

# Landlords Beware: Construction Projects And Potential Liabilities

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*Classic Restaurant Concepts, LLC v. President and Fellows of Harvard College*, 104 Mass. App. Ct. 323 (2024)

*Classic Restaurant Concepts, LLC v. President and Fellows of Harvard College* involved a dispute over a commercial lease. In 2015, defendant President and Fellows of Harvard College (“Harvard”) leased premises at 8 Holyoke Street in Cambridge, MA (the “Premises”) to plaintiff Classic Restaurant Concepts, LLC (“Classic”) for the operation of a restaurant. Prior to executing the lease, Harvard informed Classic that it intended to substantially renovate a building directly across the street from the Premises, a project that was expected to commence in 2016 and continue through 2018 (the “Project”).

The lease, which included a covenant of quiet enjoyment, required Classic to operate the restaurant in a manner that maximized the amount of gross revenue, and provided that if gross revenue exceeded specified base amounts in various years, Harvard would receive a percentage of that revenue as additional rent.

In March 2016, Harvard’s contractor for the Project, Consigli Construction Co. (“Consigli”), received permission from the Cambridge Department of Public Works to close Holyoke Street in front of the Premises to vehicular traffic during construction work hours to facilitate completion of the Project. Consigli anticipated (and had notified Harvard) that the street closure would likely continue through the end of the Project in August 2018. Classic opened its restaurant in the fall of 2016, but immediately faced significant difficulty operating due to Consigli’s construction efforts and the street closure. Classic operated in the space for a short period of time, paying Harvard for only two months of rent before ceasing operations in June 2017.

Classic subsequently sued Harvard, asserting, among other things, claims for fraud and breach of the

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implied covenant of good faith and fair dealing, and alleging that the street closure interfered with Classic's operations of the restaurant and caused its demise. Classic also sought a declaratory judgment that the lease was terminated and that it owed Harvard no money under the lease. The trial court granted summary judgment in Harvard's favor and Classic appealed. Although the Appeals Court affirmed the dismissal of Classic's fraud claim, it reversed and vacated the trial court's judgment with respect to the other claims.

The Appeals Court held that the record could support a claim for a breach of the implied covenant of good faith and fair dealing premised on Harvard's alleged interference with Classic's operations through the closure of Holyoke Street. It further found that a genuine factual dispute existed as to whether the street closure deprived Classic of the access it needed to operate the restaurant while maximizing revenue. And it concluded that, on the record presented, a factfinder could find that notwithstanding Classic's awareness about the Project, it reasonably expected that Harvard would not cause a street closure that would significantly impair its ability to maximize revenue and reap the resulting benefits. The Appeals Court also found that the trial judge's interpretation of the purpose of the good faith and fair dealing covenant from the Supreme Judicial Court's decision in *Uno Restaurants, Inc. v. Boston Kenmore Realty Corp.* – that the covenant should not supply contractual terms that the parties are free to negotiate – was too broad. The appeals Court held that the implied covenant of good faith and fair dealing contemplates obligations not expressly stated in a contract and that limiting the covenant solely to the terms of the contract would make it a nullity.

The Appeals Court also reversed the dismissal of Classic's covenant of quiet enjoyment claim. The Appeals Court found disputed issues of fact concerning whether the closure of Holyoke Street seriously interfered with Classic's tenancy. Just because Classic knew about the Project does not constitute a waiver of its right under the covenant of quiet enjoyment to challenge specific impacts. The Appeals Court further held that a factfinder could conclude that Harvard knew or should have known that the natural and probable consequence of the closure of Holyoke Street was a serious interference with Classic's tenancy, and that its failure to take corrective measures was at least negligent.

The Appeals Court further held that summary judgment should not have been granted on Classic's claim under Chapter 93A. The Appeals Court held that liability under Chapter 93A could lie because Harvard's closure of Holyoke Street for its own benefit, a breach of the covenant of quiet enjoyment, and Harvard's alleged failure to timely notify Classic of the street closure could be viewed as unfair and deceptive conduct.

Finally, the Appeals Court held that because there was a genuine dispute about whether the Holyoke Street closure significantly impaired Tenant's ability to enjoy the Premises, the dismissal of Classic's declaratory judgment claim concerning termination of obligations to pay rent was premature. A determination that Harvard constructively evicted Classic or otherwise committed a breach of the covenant of quiet enjoyment could support a declaration that the lease and Classic's obligation to pay rent were terminated.

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