

Fall 1957

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Recommended Citation

David H. Means, Landlord and Tenant, 10 S.C.L.R. 56. (1957).

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LANDLORD AND TENANT

DAVID H. MEANS*

In *United States Rubber Co. v. White Tire Co.*¹ the Court was called upon to determine the disposition to be made of a sum deposited by lessee to secure lessee's performance under the lease. Lessee having abandoned the premises during the term, lessor relet to another for the balance thereof. Lessee's default thus far (the term was to run until 6th April, 1962) had resulted in no rent loss to lessor, but lessor had paid a \$500.00 attorney's fee for negotiation of the new lease. The appeal was by the receiver for the lessee from a circuit court order determining his interest in the deposit.

The Supreme Court ruled that the lease was terminated by lessor's re-entry and reletting following lessee's abandonment of the premises and default in the payment of rent, and that thereafter lessee's liability was not for rent, but for damages resulting from lessee's breach of contract. The measure of such damages was said to be "the amount that [lessor] would have received as rent for the remainder of the term, had there been no default, less such amount as she would have received for the new tenant — for it was her duty to minimize her damages." However, the Court found that the deposit was intended to secure losses resulting to lessor by way of damages after lessee's abandonment, as well as losses sustained during lessee's occupancy.

Prior to lessee's default the deposit (in amount \$7,000.00) had been used by lessor to pay for improvements constructed by lessor under terms of the lease. The Master regarded such use as a conversion which entitled lessee's receiver to judgment for \$7,000.00 with interest, secured by an equitable lien upon the premises with the right of foreclosure. However, the circuit judge reversed the Master and held that such use had been ratified and affirmed by lessee. Reviewing this holding, the Supreme Court found no evidence that lessor had expressly authorized or ratified such use. Nevertheless, on this point the circuit court decree was affirmed on the ground

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1. 231 S. C. 84, 97 S. E. 2d 403 (1956).

that since the deposit agreement did not provide for safe-keeping or investment of the deposit, or for payment of interest thereon, or its segregation from funds of lessor, no conversion by lessor was shown.

The circuit court had allowed lessor to charge against the deposit the \$500.00 attorney's fee paid lessor's attorney for negotiating and drafting the new lease. This was held erroneous, the Court saying that in the absence of contractual or statutory liability therefor, attorney's fees are not recoverable as an item of damages. The Court recognized that a different rule would have applied had lessor paid or become obligated to pay a commission to a real estate agent in connection with the reletting, in which event the amount of such commission would have been recoverable as an item of damages for breach of the lease.

Although lessor as yet had suffered no damage chargeable against the deposit by reason of lessee's breach of the lease, yet since the term was to continue until 1962 it could not presently be determined what recoverable damages lessor might suffer in the future. The Court therefore agreed with the circuit judge that the cause must remain open and under reference until the expiration date of the original lease, at which time lessee's receiver would be entitled to a return of the deposit less any sums chargeable against the same as items of damage recoverable for breach of the lease.

Legislation

By an Act² approved March 7, 1957, it is provided that "[w]hen any leasehold estate is conveyed for a definite term by any grantor whose property is exempt from taxation to a grantee whose property is not exempt, the leasehold estate shall be valued for property tax purposes as real estate." Problems raised by this Act fall within the field of taxation rather than that of landlord and tenant.

2. Acts 1957, No. 79.