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John Erbes
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1243 Douglas Drive
Carterville, Franklin, 33314

Re: Carmen Suarez

Dear Mr. Erbes:

We have been retained by Ms. Suarez to represent her for the potential exposure for the earthquake repair work completed by her landlord and your client Ms. Elizabeth Murphy.

In light of your demand for a

reimbursement of $32,000 for these city mandated repairs, we have researched all applicable law. For the reasons set forth below, we anticipate you will advise your client that an action against Ms. Suarez is inappropriate.

As you know, Ms. Murphy owns the property located at 2906 Sunset Boulevard. Ms. Suarez is her tenant & operates a restaurant at that location. The City of Cartersville initiated a program requiring all structures comply with

the earthquake hazard reduction program. There is controlling caselaw in this matter. First, under Sewell v. Laverde the Franklin Supreme Court held that a landlord is responsible for repair work to a structure where city, state or municipal rules order compliance. The Court stated the tenant is not responsible for such repairs unless she expressly assumed that duty. Under the lease in question, section 12 speaks only to the ordinary repair & operation of the property. This provision makes no mention of city mandated repairs.

Although Section 42 states the Tenant must comply with statutes, ordenances and rules regulating the use of the premises. This provision makes no mention of structural repair work.

Even more concerning that Ms. Suarez is not responsible for this repair work is the rule promulgated in Brown vs. Green. In this case the Franklin Supreme Court resolved the issue as to whether the tenant or the landlord is responsible for non-use related obligations. Although this court found the tenant was liable

for the repair work, there are several reasons why this court would ~~find~~ find Ms. Suarez is not responsible for reimbursing your client.

First, although the lease in question was titled a "net lease", this lease was not a net lease. The court in Brown stated that merely titling a document "net lease" does not make it so. A net lease finds the Tenant as essentially assuming full ownership of the property. The landlord receives rent without any deduction for taxes or insurance paid by tenant. In this case

case, provision 9 states the landlord pays taxes & section 12 states the landlord pays insurance. Whether this lease is considered a net lease is relevant because under Brawn, the tenant assumes the Major burdens of property ownership. Further evidence this was not a net lease as seen by the 3 year life of the lease irrespective of the right to renew the lease for 5 more years.

Additionally, even if the lease is found to be a net lease, M.S. Suarez is still not liable for the repair work under Brawn.

Brauer put forth six factors to determine whether a tenant must assume the obligations to repair the property.

First, the court considered the relationship between the cost to repair & the rent. A high percentage indicates the tenant is not liable. Over the life of the lease, MS Suarez is expected to pay $62,400 in rent. The cost to repair this structure was $32,000. This is almost half of the entire 8 year tenancy. Therefore, a court would find MS Suarez not liable.

Second, the term of the lease is relevant.

In Brawn, the tenant assumed a 15 year lease at the outset. Here, Ms. Suarez only assumed a 3 year lease with an option to renew for 5 years. The court in Brawn considered a 3 year and a 5 year lease to be short term.

Third, Brawn stood for analyzing the amount of benefit conferred on the tenant for the repairs & the amount of benefit conferred on the landlord. In our case, the tenant will be occupying the premises for only 4 more years whereas in Brawn the court noted the occupancy was for 12 more

years. For that reason, Ms. Suarez is not liable.

Fourth, Brown discussed whether the curative action was structural in nature. If it was structural in nature, the landlord was responsible for the repair absent lease language to the contrary. Here, the repair work was obviously structural. Although section 2 states the tenant must abide by all statutes & rules, it does not explicitly place the burden of structural repair on the tenant.

Fifth, the Brown court analyzes the interference with the tenants operation of

their business as a result of the repair work. Here, it is conceded the repair work was done to minimize interference with Ms. Suarez's business. However, no facts is dispositive of the issue.

Lastly, the Brown court stated where the parties contemplated which party would be responsible for such repairs, this will be given effect. In Brown the court stated the tenant was an experienced tenant & knew of the problems associated with renting an old building. However, the court noted where a condition is

unforeseeable, they would be "loath"
to apply this factor against an unsuspecting
tenant. If the condition is foreseeable
& the tenant is experienced, it may be
assumed she contemplated the obligation).
Here, in our case, their is no way MS.
Suarez as a restaurant owner could
have contemplated that the structure
of the building was not in compliance
with earthquake standard. Further
this program was initiated during
MS. Suarez's tenancy. Given her level
of experience & all the other shared

discussed factors ~~the~~ illustrated in Brown, my client is not liable for the repair work to your clients property. Thank you for your consideration of this matter.

Very ~~Truly~~ truly yours,

P.S.
The intent of the parties is evidenced by Section 19 where the tenants responsibility to pay liens + assessments of the city is matched and. Additionally, section 31 speaks of

reimbursing the landlord for expenses properly paid by the tenant. As discussed above, the Brown factors indicate payment of this repair work was not the responsibility of MS Suarez under the lease given applicable case law.