The Most Influential Commercial Lease Cases in the Last Century That Every Drafter and Litigator Must Know

By Adam Leitman Bailey and Dov Treiman

For almost two years, the attorneys at Adam Leitman Bailey, P.C. have been compiling a list of the greatest commercial leasing cases of the past century. The authors have always been fans of "greatest" lists—there being something special about choosing the best among so many great people, entertainers, athletes, composers, or, in our case, decisions that have had the greatest effect on leasing law. "Greatest" lists permeate our entire culture and are the basis for entire institutions like the Academy Awards, Tonys, Grammys, and the various Halls of Fame. Cooperstown, New York, is a village entirely based on "greatest" lists, housing both the Baseball Hall of Fame and the greatest of the American summer opera festivals, Glimmerglass.

Law, however, is a peculiar field which, like baseball but unlike opera, lends itself well to actual statistical analysis of "greatness." These "greatests" are therefore those cases that are so heavily cited that they have demonstrated to have the most important impact on landlords' and tenants' businesses, and they are those cases in ignorance of which no litigator or drafter dares to enter either a courtroom or a lease negotiation.

A mere handful of cases have achieved that kind of influence in commercial landlord-tenant relations. In New York, few areas have residential rent regulation, but for the most part in the commercial arena, the principles of governing law are those of the common law, finding their roots in its development over the past thousand years, first in Britain and then later, here. These cases cover stability in leasing law, mitigation of damages, lease interpretation, lease enforcement, lease violations, attorneys' fees, bankruptcy, court stipulations, and actual and constructive eviction. While late night television talk show hosts would no doubt list these cases in inverse order of importance, we will use them to trace the lifetime of a leasehold, from negotiation through breach and enforcement.

Holy Properties Ltd. v. Kenneth Cole Productions, Inc.: Stability in commercial leasing law and mitigation of damages

Of these leading cases, probably the most essential one to understand is *Holy Properties Ltd. v. Kenneth Cole Productions, Inc.*,[1] for it is this case that erects the entire dominant theory of commercial leasing law. The court wrote:

> Parties who engage in transactions based on prevailing law must be able to rely on the stability of such precedents. In business transactions, particularly, the certainty of settled rules is often more important than whether the established rule is better than another or even whether it is the "correct" rule. This is perhaps true in real property more than any other area of the law, where established precedents are not lightly to be set aside.[2]

This holding sets the theme for this entire article. Yes, New York will vary from other jurisdictions about its holdings on a particular point, and the view expressed in some other jurisdiction may be eminently logical, but the principle of *stability* is so important to real property law, that New York will not lightly be persuaded to abandon its own view to hold some better view. In ancient Egypt, this principle of stability was known as *ma'at*[3] and endured for 5,000 years. Therefore, there is no reason to believe that in New York the principle of *Holy Properties* will be changed any time soon. Under *Holy Properties*, better is simply not good enough.

Holy Properties adhered to the common law; now a minority rule held only in Alabama, Georgia, Minnesota, Mississippi, New York, and West Virginia that a landlord has no duty to mitigate damages when the tenant abandons the lease.[4] After acknowledging its minority position, the New York high court felt that the adherence to *ma'at* was so important that it overrode any considerations of having a right or better rule.[5]

While it is perhaps more the profession of economists and MBAs than of lawyers to make these determinations, it cannot be doubted that stability in commercial transactions, especially commercial leasing, will make a state more economically attractive for businesses seeking a new location. No one likes the law to be an unknown commodity. This, along with the sheer number of business contacts physically nearby, no doubt substantially contribute to New York's attractiveness as a business environment and continue to make New York one of the great economic engines of the nation, indeed, of the world.

Interpreting Leases

151 West Associates v. Printsiples Fabric Corp.: Construction of leases against their drafters

While leasing no doubt has a flavor of conveyancing to it and was certainly understood at common law to be such, modern commercial leasing law is vastly more inclined to look at the lease as a contract subject to the same kinds of principles that govern contracts generally.[6]

