

BE CAREFUL WITH CONTRACT DEFINITIONS



COUNSEL'S CORNER

In August 2004, TC Dallas #1, LP bought an office building from Republic Underwriters Insurance Company for \$20 million. TC intended to redevelop the property, but it could not do so until Dallas National Bank vacated. To make the deal, Republic agreed to share TC's early lease termination expenses and the costs of operating and managing the building until the Bank moved out.

Instead of redevelopment, TC instead elected to sell the property 10 months later for \$16 million, to SCA 2727 Turtle Creek LP. TC retained in its contract with SCA the right to receive compensation from Republic as stated in the first contract. As well the second contract provided that the reduced purchase price reflected a \$6 million reduction from the intended price, called a "bank credit," which was defined as the amount by which the intended purchase price was reduced to compensate SCA for the risk in accepting title subject to the tenancy of Dallas National Bank, as well as anticipated lease termination expenses and operational costs of the property as an occupied building.

The second contract then reserved for SCA the exclusive right to negotiate lease termination fees. For reasons not explained in the appellate decision, the second contract obligated SCA to pay the anticipated Bank lease termination fees to TC. It was then TC's duty in the second contract to remit such fees to the Bank.

Using the second contract's procedures regarding the Bank lease termination fee, SCA wired \$2 million to TC, and TC wired \$2 million to the Bank. Actually the fee was not really for a lease termination, but rather the Bank was paid for a release of its right to renew the lease term through 2014.

TC then sued Republic, demanding reimbursement for portions of the \$2 million paid to Dallas National Bank, as well as the \$6 million "bank credit" and other expenses.

Republic asserted in the trial court that it had no obligation to reimburse TC for such expenses. The trial court agreed. TC Dallas #1, LP appealed.

The Dallas Court of Appeals, deferring at one point to Webster's Third New International Dictionary for guidance, rejected TC's appeal. Using the strict language of the first contract regarding "*lease termination costs*," and "*expenses and disbursements*," the Court of Appeals ruled that the monies paid and credit offered in the secondary contract did not exactly match the definitional phrases in the first contract.

TC lost, again. See TC Dallas #1, LP v. Republic Underwriters Insurance Company, Dallas Court of Appeals, July 21, 2010.

Bottom line:

1. Definitional phrases in contracts are really important.
2. Definitional phrases in contracts are vitally important.
3. Definitional phrases in contracts are critically important.

Yes I know there is some repetition, but I thought it was important enough to repeat.

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