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Commercial landlords: Time to tune up your indemnity provisions

The California Court of Appeal recently issued an opinion which reminds us to take another look at the “boilerplate” indemnity provisions in commercial leases.

In *Morlin Asset Management LP v. Murachanian* (B259800), a vendor was called to clean the carpets in the dental suite of a tenant in the office building owned and managed by Morlin Asset Management LP and Morlin Management Corporation. The carpet cleaner claimed he was injured by a defect in the common area of the building for which the landlords had the exclusive right of management and control. He sued the landlords, who then sought indemnity under the terms of their lease with the tenant.

The indemnity provision in the lease provided:

“8.7 Indemnity. Except for Lessor’s gross negligence or willful misconduct, ***Lessee shall indemnify, protect, defend and hold harmless*** the Premises, ***Lessor and its agents***, Lessor’s master or ground lessor, partners and Lenders, ***from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys’ and consultants’ fees expenses and/or liabilities arising out of involving or in connection with, the use and/or occupancy of the Premises by Lessee.*** If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee’s expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.” (emphasis by the Court of Appeals)

The trial court held that the indemnity provision did *not* apply because the carpet cleaner’s injuries allegedly occurred in the common area, not in the tenant’s “Premises.” The trial court found that the lease obligated the tenant to “indemnify the landlords only against claims ‘involving the Premises, which has a limited definition and does not include ‘stairwells.’”

On appeal, the landlords argued that the carpet cleaner’s injuries arose out of the use of the Premises. But, the Court of Appeal concluded “the injury to a third party that occurred outside the dental suite, in a common area over which the landlords have exclusive control, did not arise out of the tenant’s use of the dental suite. It does not matter that the accident would not have happened but for the tenant hiring the third party to clean the carpets in the dental suite, and that the third party may have been at fault. The connection between the tenant’s use of his suite and the accident in the stairwell over which the tenant had no control is too remote to have been within the contemplation of the parties when they entered into the lease.”

Moral of the story? Review the boilerplate provisions of your lease forms and look for opportunities to better protect your side’s rights. It is always a good idea to learn from prior losses, especially if they are not your own.

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