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# Plaintiffs' Contributory Negligence in Failing to Read Leases Precludes Malpractice Claim

**January 5, 2012**
*Lawyers for the Profession® Alert*

*Marion Partners, LLC v. Weatherspoon & Voltz, LLP,* 716 S.E.2d 29 (N.C. 2011)

**Brief Summary**

Plaintiff landlords filed a legal malpractice lawsuit against defendants, an attorney and his firm, which had been hired to review commercial leases. The landlords alleged that defendants had failed to advise them regarding lease provisions that shifted certain tax burdens from the tenants to the landlords. The appellate court affirmed summary judgment in favor of defendants on the basis that the landlords were not entitled to escape the consequences of their contributory negligence in failing to read the leases.

**Complete Summary**

The landlords retained the attorney to review leases between them and a lessee. The landlords had constructed the buildings in which the lessee's drug stores operated, leasing the buildings to the lessee. In January and February 2006, the landlords executed leases with the lessee for properties in South Carolina, first having the attorney review the leases. The three leases included a new tax provision, Section 34(d). In the Spring 2008, the landlords became aware of a change in the tax law after having entered into purchase contracts with a buyer for the properties in question. The sale of the properties fell through based on the leases' inclusion of Section 34(d).

The landlords then sued the attorney and his firm for legal malpractice. The appellate court affirmed and upheld summary judgment in favor of defendants based on the defense of contributory negligence. The court held that "contributory negligence is a defense to a claim of professional negligence by attorneys, just as it is to any other negligence action." The court held that it is well-established that "[o]ne who signs a written contract without reading it, when he can do so understandingly is bound thereby unless the failure to read is justified by some special circumstance." *Davis v. Davis,*256 N.C. 468, 472, 124 S.E.2d 130, 133 (1962).

The landlords suggested that this rule may be altered when the party has retained an attorney to review the contract. The court disagreed, holding that although the lawyer owed a duty to review and explain to the landlords the legal import and consequences which would result from executing the document, that duty did not relieve the landlords from their own duty to ascertain for

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themselves the contents of the contract they were signing. The court concluded that although the lawyer had a duty to advise the landlords regarding the leases, that duty did not relieve the landlords from their duty to read the leases themselves.

The court also rejected the landlords' argument that their failure to read the leases was justified by "special circumstances," as provided in *Davis*. The *Davis*court had explained that "[t]o escape the consequences of a failure to read because of special circumstances, complainant must have acted with reasonable prudence." The "special circumstance" claimed by the landlords was their assertion that they had a "custom and practice" of relying upon the attorney to review the leases and "to notify them of any changes or additional language inserted into a new lease as compared to their prior leases." The court disagreed, finding that the record established that the lawyer had sent e-mails to each of the landlords directing them to read the leases.

**Significance of Opinion**

This decision is notable because the appellate court held that the landlords were not entitled to escape the consequences of their contributory negligence in failing to read leases on the basis of a special circumstance (i.e., reliance upon their attorney), and that the contributory negligence precluded a claim of professional negligence against their attorney.

For further information, please contact Terrence P. McAvoy.

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