Jumpin' Jack's Party Shack

COUNSEL'S CORNER

In 2006 Jim and Jeneane Cremer formed Jumpin' Jack's Party Shack, Inc., to operate a children's party center. The Cremers found a warehouse in Tyler owned by Morris Hallman, and signed a four year lease.

The leased premises consisted of a 20 x 20 foot sheet metal over steel frame air-conditioned office, with an attached 50 x 80 foot warehouse structure. The warehouse portion was not air conditioned, and contained only a bare concrete floor and open-air roof extension. It had been previously used as a car wash bay.

The Cremers spent $36,950 for dirt work, concrete and materials to make a 50 x 50 foot warehouse extension and enclose it. Also the Cremers expended another $115,000 to install six air conditioning units, HVAC duct work, lighting, plumbing, toilets, cabinets, party rooms and more offices.

In December 2010 – the end of the lease term – the Cremers removed the six air conditioning units, HVAC ducts, lighting, kitchen and bathroom fixtures, doors, door jambs, insulation, electrical wiring and sheetrock as they vacated the buildings. All of those components had been installed by the Cremers after the beginning of the lease term.

Morris Hallman was not pleased and sued the Cremers. Hallman's position was that the Cremers had no right to remove valuable improvements, and by doing so, Hallman was substantially damaged.

The trial court ruled for Hallman, finding that in the lease agreement ". . . the parties expressly agreed that at the expiration of the lease, improvements to the property made by lessees . . . belonged to lessor, Morris L. Hallman, and were to be returned to the lessor by the lessees in good operation condition."

The trial court awarded Hallman damages of $67,339. Cremers appealed.

The Appellate Court took a hard look at the 2006 lease, particularly focusing on the obligation of the tenants to repair everything the tenants installed, modified, replaced or added. Otherwise, if the landlord had installed it (meaning: it was in the buildings

when the Cremers received the keys), then it was the landlord's obligation to repair and maintain.

Due to procedural issues, the argument that Cremers installed trade fixtures into the buildings which became permanently annexed and incorporated into the real estate, was not litigated. Presumably the outcome might have been different.

But – based on the pleadings before the Court of Appeals – Cremers win; Hallman loses. Cremers had the right to remove the improvements they installed, much to Hallman's disappointment and financial loss, as the Court of Appeals concluded that the trial court had not properly analyzed the 2006 lease agreement.

See *Cremers v. Hallman*; No. 06-13-00011-CV; Texas 6th Court of Appeals, May 16, 2013.

Lessons learned:

1. Commercial leasing is inordinately difficult. Purchase and Sale Agreements are easier. Leasing is like a marriage. Sometimes a beautiful partnership is formed. Other times not so much.

2. Don't assume that the lease form you are using contains all the concepts that are important to you, the landlord and the tenant. Or the lenders financing the project or tenant's leasehold interest. Even the 'boilerplate' clauses can be incomplete, confusing, or MIA.

3. It's unfortunate this Texas Appellate Court did not fully address the issue of trade fixtures and permanent annexation into the realty. But, regardless, if it's important to you then be sure it is properly stated in your lease!

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