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COMMERCIAL LEASE NEWSLETTER

QUIET ENJOYMENT OF LEASE PREMISES v. CONSTRUCTIVE EVICTION THE LINE HAS BEEN BLURRED

This article addresses the issue of "Quiet Enjoyment of Lease Premises" and the impact and effect of the interpretation of quiet enjoyment based upon a recent appellant court decision emanating from a case in the 20th Judicial Circuit, *Coral Wood Page Inc. v. GRE Coral Wood, L.P., 71 So. 3d 251 (2d DCA 2011)* ("*Coral Wood Page*"). Coral Wood Page has blurred the lines of quiet enjoyment and constructive eviction so that landlords need to exercise extra caution in regard to how they conduct themselves in dealing with commercial tenants and operational disputes.

To see how the lines have blurred, one must first look at the definition of "quiet enjoyment" which has historically, focused on addressing the issue of the tenant's claim of title to the subject premises. In the Supreme Court case of *Hankins v. Smith, 138 So. 494 (Fla. 1931)*, the Court indicated:

> ***"The ordinary lease of realty raises an implied covenant that the Lessee shall have the quiet and peaceable possession and enjoyment of the leased premises, so far as regards to the Lessor, or any asserted title to the leased premises, superior and paramount to that of the Lessor."***

Again, as most real-estate practitioners know, a lease is a conveyance of real estate much like a deed; only the lease is for a specific limited period of time, where a deed is a perpetual conveyance of the underlying full fee. In *Coral Wood Page*, the Appellate Court had blurred the line between quiet enjoyment and constructive eviction. Constructive Eviction essentially is efforts by the Landlord to either actively or constructively interfere with the actual physical use of the premises versus the concept of quiet enjoyment which relates to, as indicated above, the title of the subject premises rather than the physical use of the premises.

The Appellate Court, in reversing what this author would suggest was sound reasoning by the trial court in *Coral Wood Page*, indicated as follows:

"On appeal, GRE (Landlord) challenges the legal sufficiency of tenants' first affirmative defense based on the alleged breach of the covenant of quiet enjoyment…"

"…GRE argues that the tenants could not maintain this defense without proving the claim of constructive eviction. That is incorrect. As this Court has recognized, a tenant may claim damages based on a breach of the implied covenant of quiet enjoyment even where the landlord's actions did not rise to the level of eviction and the tenant remained in possession. Carner v. Shapiro, 106 So. 2d 87, 89 (2d DCA 1958)."

The author believes that the Appellate Court again got it wrong for several reasons.

1. *Carner v. Shapiro* is not a case involving quiet enjoyment. *Carner v. Shapiro* is a Court of equity granting damages based upon the interference in the use of the premises of the tenant's operation of his business by the landlord.

2. *Carner v. Shapiro* does not stand for the fact, as cited by the 2d DCA, that a breach of "implied covenant of quiet enjoyment" exists even where the landlord's actions did not rise to the level of constructive eviction and the tenant remained in possession.

3. In *Carner v. Shapiro*, the Court held that if a tenant seeks to enjoin the actions of the landlord which are interfering with the use rights/title of the tenant, but the tenant does not vacate the premises, the tenant, nonetheless, still has a cause of action for damages from such interference. It is consistent and logical since most leases identify specific use rights of the tenant and if those use rights are interfered with, it is nothing more than a breach of contact with resulting damages arising from the landlord's actions.

In the author's opinion, The *Coral Wood Page* Court did not properly construe the holding in *Carner v. Shapiro.* If the Court read the holding in Carner v. Shapiro, it would have also noted the comments made by the 2d DCA in 1958 in rendering its decision in *Carner v. Shapiro*, which indicated:

"Authorities are in conflict concerning the necessity of abandonment by the tenant, and our Supreme Court has not passed on the precise point…" (Identifying the fact that at the time there was still some uncertainty in the area of constructive eviction and the requirement of a tenant to abandon the premises as a precursor for constructive eviction).

That observation on the state of the law may have been true in 1958 when *Carner v. Shapiro* was decided, however, the *Coral Wood Page* case failed to review a line of cases, coincidentally established by the 2d DCA which followed *Carner v. Shapiro* which clarified the issue of constructive eviction. In both of the cases of *Richards v. Dodge, 150 So. 2d 477 (2d DCA 1963)* and *Sentry Water Systems, Inc. v. ADCA Corporation, 355 So. 2d 1255 (2d DCA 1978)*, the 2d DCA clearly identified the element "constructive eviction can constitute a breach of the covenant of quiet enjoyment implied in the lease" in *Richards v. Dodge*.

Further, *Richards v. Dodge* cited 32 Am.Jr., Landlord and Tenant §§ 245, 265 (1955), and set forth that "generally, abandonment of the premises within a reasonable time after the landlord's wrongful act is a necessary element of constructive eviction".

In reality and in practicality, the reason for the *Coral Wood Page* decision was the fact that the 2d DCA has historically been the most adamant about reversing Summary Judgments and most appellate practitioners will recognize that the 2d DCA is apt to reverse almost any Summary Judgment if the least scintilla of fact is available in the case. That is clearly not the standard Fla. Rules of Civil Procedure 1.510 which is interpreted to indicate "Summary Judgment should be granted on a Fla. Rule of Civil Procedure 1.510(c) where the pleadings, depositions, answer, interrogatories and admissions on file, together with affidavits if any, show that there is no change of issue as to any material fact." *Henry v. Alfonso*, 650 So. 2d 644, 645 (2d DCA 1995).

In the *Coral Wood Page* case, the only fact that is in dispute is raised by an affirmative defense which indicated that the landlord was guilty of having security officers in the parking lot which was claimed by the Defendant to be an interference with the Defendant Tenant's use of the premises.

It is the author's opinion that the more proper holding would have been that if this raised a genuine issue of fact then the issue would need to be tried on the matter of damages for breach of contract by the Landlord but not for the Appellate Court to rule that these facts supported a blurring of the line between constructive eviction and implied covenant of quiet enjoyment since (a) the tenant never met the elements necessary for constructive eviction since the tenant did not vacate the premises and (b) the title of the premises were never interfered with by the landlord.

While the 2d DCA may have identified a specific fact upon which it could deny Summary Judgment, it was not based upon the theory of law that quiet enjoyment can be founded upon the Landlord interfering with common areas not part of the leasehold estate.