

# LEASE GUARANTY v2.0



## *COUNSEL'S CORNER*

Faith and True Christian Center, Inc. entered a commercial Lease with USA Real Estate-2, LLC, in which Faith leased space from USA for church activities. The Lease was for five years beginning September 1, 2007. When the Lease was executed the church's pastor and president, Anthony Harrison and his wife, executed a personal Guaranty along with other persons in leadership positions at the church.

The Guaranties were accepted by USA Real Estate, after it had reviewed and approved federal and state tax returns of the Guarantors.

None of the Guarantors had any ownership interest in Faith; none of them were "commercially sophisticated" as observed by the circuit court.

In any event, evidently Faith was suffering from financial problems so Pastor Harrison sought a Lease extension in exchange for lowering the monthly rental and extending the term for three more years. Harrison did not seek the consent of the other Guarantors who may have objected had they known of Harrison's plan.

Unfortunately, three years after the Lease was extended Faith was unable to pay the reduced rent. Consequently, Faith and USA Real Estate agreed that Faith would vacate the property eight months before expiration of the Lease term.

After Faith vacated, USA Real Estate asserted a lawsuit against Faith, Pastor Harrison and the other Guarantors. The claims against Pastor Harrison and his wife were dismissed due to a bankruptcy discharge. The litigation continued against Steve Carter and the remaining Guarantors.

At the conclusion of the trial, the circuit court found that Carter and the remaining Guarantors did not consent to the Lease extension amendment. And consequently, Carter and the Guarantors were not liable for rental due under the Lease extension amendment.

USA Real Estate appealed.

The Appellate Court accepted the evidence that the Guarantors did not know of the Lease extension amendment until they were sued. And that date was almost four years after the amendment was executed.

The issue presented to the Court related solely to the language of the Lease and Guaranty.

The Lease stated that no notice to the Guarantors is required with respect to an indulgence, modification, alteration, or accommodation. USA Real Estate focused on the word *modification* and claimed that a *modification* is similar to a Lease amendment.

The Appellate Court looked high and low for language in the Lease or Guaranty providing for extensions without the Guarantors' specific consent. Failing to locate that exact provision, the Court determined that the terms "Lease modification" and "Lease extension" were sufficiently different.

The Court then concluded that absent the formal written consent of the Guarantors to the Lease extension, the Guarantors could not be liable for rental during the Lease extension period.

Judgment for the Guarantors is affirmed; the Guarantors are not liable for rental during the extension period. See *USA Real Estate-2, LLC v. Carter*; No 2648; Maryland Court of Special Appeals, January 12, 2018:

[https://scholar.google.com/scholar\\_case?case=11118511451226795847&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholarr](https://scholar.google.com/scholar_case?case=11118511451226795847&hl=en&as_sdt=6&as_vis=1&oi=scholarr).

#### Lessons Learned / Questions Asked:

1. Most commercial Leases are also guaranteed by one or more Guarantors, right? And experienced Guarantors often negotiate and change the text of the Guaranty Agreements, yes?
2. Both before and after edits, does your Lease Guaranty Agreement provide for the ongoing / continuing duty of the Guarantors without requiring their written consent?
3. This lawsuit could possibly have been avoided if the Landlord or its agents had obtained execution of the Lease amendment by the Guarantors. And – the Guarantors could not have complained that they were surprised and only learned of the \*not\* modification when the lawsuit was asserted. Best practice suggests that Landlords and property managers always obtain the written consent of the Guarantors to all extensions, amendments, modifications, renewals, novations, and adjustments, regardless of the text of your Guaranty Agreements.

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