WHEN TEMPORARY BECOMES INTERMINABLE

How many lawyers does it take to terminate a lease?

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In the career of any right of way professional, some cases are more memorable than others. This matter in particular was truly unforgettable for the variety, creativity and ferocity of the opposition to the state's attempts to terminate a temporary tenancy. Patience and persistence is certainly required in both the right of way and legal professions.

In July 1978, the state of California entered into what was then a seemingly nondescript post-acquisition written lease of vacant property. It was for an interim use of state-owned property that had been acquired for the future widening of a landscaped freeway. The lease agreement called for up to three 5-year lease periods between the state and the lessee, Marina Del Rey Boat Storage, Inc., but specifically provided that the lease of the subject property was intended to be only temporary in nature, as the property was going to be used in a future highway improvement project. The lease memorialized the intended temporary nature of the occupancy by including an unconditional 90-day termination of tenancy clause. Also included in the lease was a post-acquisition tenant relocation assistance benefits waiver clause wherein the lessee acknowledged that the state was not obligated to find them a relocation site after the termination of the lease. The lessee proceeded to design, construct and manage a boat and recreation vehicle self-storage facility on the property.

Over the next 20 years, the "temporary" occupant lessee amassed several hundred self-storage subtenants who were renting parking spaces for vehicles and enclosed spaces for personalty within repurposed metal ocean containers. Further complicating matters, many of the subtenants had in fact subleased storage space from the lessee for ten or more years. It was estimated that the lessee was receiving a tidy monthly net income in excess of $20,000 each month, so it was hardly surprising that the lessee was now disinclined to voluntarily leave the leased property.

In March 1998, the state decided to cancel the temporary lease for a traffic improvement project. Under the lease agreement, the right of way department prepared and mailed a 90-day Notice of Termination of Tenancy and also sent a process server to post a copy of the Notice of Termination at the property. However, upon attempting to post the notice, the process server was physically confronted by principal owner, Mr. Green, who was the lessee corporation's sole shareholder. Following the confrontation, Mr. Green called 911 emergency requesting police assistance, alleging that the process server was a trespasser who assaulted him while attempting to vandalize the lessee's

property. Patrol cars, police and news media helicopters swarmed the property. The incident and alleged confrontation even ended up as a featured story on the local evening news.

Here Come the Lawsuits

The next day, Mr. Green hired his first attorney in an attempt to stop or forestall the tenancy termination with a preemptive lawsuit against the state with six total cause of actions. He alleged breach of contract, trespass, intentional interference with contract, negligent interference with contract, conspiracy and inverse condemnation. He also hired two more attorneys to begin lobbying the local state legislators to try to convince the state to redesign the freeway-widening project away from the property and to persuade the state to sell him the property. A group of subtenants concurrently filed a second lawsuit against the state to prevent the tenancy termination.

Mr. Green then proceeded to hire a fourth attorney to file a third lawsuit against both the state and the process server for personal injuries and damages that he claimed were suffered during the alleged trespass and vandalism at the property.

The state countered the three lawsuits by filing an unlawful detainer lawsuit (the fourth) to recover possession of the property and tendering the legal defense of the personal injury lawsuit back to Mr. Green's insurance carrier pursuant to the indemnity clause in the lease agreement. The state also filed documents seeking to disqualify the fourth attorney from representing either Mr. Green or the lessee corporation, because under contractual obligation, the lessee was required to indemnify the state as the lessor.

Filing an unlawful detainer lawsuit to recover possession and damages assured that the state would receive priority processing within the judicial system. In short order, the state prevailed in the unlawful detainer action and was awarded a judgment that included the right to possession and $32,700 for costs, fees and damages. The court also issued a writ of possession, which prompted Mr. Green to hire his fifth attorney to prepare an appeal of the unlawful detainer judgment. When there is a contractual obligation to indemnify the relationship between parties, tendering the defense of a lawsuit is the act of requesting that another party assume the responsibility and costs of defending against lawsuit claims. In this case, the lessee agreed in the original lease to indemnify and defend the state against any and all personal injury actions that occurred on the leased property. Thus, an unusual situation arose here, as the lessee corporation had a contractual obligation to defend the state and the process server against the personal injury claims being made by its own sole shareholder, Mr. Green. The lessee's insurance company was therefore responsible for defending the state, including any costs and damages awarded to Mr. Green. The corporation was now defending itself against its own shareholder.

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Dealing with Delaying Tactics

The lessee's insurance company agreed to honor its contractual obligation to represent the state, prompting the retention of the sixth attorney. Upon notice of the appeal denial in the unlawful detainer action, Mr. Green initiated another action in federal bankruptcy court (lawsuit five), through another, the seventh, attorney. This attorney filed an application seeking bankruptcy protection for the lessee through the federal bankruptcy courts, asking the court to delay the enforcement of the unlawful detainer judgment. Mr. Green and the lessee corporation then hired three more attorneys (bringing our count to ten) to negotiate a settlement. Although there was a delay, these attorneys were ultimately unsuccessful in negotiating a settlement, and the state took possession of the property.

Responding to the lessee's breach of contract claim, the state filed a cross-complaint in lawsuit number six, against lessee for breach of contract and false claim act violations. The lessee tendered the defense of the cross-complaint to the corporation's insurance carrier and retained an eleventh attorney. Then, the lessee retained his twelfth attorney to defend against the state's cross-complaint. The state brought a Motion for Summary Judgment on the cross-complaint that was granted by the court. The lessee then sought to mediate the case, and when the eleventh attorney left his firm, a thirteenth was injected into the litigation.

A global mediation was scheduled wherein the lessee's insurance carrier decided to add new legal counsel for advisory assistance concerning coverage and policy issues—insert attorneys number fourteen and fifteen. In response to the insurance company's anticipated denial of coverage to the lessee corporation and Mr. Green, they retained new insurance coverage and policy counsel with a sixteenth attorney.

Resolution

Fortunately, I partnered with a great attorney on this matter through the 28 months of litigation between the parties until all the cases were finally resolved and the property was cleared of the improvements, subtenants and abandoned personal property through public auctions. The lessee's insurance company ultimately agreed and paid the state $235,000 for fees, costs and expenses. In the end, the state was ecstatic to receive and cash the check. In case you're keeping track at home, that was six lawsuits, 16 attorneys and five mediation sessions. Any winners, though? ✪

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