Among the most important of these principles is that of *contra*

proferentem, the idea that contracts are construed most strongly against their drafters.[7] This doctrine is somewhat stronger in the residential leasing context than in the commercial leasing context because in all but very few residential leasing markets, the leases are presented to the tenants essentially as take-it-or-leave-it. In commercial leasing, however, the amount of participation by the tenant can vary widely. The mere fact, however, that a lease says that it was jointly drafted by the landlord and the tenant will not foreclose the tenant from offering proof that this was simply not true. The clause reciting that a contract is not one of adhesion may be no less a contract of adhesion than the rest of the contract. As a practical matter, therefore, any landlord who wants to elude the doctrine is going to have to have and maintain a paper trail demonstrating the tenant's actual participation in the drafting process. For landlord's counsel, this may well mean letters that begin, "This is to memorialize your request that the lease say." The leading case discussing all these ideas is *151 West Associates v. Printsiples Fabric Corp.*, in which the court wrote: "It has long been the rule that ambiguities in a contractual instrument will be resolved *contra proferentem*, against the party who prepared or presented it. Moreover, unless the terms of a lease are clear, no additional requirements or liabilities will be imposed upon a tenant."[8]

Vermont Teddy Bear Co. v. 538 Madison Realty Co.: Strict adherence to the terms actually embodied in a lease

In *Vermont Teddy Bear Co. v. 538 Madison Realty Co.*, the court takes this idea to the next step, holding that it does not matter what the parties meant to say or what they should have said.[9] When it comes to a lease, the parties will be bound by the clear meaning of the words actually employed. As the court put it:

> When interpreting contracts, we have repeatedly applied the "familiar and eminently sensible proposition of law [ ] that, when parties set down their agreement in a clear, complete document, their writing should be enforced according to its terms." We have also emphasized this rule's special import "in the context of real property transactions, where commercial certainty is a paramount concern."[10]

Again we find that same concern we saw in *Holy Properties*.[11] And the kicker in *Vermont Teddy Bear* is the phrase, "In the absence of any ambiguity, we look solely to the language used by the parties to discern the contract's meaning."[12] In short, if the clause is clear, it need not be sensible to be enforced.

Vermont Teddy Bear stands as something of an unsung hero of capitalism. Its proposition that a written agreement entered into by two people shall be enforced regardless of the severity of the consequences or the lunacy of the terms monumentally strengthens business relationships. Business people will only do business in a reliable province where the laws are stable and justice is invoked fairly. But fairness can only be achieved when courts enforce the agreements before them without relying on the equities or any prejudices—hence the importance of this animal of a case.

South Road Assocs., LLC v. IBM Corp.: Strict adherence to the terms actually embodied in the lease in spite of practical construction

South Road Assocs., LLC v. IBM Corp.,[13] takes *Vermont Teddy Bear* one step further. Not only does it adhere to the strict meaning of the terms used in the lease itself, but it forbids interpretation of those words by reference to practical construction[14] when the words themselves are clear. The key passage in the case is to be found in the words:

> Whether a contract is ambiguous is a question of law and extrinsic evidence may not be considered unless the document itself is ambiguous. Further, "extrinsic and parol evidence is not admissible to create an ambiguity in a written agreement which is complete and clear and unambiguous upon its face." Since the meaning of "premises" is clear and unambiguous in the lease, extrinsic evidence such as the conduct of the parties may not be considered. IBM's conduct—placing underground storage tanks in the surrounding land and cleaning the resulting pollution—is not sufficient to create an ambiguity in the lease where the language is clear. Neither may the conduct of IBM in paying all real estate taxes pursuant to a lease provision create an ambiguity. The contract, read as a whole, clearly and consistently uses the term "premises" to refer only to interior space and we cannot rely on extrinsic evidence to find otherwise.[15]

Fifty States Mgt. Corp. v. Pioneer Auto Parks: Enforcement of leases as written and acceleration of rent upon default

Yet, in spite of their importance, *Vermont Teddy Bear* and *South Road Assocs.* can hardly be regarded as unique. They stand in a line of increasingly powerful cases binding landlords and tenants to the actual wording of their leases. One of the most signal cases of all time, *Fifty States Mgt. Corp. v. Pioneer Auto Parks*,[16] examined whether a clause in a lease making the rent for the entire term of the lease due upon a single default could be enforced. While there were earlier cases that had argued that such a drastic result was inequitable and an unenforceable forfeiture, New York's high court in *Fifty States* cut through all of that, holding:

> In sum, the facts of this case do not justify equitable intervention. The parties freely bargained for the inclusion of a clause in their lease whereby the rent for the remainder of the lease term would be accelerated upon breach of tenant's covenant to pay rent. . . . That honoring at least this aspect of its bargain may cause Pioneer fiscal hardship does not, standing alone, serve as a basis for construing the acceleration clause as a penalty under the guise of applying equitable principles to a routine commercial transaction.[17]

In short, in a commercial transaction, the parties are to be held to the terms they negotiated, even if harsh.

