

## **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?”

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