

Restrictions on Lease Remedies Arising Under *Homart*

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In March, when much of the country was first experiencing the effects of the COVID-19 pandemic, it was commonly believed that things would return to normal soon. Nearly nine months later, most of us have come to realize that there is now a new “normal.” A “normal” where we work from home, no longer eat at restaurants, go to the movies, or take vacations. These new norms are having a devastating effect on the commercial real estate market, retail businesses, the hotel sector, and many other industries. With lease defaults on the rise, landlords and tenants are increasingly turning to real estate lawyers for help. Consequently, certain industry standard lease provisions, such as a landlord’s right to pursue multiple and concurrent remedies, have come under increased scrutiny.

As touched on above, most commercial leases allow the landlord to pursue all default remedies on a concurrent and cumulative basis. However, this is not always permitted under law. In *Homart Dev. Co. v. Sgrenci*, 662 A.2d 1092 (Pa. Super. Ct. 1995), the court concluded that a landlord cannot eject a tenant and at the same time hold the tenant responsible for rent accruing under the lease after the tenant has been evicted. *Homart Dev. Co.* at 1100-01 (emphasis added) (internal citations and quotations omitted). Therefore, if a landlord obtains simultaneous judgments for ejectment and accelerated rent, the tenant will have solid grounds to have the accelerated rent judgment stricken. Curiously, despite *Homart*, simultaneous judgments of this sort are often awarded by the courts.

This, therefore, begs the question, “When faced with a defaulting tenant, should a landlord pursue a judgment for ejectment or a judgment for accelerated rent?” The answer to this question may very well depend on the health of the leasing market. In a market where demand for space is high, as appealing as a judgment for accelerated rent may seem to be, it may be more sensible to forego such a judgment and instead pursue a judgment for possession. After all, defaulting tenants often lack the means of paying the judgment amount. Therefore, obtaining possession and renting the premises to a replacement tenant may be the landlord’s best means of mitigating its damages. Conversely, where demand for space is low, a judgment for accelerated rent may prove to be the better alternative.

It is worth noting that *Homart* does not foreclose the possibility of obtaining a judgment for ejectment and simultaneously obtaining a judgment for an amount of damages that approximates the landlord’s actual damages, such as, for example, the sum of (i) all rent in arrears up to the point of repossession, (ii) the landlord’s unamortized leasing costs, (iii) the landlord’s reasonable estimate of the cost of leasing the premises to a replacement tenant, and (iv) the difference, if any, between the value of the defaulting tenant’s rent and the fair market value of the premises for the remainder of the lease term.

While the parties to a commercial lease will obviously need to deal with it as it already stands, the foregoing demonstrates that now, more than ever, careful consideration should be given to what remedies are included in a lease and what remedies are pursued following a tenant’s default. After all, remedies that work are better than remedies that don’t.



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