Enforcing the Lease

Greenblatt v. Zimmerman: Use of "practical construction" to interpret a lease

Morgan Guaranty Trust Co. of NY v. Solow d/b/a Solow Building Co.: Adherence to "practical construction" to interpret a lease

The ideas associated with enforcing leases are tightly tied with the ideas of interpreting them. Frequently, cases discussing how a lease is to be enforced out of necessity also deal with the rules of how one is to be interpreted. Since commercial leases tend to be for longer terms than residential leases, there can be some considerable lapse in time from when a clause is written to when it falls upon a court to interpret it. So, in commercial leasing, one often comes across the idea of "practical construction" whereby a court, rather than taking a fresh look at the language in the lease itself, will look instead to how the parties actually lived under that language in the early years of the lease.[18] If the landlord suddenly departs from that interpretation, such as in calculating the rent, the courts will rarely sustain that departure.

For example, common in commercial leases are so-called "pay now—fight later" clauses.[19] In these, the lease contains a component of the payments that the tenant must make usually called "additional rent."[20] Unlike the "base rent," however, the actual numbers are not set forth in the lease. Instead, the landlord has to examine the operating expenses of the building, typically including real estate taxes, and *compute* which of the operating expenses are properly passed along to the tenant as additional rent. Where either the lease is unclear in its writing as to which expenses count as "operating expenses" and which don't, or where there are expenses that could be characterized either way, depending on one's point of view, disputes will arise as to how much additional rent the tenant owes. For example, a roof repair is typically an operating expense, but a roof replacement is typically not. It therefore becomes a disputable item as to whether a particular repair was so extensive as to be essentially a replacement and therefore outside of the tenant's fiscal obligation. Leases will often call for arbitration to resolve such disputes. In a "pay now—fight later" clause, however, the tenant must first pay the disputed amount as a prerequisite to demanding arbitration as to whether it was, in fact, owed.[21] If the landlord abuses that process, however, the courts will enjoin the landlord's improper calculations.[22]

Ran First Assocs. v. 363 E. 76th St. Corp.: Tenants' entitlement to the benefit of tax abatements procured by landlord

Clauses like the "pay now—fight later" clauses are part of the generally common phenomenon in commercial leasing of the rent being broken out into the tenant paying a base rent plus increases in the rent itself and a share of the operating expenses of the building. These expenses often include real estate tax escalations. While leases often call for such things, they are generally silent about whether the tenant gets to share in the benefit of tax decreases the landlord manages to procure. Unless the lease says to the contrary, the tenants do indeed get such benefit.[23]

41 Fifth Owners Corp. v. 41 Fifth Equities Corp.: Fixtures defined

While many leases call for fixtures becoming the property of the landlord, almost no lease attempts even a decent job at defining just what is and what is not a fixture. *41 Fifth Owners Corp. v. 41 Fifth Equities Corp.*[24] takes the lead in filling that gap, albeit somewhat tersely. While it makes no attempt to provide a comprehensive definition of the term fixture, at least it stated, "The dedicated purpose of the unit, its size and the extent of its connection to the structure render it a fixture."[25] We would have to conclude that a vastly smaller unit would *also* be a fixture if indeed it was of dedicated purpose and extensively connected to the structural fabric of the building itself. Apparently the equipment in *41 Fifth* had fairly complex connections to the structure.

Lease Violations

Jefpaul Garage Corp. v. Presbyterian Hospital in the City of New York: Definition of waiver, acceptance of rent not constituting a waiver

Closely tied to the ideas behind enforcing leases are the ideas associated with when they are breached. While it is generally an ordinary exercise in lease interpretation to determine if the tenant has technically breached the lease, it is a more fact-laden question to determine whether the landlord has waived that breach. The first and most important concept with waiver is its very definition. For that purpose, the leading case is *Jefpaul Garage Corp. v. Presbyterian Hospital in the City of New York*,[26] which defines a breach as a voluntary relinquishment of a known right. The two key words in that definition are

"voluntary" and "known."[27] If the landlord is acting under compulsion, there is no waiver. However, much more importantly, if the landlord is unaware of either the right itself or the breach of it, then the landlord cannot be said to have relinquished a known right.

