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Individual liability against officer of corporate tenant in lease dispute - by Anthony Cichello and Jason Curtin

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In most commercial tenancies, the fact that corporations or other business entities act as the parties to the lease insulates the corporate officers of those business entities from individual liability. However, this is not always the case. In a recent case, a Massachusetts court held that an officer may be individually liable for statements made on behalf of his corporate employer during

negotiations over an early lease termination, notwithstanding the fact that he acted in his capacity as an officer of a corporation.

In *300 Needham Street, LLC v URC, LLC*, Docket No. SUCV-1684718 (Sept. 15, 2016), a Massachusetts court held that a corporate officer of a commercial tenant may be individually liable under the Massachusetts Unfair and Deceptive Trade Practices Act, M.G.L. c. 93A, for his participation in the tenant's withholding of rent in an attempt to coerce a favorable lease termination from the landlord. In so doing, the Court reaffirmed the principle that a corporate officer may be held individually liable under Chapter 93A for participation in unfair and deceptive conduct by the corporation for which the officer acts.

The facts of the case are not atypical of commercial tenancies in that the case involved a commercial tenant seeking early termination of a lease. Specifically, 300 Needham, LLC, as tenant, entered into a 10-year lease with URC, LLC, as landlord, for commercial property to be used as a restaurant. Just months into the lease term, the restaurant failed and closed, and the tenant sought to negotiate a termination of the lease. Although the tenant initially made monthly rent payments to the landlord, as negotiations dragged on, a corporate officer of the tenant, Herz, threatened to “shut off the [rent] spigot” — allegedly in order to coerce the landlord into a favorable settlement.

When the tenant made good on its threat and stopped making rent payments, the landlord sued the tenant and a corporate guarantor for declaratory judgment and breach of contract. The landlord also brought claims against tenant, the guarantor, and Herz individually, for violation of Chapter 93A, asserting that the withholding of rent in order to coerce a favorable settlement was an unfair and deceptive trade practice. Herz, the senior vice president of both tenant and guarantor who negotiated and signed both the lease and the guaranty, and engaged in essentially all communication on behalf of the tenant with the landlord, moved to dismiss the 93A claim brought against him individually, asserting that it failed to state a claim against him.

The court rejected Herz's argument. First, the court noted that the complaint clearly stated a claim against the corporate defendants, noting that the purposeful breach of contract “as a lever to obtain advantage for the party committing the breach” states a claim for violation of Chapter 93A. Herz argued that a claim could not be asserted against him personally because he was not attempting to gain a benefit for himself and that he was not engaged in trade or commerce. With little analysis, the court rejected these arguments, noting that “[i]t is settled that corporate officers may be held liable under c. 93A for their personal participation in conduct invoking its sanctions.” Accordingly, the court denied Herz's motion to dismiss.

This case presents a potentially potent tool to any party to a commercial lease that can effectively allege that the opposing party has purposefully breached the contract to gain leverage in a business dispute – namely, the prospect of holding corporate officers individually liable for their participation in the corporate misconduct. Thus, corporate officers should be aware that coercive statements, such as threats of nonpayment or insolvency, made during settlement negotiations can trigger individual liability against them.

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