

Litigation Team Successfully Represents Commercial Landlord At Trial

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A commercial landlord, recently prevailed in a complex litigation and trial before the Superior Court of New Jersey, Chancery Division, General Equity Part. Following a trial which took place over several months, Final Judgment was entered on behalf of the firm's client in excess of \$2.4 million dollars, including recovery of the firm's client's attorneys' fees and costs.

The dispute commenced following unsuccessful negotiations between the firm's commercial landlord client and the tenant relating to the tenant's allegation that the landlord had overbilled for certain Common Area Maintenance ("CAM") charges. Specifically, a clause contained in a Lease Agreement, common in the industry, allowed for the commercial landlord to pass through CAM charges to the tenant based on the square footage occupancy of the landlord's space, in relation to the total site. Reciprocally, the leasehold contained a right benefitting the tenant which permitted the tenant to request documentation in support of the CAM charges. The landlord objected to the tenant's request for the CAM charge verification data due to the tenant's habitual late payment of rent, which the landlord deemed a breach of the Lease Agreement.

Direct negotiations between the landlord and tenant were unsuccessful, and the tenant commenced suit with the filing of a Complaint seeking compliance by the landlord of its obligation to verify CAM charges, and substantial money damages. The commercial landlord, at that point, turned to Giordano, Halleran & Ciesla to review the matter and defend. Following the firm's analysis of the Lease Agreement, CAM charges, and overall rent roll and payment history, the firm formulated a defense that focused on the inaccuracy of the tenant's claim of CAM overbilling. Additionally, a Counterclaim was filed by the commercial landlord against the tenant alleging that CAM charges were underbilled, and following detection via forensic analysis of the lease and payment history, the landlord alleged that it had underbilled the tenant the base rent by virtue of failing to apply an annual Consumer Price Index ("CPI") increase. An ancillary dispute regarding repairs relating to obligations for the roof were litigated concurrently.

Discovery ensued, including the retention of an expert CPA witness who specialized in lease and rent analysis. Upon motion by Giordano, Halleran & Ciesla, on behalf of its commercial landlord client, the Court appointed a neutral real estate CPA expert to opine on the findings of the parties'

respective experts, thereby addressing a “*battle of experts*” scenario. Following a lengthy trial, post-trial motions, and computations disputes, the Court ruled in favor of the firm’s client by dismissing the Complaint of the tenant, and entering judgment in favor of the commercial landlord for both underpayment of CAM charges, underpayment of base rent and the Court accepted the argument on behalf of the firm’s client that a fee shifting provision contained in the Lease Agreement entitled the commercial landlord to reimbursement of all legal fees and costs.

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