How does ignorance of the breach take the situation out of the definition? Let us illustrate this by way of an example. Under a rather common lease clause, if the tenant fails to have certain insurances naming the landlord as an additional insured, the tenant is in breach of the lease. It would stand to reason and indeed the law charges the landlord with knowledge of the contents of its own lease. So there is no real question that the landlord *knows* of the right that the tenant's insurance insures the landlord. If the landlord, however, does not know that the tenant is *breaching* this clause, as, for example, by fraudulently claiming that certain insurances are in place when in fact the insurance certificates are forged, then the landlord has not waived this breach if the landlord is fooled by the certificates. Why? Because the lease gives the landlord a remedy for the tenant's breach. That remedy is itself one of the landlord's rights, but if the landlord is kept in the dark about the breach, the landlord, while knowing of the right to be insured, does not know of the right to evict to which the breach of the insurance clause had given rise. Thus, with the falsified insurance the landlord's right to terminate the lease is an *un*known right which landlord cannot be said to have waived. The other key point of *Jefpaul* is that the conduct on the part of the landlord cannot be accidental or inadvertent but must have been specifically intended as a waiver.[28] The key phrase from the decision is, "While waiver may be inferred from the acceptance of rent in some circumstances, it may not be inferred . . . as a matter of law, to frustrate the reasonable expectations of the parties embodied in a lease when they have expressly agreed otherwise."[29]

TSS-Seedman's, Inc. v. Elota Realty Company: Difference in remedies allowed by conditional limitations and conditions subsequent

Summary proceedings, while generally regarded a derogation of common law, are now approaching the conclusion of their second century since their invention and have had ample time to develop a common law of their own. For most of that period, the courts have shown a decided hostility to the invocation of the summary remedy and the proceedings have, in many jurisdictions, betrayed a certain fragility. This is no less true in the state of New York, the geography of their invention, than anywhere else. Generally in garden variety commercial summary proceedings, especially those for nonpayment, a landlord can obtain the relief sought. In summary proceedings brought to recover the property itself, rather than to recover funds, many courts will find in the summary proceedings common law ample doctrine relegating suitors to the long, slow, and expensive common law ejectment proceeding.

The legal theory here is between two ostensibly different kinds of contingencies in leases that occur in the event (typically) of a default by the tenant in fulfilling some obligation under the lease. In the first, the failure of the tenant to abide by a lease obligation triggers a *conditional limitation* whereby the termination of the lease is automatic without any further action by the landlord. In the other, the *condition* (a / k / a condition subsequent), the default, gives the landlord the option to terminate the lease. There is nothing automatic. The landlord must exercise the option for it to take effect.[30] While it is generally easy to state this theory, it is remarkably difficult to apply it by using any kind of analytical means. But, if one applies the mechanical method of finding that the presence of a notice to cure creates a conditional limitation and the absence of one creates a condition subsequent, one will most generally come up with the correct result. A notice to cure will, however, often provoke a *Yellowstone* injunction and one is therefore better off with a naked termination notice, set up as a conditional limitation—although wording the lease just right to achieve that result is exceptionally difficult. For undeniably obsolete reasons, while conditional limitations can be the predicate of a summary proceeding, a condition subsequent can only be enforced through an ejectment action.[31]

For all of the reasons commercial litigators condemn badly written leases and their drafters, no complaint rings louder or more justifiably than when a landlord finds its case can no longer be maintained as a summary proceeding designed to last a few months but instead must proceed in the longer, more cumbersome common law ejectment action lasting typically a few years before an order of eviction. Hence, no lesson is more important to the lease drafter than understanding, drafting and implementing conditional limitations and staying far away from the ocean of dangerous conditions subsequent.

Dulac v. Dabrowski: Landlord's ability to bring nonpayment proceeding without violating automatic stay in bankruptcy proceedings

There can be no doubt that the most important incident of the landlord-tenant relationship is the landlord's ability to collect rent. While many things can frustrate this ability, under *Dulac v. Dabrowski*,[32] the presence of a bankruptcy proceeding is no bar to the bringing of an ordinary nonpayment proceeding—provided one seeks only possession and not the back rent. However, what the decision leaves unstated is just exactly how one is to go about wording the demand for such a proceeding. The statute says that one must demand rent or possession in the alternative, but this decision only allows for the demand for possession. No reported case has yet declared what the correct wording for the demand would be.

