picture show" was held to mean no more than the imposition of a restriction on the use of the property.\textsuperscript{14} The inference that the parties intended the more onerous burden of operating the theatre during the life of the lease could not be reasonably drawn from these covenants. There was no showing that the parties considered, during negotiation of the lease, the effect the operation would have on the premises and those adjoining, and while it was alleged that great injury would result from a failure to so operate the premises, no proof was offered to support the allegation. The court distinguished this case from cases involving leases wherein the amount of rental specified is materially dependent on the operation, and the obligation to operate a business is therefore implied.\textsuperscript{15}

There is a possibility that if, in a similar case, it be evidenced that it was the intent of the parties to require the operation of the premises, the court might construe such a covenant so as to reach an opposite result. For in \textit{Congressional Amusement Corporation v. Weltman},\textsuperscript{16} the District of Columbia Court, in construing a similar covenant, reached the same result as the Florida Supreme Court. It held that such a covenant was either unambiguous to the contrary of such a contention (the obligation to operate) or "at the very least, was so ambiguous that the lessees were entitled to introduce parol evidence." However, in a later case\textsuperscript{17} the

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  \item 12. \textit{LaJolla Casa de Manana v. Hopkins}, 98 Cal. App.2d 339, 219 P.2d 871 (1950);
  \textit{Rupp Hotel Operating Co. v. Donn}, 158 Fla. 541, 29 So.2d 441 (1946);
  \textit{Colonial Hotels v. Maynard}, 158 Fla. 318, 29 So.2d 28 (1946);
  \textit{Lincoln v. Harvey}, 191 S.W.2d 764 (Tex. 1945).
  \item 13. Ibid.
  \item 14. \textit{Frosti Corp. v. Marlemes}, 53 So.2d 538 (Fla. 1951).
  \item 15. \textit{Lincoln Tower Corp. v. Richter's Jewelry Co.}, 152 Fla. 542, 12 So.2d 452 (1943);
  \item 16. 55 A.2d 95 (D. C. 1947).
  \item 17. \textit{Amos v. Cummings}, 67 A.2d 687 (D. C. 1949).
\end{itemize}
same court held a similar covenant to be effective to create an affirmative obligation to operate in the manner specified. It distinguished this case from the previous one on the basis that there was a showing here that it was the intent of the parties that such use be affirmatively required, and that a failure to do so might result in serious loss to the landlord.

In another case\(^8\) the controlling provisions of the lease in question were as follows: the lessee was to use the premises for a women's apparel store and no other purpose; the lessee could sublease, but such sub-tenant could not conduct any business that would conflict with the business of any other tenant in the building. The lessee had sublet the premises and the sub-tenant was operating a gift shop therein. The landlord argued that since the rent was contingent in part on the amount of gross sales, the “use” was limited by implication. This reasoning was not accepted. The court held that the lease was clear, certain and unambiguous as relating to this point. The restriction to a single use applied only to the original lessee, and the sub-lessee could use the premises for any non-conflicting business, such as the gift shop in question.

**Equitable Relief**

The Supreme Court upheld a chancellor’s decree granting equitable relief to a lessee-defendant who had failed to perform the condition precedent to the exercise of his right to renewal of his lease. The lease required transmittal to the lessor of written notice thirty days prior to termination of the lease, but such notice was not given until twelve days prior to termination. The chancellor found as a matter of fact that the lessor had not been damaged by the delay, and that the equities were with the lessee. One justice dissented on the grounds that the “hardship” requisite to such relief was not evidenced in this case; that a mere showing of “equities” in favor of the lessee would not be sufficient to justify granting equitable relief.\(^9\)

Though, of course, it is a question of fact that is argued here, it should be noted that the granting of equitable relief in such cases has always been predicated upon “unconscionable loss” rather than mere inconvenience or slight equities.\(^20\)

It is well settled in this jurisdiction that a judgment of statutory eviction does not bar an equitable action by the lessee for relief from forfeiture.\(^21\) Also, it is elementary that courts of equity have inherent power to relieve a lessee from forfeiture for non-payment of rent.\(^22\) The reasoning proceeds upon the theory that the lease provision for termination

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18. Ridgefield Investors v. Mae Ellen, 58 So.2d 676 (Fla. 1952).
and re-entry upon failure to pay rent is designed to secure the payment of rent, and if the landlord is made whole there is no purpose for the forfeiture. Thus, the Florida Supreme Court granted relief to a lessee who, when notified of his failure to pay the rent when due, tendered a check which was wrongfully dishonored by the drawee bank; whereupon the lessor brought a suit for statutory eviction.

Cases are few indeed where equity does not grant relief from forfeiture under similar circumstances. The failure to pay must be of such nature as to be termed wilful, such as habitual arrears or unreasonable time overdue.

An interesting case raised the issue of whether a land owner could erect and maintain a sign on his premises which obstructed the view from the highway of the adjoining possessor’s premises (restaurant) and advertising sign. It had been alleged that the complainant was the defendant’s tenant, that the sign was constructed solely for spite, and that it was causing serious loss to the complainant’s business. The chancellor found that substantial damage had been caused, but that it would be inequitable to require the sign to be moved or destroyed. Relief in the form of an abatement of rent was ordered for so long as the sign was maintained in its location. The basis for the chancellor’s opinion does not appear in the report, but the only supportable one would appear to be reasoning in accordance with the “spite fence doctrine.”

In affirming the case, the court held that “the eviction and maintenance of a large advertising sign is not per se a nuisance, but under certain circumstances it may become one, and could well be one when it seriously affects the rights and business of the adjoining property owner, it having been erected for that purpose.” The court stated further, “An adjoining property owner cannot maintain a condition that may be or become a nuisance on his property which is injurious to the business or property rights of an adjacent landowner . . . . especially if that adjoining property owner be his landlord,” (italics supplied). The meaning of this statement is obscure. The mere fact of a landlord-tenant relationship would ordinarily render that to be a nuisance which was not otherwise so; because if the relationship embodied covenants which that complained of breached, it would be actionable as a breach thereof, and not thereby rendered a nuisance.

**Eminent Domain**

Apportionment of award.—In a suit for a declaratory decree the Circuit Court of Dade County was confronted with the problem of

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23. Paducah Home Oil Co. v. Paxton, 222 Ky. 778, 2 S.W.2d 650 (1928).
apportioning, between lessor and lessee, an award given for realty constituting a part of the leased premises, which was taken by the city under right of eminent domain. The court reasoned that since the tenant would have had a right to use the land during the life of the lease, he should have a right to the use of the money which stands in place of the land. Accordingly, it was ordered that the full amount be given to the lessor and the lessor credit the lessee with the yield such award would bring if invested in highest grade securities (temporarily set at three and one-half per cent per annum).

This case is the subject of a note28 wherein the many rules which the various courts apply in determining the apportionment of such awards are set forth. The rule announced in this case is very much like the remedy provided in Massachusetts by statute.29

29. MASS. GEN. LAWS c. 79 § 24 (1921).