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Commercial Tenant Held to Have Waived Right to Terminate the Lease

Until 2002, Massachusetts followed the “doctrine of independent covenants” in commercial leases, under which a tenant could not withhold rent even if the landlord breached the lease. In Wesson v. Leone, 437 Mass. 708 (2002), the SJC created an exception to this doctrine, holding that if a commercial landlord breaches a provision in a lease that was a material inducement to the tenant entering into the lease, the tenant could terminate the lease and stop paying rent. This generated several cases upholding a commercial tenant’s early lease termination where, for example, the landlord failed to maintain the building to such a degree that the tenant was constructively evicted.

A large commercial tenant, relying on Wesson, recently terminated its lease, turned over possession, and stopped paying rent, arguing that the landlord constructively evicted it by unreasonably refusing to approve its construction plans to build out the space. The landlord

sued, arguing that under the express terms of the lease, the tenant had expressly waived its rights under Wesson to terminate the lease, even if the alleged breach was a material inducement into entering into the lease. Judge Debra Squires-Lee of the BLS agreed with the landlord. The court held that even though Wesson did change the law to afford a commercial tenant a right of termination, the SJC was careful to note that parties to a commercial lease could always “validly agree otherwise.” That is what the parties to this commercial lease did, as the lease stated that the tenant had no right to withhold rent and “Tenant hereby waive[d] the benefit of any statute or judicial law to the contrary.” The case is Waltham Centerpoint Investment Group, LLC v. Generation Bio Co., No. 2484CV000462-BLS2. It is a must-read for real estate practitioners, landlords and tenants.

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