First National Stores, Inc. v. Yellowstone Shopping Center, Inc.: Tenant's right to litigate whether it is in breach prior to actual forfeiture of the lease

New York leads the nation in devising a procedure allowing a tenant who has received a notice to cure the opportunity to contest prior to the declaration of the termination of the lease whether there really has been a lease violation.[33] Jurisdictions allowing such a procedure accord the tenant an enormous safeguard permitting the tenant the opportunity to find out if the landlord was right and to put things to right before losing a valuable leasehold. However, there is a cost to that benefit. The same line of authority holds that unless the tenant utilizes this procedure to obtain a tolling of the cure period actually *during* that period, by way of a declaratory judgment action, if the tenant actually was in default of the lease, once the cure period is up, the courts themselves have no power to fix it. The *Yellowstone* injunction, as it has come to be known, is the single most powerful weapon in a tenant's arsenal and fear of its employment has guided many a landlord's decisions.

Stipulations

Hallock v. State of New York and Power Authority of State of New York: High favor to which attorney stipulations are entitled and authority of attorney

Although not itself a decision from the realm of commercial leasing, the single most influential decision in the realm of commercial litigation is *Hallock v. State of New York and Power Authority of State of New York*.[34] The theme of this article is that of case law. Yet, it is obvious that there can be no case law without litigation. As soon as one deals with *any* kind of litigation, it is preferable for the parties, for the courts, and for society, that parties arrive at some kind of resolution of the matter without requiring the court to go to judgment. The chief mechanism of such resolution is the judicial stipulation, and they save taxpayers hundreds of millions of dollars annually. Therefore, judicial stipulations are highly favored by the courts and, when crafted by attorneys on all sides, should be almost invulnerable to attack. Indeed, absent notice of lack of authority to the other side, it is conclusively presumed that an attorney's stipulation binds his or her client.

1029 Sixth LLC v. Riniv Corp.: Strict enforcement of stipulations

However, the attack can be somewhat subtle. The parties may continue to avow that the stipulation binds them while one side seeks to be excused from a *de minimis* departure from the obligations undertaken in the stipulation. Courts will generally allow such departures unless the stipulation by its own terms forbids such.[35]

379 Madison Avenue, Inc. v. The Stuyvesant Company: Attorneys' fees clause in favor of landlord enforceable

Sykes v. RFD Third Ave. I Assocs., LLC: Stipulated victory sufficient predicate for an award of attorneys' fees

It is now generally agreed that a lease clause calling for the tenant to pay for the landlord's attorneys' fees in the event of litigation is fully enforceable.[36]

Although New York allows victory in the litigation in chief to be the basis of an award of attorneys' fees when authorized by the lease, there is some controversy as to whether a "win" achieved by means of a stipulation is enough of a win to justify the attorneys' fees award. Some writers believe that such a doctrine discourages parties from stipulating to their own defeat, but others maintain that it encourages the winner to win at the bargaining table, knowing that the win will not be diminished by it having been achieved through a stipulation. The dominant view is that a stipulated win will, in fact, support an award of attorneys' fees.[37]

F & F Restaurant Corp. v. Wells, Goode & Benefit, Ltd.: Subletting and assignment, landlord bound not to withhold consent without a valid reason

Among the most common clauses in commercial leases are those dealing with subletting and assignment. At common law, tenancies are freely sublettable and leases freely assignable. So, if the lease is silent on the issue, the tenant can do as it wishes. Most leases are not silent on the issue of subleasing, however, and either prohibit or restrict it. The most common form of restriction is that sublets or assignments must only be on consent of the landlord. Also, most typically, consent "shall not [be] unreasonably with[e]ld."[38] This phrase has come to mean that consent will be deemed given unless the landlord can articulate a valid reason to refuse consent. The two key concepts in that sentence are "articulate" and "valid." If the landlord is silent, the law deems consent to have been given. If the landlord simply says "no" without stating a reason, the law again deems consent to have been given. If the landlord says "no" and gives a reason that is not valid, the law still again deems the consent to have been given. As *F & F Restaurant Corp. v. Wells, Goode & Benefit, Ltd.*[39] states:

