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## The Law

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### **Clause Can't Vitiate Another**

*by Ron Davis*

Efforts at forcing a departing tenant to restore leased space to its original condition have not gone well for a New Jersey shopping center owner.

The shopping center is located in the Paterson-area town of Lincoln Park, and the tenant operated a restaurant at that facility for 10 years. When his lease expired, however, the tenant decided not to relet the space. That's when a serious dispute arose.

The lease that the tenant signed required certain guarantees. And the dispute involved the promise that the tenant must assure that the heating/ventilating/air-conditioning (HVAC) units are "in good condition and repair" at lease termination. The exceptions to that promise were "reasonable wear and tear and damage by Acts of God, fire, or a standard extended covered period...."

The lease further required the tenant to make good "all alterations, additions, and improvements which may have been made in, on, or to the premises." The only exceptions to those requirements were "movable furniture or unattached movable trade fixtures put in at the sole expense of the tenant, provided, however, that the tenant shall ascertain from the landlord at least 30 days before the end of the term whether landlord desires to have the premises or any part restored to the condition in which it was originally delivered to tenant."

The tenant, however, apparently failed to strictly comply with the lease requirements. Before the tenant moved out, the center's owner determined that the HVAC units were not "operable" and therefore sued the tenant.

In response, the tenant pointed out that the HVAC units had become old and defective during the tenant's occupancy of the restaurant space. In fact, the units were more than 20 years old at lease end. And the argument that they were still restorable to their original state failed to persuade the New Jersey courts.

A superior court judge ruled that the tenant was not responsible for the wear and tear of the HVAC system. The judge explained: "The evidence being clear that the [HVAC] units are just old and worn out, [the center owner's] reliance on the repair provision is misplaced, as it was for the purpose of keeping the demised premises in repair during the tenancy, not to make capital improvements to the property to 20-year-old air conditioning units."

The center's owner appealed that ruling.

A New Jersey appellate court agreed with the lower court judge, adding, "The [tenant's] obligation to surrender the premises in good condition was subject to reasonable wear and tear. If [the center's owner's] interpretation were correct, a simple request to restore the premises to its original condition would vitiate the 'reasonable wear and tear' exception to the tenant's obligations."

(Mort's Family Group, L.L.C. v. Yan Huang [2011 WL 4345820 [N.J. Super. A.D.]

*Decision: September 2011*

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