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## Mass. Land Court ruling upholds sanctity of commercial lease documents

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Boston, MA A recent decision issued by the Massachusetts Land Court has significant implications for the commercial real estate industry. The question was, does a prospective lessee have a valid lease where only one party has signed? The answer in this case was a firm no.

The case was brought by Alo, LLC, a prospective tenant for space at 149 Newbury St., after the property owner would not, or did not, sign the lease for which it had been negotiating with Alo.

Alo's lease process was interrupted by the formal execution of a lease agreement between the lessor, L3 149 Newbury Street, LLC, and a different prospective lessee.

The proposed lease agreement provided by L3 to Alo included specific language to the effect that there could be no lease unless and until the document was fully executed by both parties. The Land Court ruled that this language could not be ignored or treated to be without meaning.

Citing two precedents, Judge Howard P. Speicher concluded that "if the language used repeatedly

by the parties to state their intent...was not sufficiently clear, then no language could accomplish that task.”

The 1987 Goren v. Royal Investments, Inc. decision noted that the law “recognizes the right of parties to a proposed business transaction to hug before they marry.” And Rosenfield v. US Trust Co., decided in 1935, stated that an “agreement to reach an agreement is a contradiction in terms and imposes no obligation on the parties thereto.”

The complaint’s summary dismissal confirmed that a commercial lessor cannot be found in breach of an agreement that, by the terms of the contract, does not yet exist.

An October 24 Boston Business Journal article noted that Alo is a fast-growing yoga apparel chain based in Los Angeles. It also reported that L3 promoted the Newbury St. locations as the “last remaining undeveloped land parcel” on that trendy Boston street.

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