> It is enough on this point to note that Neuman as equitable owner had the right to withhold consent only if he had a reasonable ground for doing so and that the existence of a reasonable ground must be proved by Neuman's successor, the present owner, and will not be presumed. For like reason, the assignment from Margin Call to plaintiff must be given effect unless the landlord can establish a reasonable ground for withholding consent.[40]

Actual and Constructive Eviction

Barash v. Pennsylvania Terminal Real Estate Corporation: Definition and distinctions of actual and constructive eviction

At the other end of the spectrum from stipulations resolving litigation, is self-help. This comes in two principal species. The first, actual eviction, is where the landlord without benefit of judicial process deprives the tenant of actual possession of the premises in whole or in part—by means of physically depriving the tenant of some or all of the leased space. The second, constructive eviction, is where the tenant, also without benefit of judicial process, deems itself to have been deprived of the *use* of the premises and abandons them in whole or in part. If the tenant only abandons a portion of the used space, deeming it unusable, this is a "partial constructive eviction." In sum, actual eviction is a self-help remedy employed by landlords; constructive eviction is a self-help remedy employed by tenants. *Barash v. Pennsylvania Terminal Real Estate Corporation* states, "To be an eviction, constructive or actual, there must be a wrongful act by the landlord which deprives the tenant of the beneficial enjoyment or actual possession of the demised premises."[41] From this point of view, the action is in either case *regarded* as being taken by the landlord, but this is a faulty perception. It is the *inaction* of the landlord and the *action* of the tenant that makes one realize a constructive eviction has taken place. It is the opposite for an actual eviction.

Eastside Exhibition Corp. v. 210 E. 86th St. Corp.: Landlord's entitlement to rent in spite of *de minimis* permanent deprivation of leased space

Returning to our theme of *ma'at*, we find it seriously upset by *Eastside Exhibition Corp. v. 210 E. 86th St. Corp.*[42] The common law rule had been that an actual partial eviction, no matter how small, deprives a landlord of the entire entitlement to rent. To put this in realistic terms, let us say that the landlord rents the tenant some 2,000 square feet and then reduces the square footage to 1,980 for the purpose of installing a utility closet to which the tenant is forbidden access. At common law, such deprivation of the 20 square feet would deprive the landlord of all entitlement to rent until the premises are restored to their previous condition. In *Eastside Exhibition*, however, the court ruled that a *de minimis* deprivation will not forfeit the landlord's entitlement to rent.[43]

Note the important distinction here: actual eviction, whether it is actual total eviction or actual partial eviction, entitles the tenant to total forgiveness of the rent. *Eastside* holds that where the actual partial eviction is *de minimis*, the tenant is *not* entitled to total forgiveness, but only an assessment of the damages actually sustained.[44] *Constructive* eviction, on the other hand is where the tenant has deemed the premises to have become so unusable that the tenant has abandoned them in whole or in part. Under constructive eviction, the amount of forgiveness of rent the tenant receives varies with the amount of space the tenant has abandoned.

Those watching the development of commercial leasing law are keeping a careful eye focused on how and whether *Eastside's* doctrine spreads across the state. That it violates *ma'at* cannot be denied.

Conclusion

As we saw with our analysis of *Holy Properties*, the principle of *ma'at* is critical in the study of commercial leasing law. Yet, as we see from *Eastside Exhibition*, common law doctrines do, from time to time, get thrown out or severely modified.

There are fields of law in which one can rely on ancient doctrines and not worry about their changing much. One can keep practicing law at the end of one's career essentially the way one did at the beginning. But commercial leasing law is *not* such a field.

Many of the above cases help commercial leasing practitioners avoid land mines. Other cases assist in understanding the essence and important rules of commercial leasing. Other cases are simply core elements of the always developing common law of commercial leasing. Although many other cases could and should be added to this body of law, these cases will give the reader enough weapons and shields to enter the friendly battle of commercial lease representation. The practitioner who does not master at least the cases discussed in this article and keep an eye open for further developments works at peril.

Endnotes

1. 87 N.Y.2d 130, (1995), *TLC Mitigation 1*, TLC Serial #0095 (1995).
2. *Holy Properties*, 87 N.Y.2d at 134.
3. *See* New World Encyclopedia, http://www.newworldencyclopedia.org/entry/Ma'at (last visited Mar. 19, 2009) (stating that *ma'at* was a divine order which designated the meaningful and orderly nature between man and gods).
4. *See Holy Properties*, 87 N.Y.2d at 130 (stating that the lease expressly provided that landlord was under no duty to mitigate damages if tenant abandons property).
5. *Id.* at 134 ("the certainty of settled rules is often more important than whether the established rule is better than another or even whether it is the 'correct' rule") (citing *Maxton Builders Inc. v. Lo Galbo*, 493 N.Y.S. 825 (1986)).
6. *See generally 151 West Assoc. v. Printsiples*, 61 N.Y.2d 732, 734 (1984) (discussing the rule of interpreting a contract in the case of ambiguities).
7. *Id.* (citing *Taylor v. U.S. Casualty Co.*, 269 N.Y. 360 (1936)).
8. *Id.*
9. 1 N.Y.3d 470 (2004), *TLC Leases 5*, TLC Serial #0256.
10. *Id.* at 475 (quoting *W.W.W. Assoc. v. Giancontieri*, 77 N.Y.2d 157, 162 (1990)).
11. *Supra* note 4.
12. *Vermont Teddy Bear*, 1 N.Y.3d at 475.
13. 4 N.Y.3d 272 (2005), *TLC Leases 12*, TLC Serial #0306 (2005).
14. *Id.* (concluding that when an agreement is a clear and complete document, the

agreement should be binding according to those terms which are stated).

15. *Id.* at 278.
16. 46 N.Y.2d 573 (1979).
17. *Id.* at 579.
18. *See Greenblatt v. Zimmerman*, 117 N.Y.S. 18, 20 (1st Dep't 1909) (holding that in order to give a fair construction of the lease, great weight should be placed on the practical construction placed on the lease in the prior years).
19. *Morgan Guaranty Trust Co. of NY v. Solow*, 68 N.Y.2d 779 (1986), *TLC Rent 6*, TLC Serial #0279.
20. *Id.*
21. *Guaranty Trust*, 68 N.Y.2d at 780.
22. *See id.* (discussing how landlord submitted different calculations of the additional rent for each year it was due. This court affirmed the decision of the arbitrators in choosing the correct calculation.).
23. *Ran First Assoc. v. 363 E. 76th St. Corp.*, 747 N.Y.S. 13 (1st Dep't 2002), *TLC Taxes 1*, TLC Serial #0230 (holding that the tax abatement should not have been included in the calculation of additional rent because "real estate taxes" as defined in the lease does not include tax exemptions or abatements, and the assessment of tax required actual payment by landlord).
24. 787 N.Y.S. 326 (1st Dep't 2005), *TLC Fixtures 1*, TLC Serial #0300.
25. *Id.* at 387.
26. 61 N.Y.2d 442, 446 (1984), *TLC Waiver 1*, TLC Serial #0084 (1984).
27. *Id.* at 446.
28. *Id.* at 445.
29. *Id.*
30. *TSS-Seedman's, Inc. v. Elota Realty Co.*, 72 N.Y.2d 1024, (1988).
31. *See* discussion *infra* note 36.
32. 774 N.Y.S.2d 487 (1st Dep't 2004).
33. *First National Stores, Inc. v. Yellowstone Shopping Center, Inc.*, 21 N.Y.2d 630 (1968).
34. 64 N.Y.2d 224 (1984).
35. *See 1029 Sixth LLC v. Riniv Corp.*, 777 N.Y.S. 122 (1st Dep't 2004).
36. *379 Madison Avenue, Inc. v. The Stuyvesant Co.*, 275 N.Y.S. 953 (1st Dep't 1934), *aff'd* 268 N.Y. 576 (1935).
37. *See Sykes v. RFD Third Ave. I Assocs.*, 833 N.Y.S. 76 (1st Dep't 2007).
38. *F & F Restaurant Corp. v. Wells, Goode & Benefit, Ltd.*, 61 N.Y.2d 496 (1984).
39. 61 N.Y.2d 496 (1984).
40. *Id.* at 503.
41. 26 N.Y.2d 77 (1970).
42. 801 N.Y.S.2d 568 (1st Dep't 2005).
43. *Id.* at 570.
44. *Id.*

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