

KROKIDAS & BLUESTEIN

ATTORNEYS

CLIENT ALERT

Massachusetts Appeals Court Affirms Change in the Law Regarding Damages Landlord May Recover From a Defaulting Tenant

In a recent case decided by the Massachusetts Appeals Court, Panagakos v. Collins, et al., No. 10-P-1006, the Court affirmed that Massachusetts law allows a commercial landlord to recover from a defaulting tenant the full amount of the rent owed for the balance of the term of the commercial lease without any obligation on the part of the landlord to mitigate its damages. The Panagakos decision clearly indicates that the change in the law portended by the Supreme Judicial Court decision in Cummings Properties, LLC v. National Communications Corp. 449 Mass. 490 (2007) is here to stay.

In Panagakos, the tenant defaulted under a five-year lease which contained a liquidated damages provision stating simply that if the tenant defaulted under the lease it would have to pay the entire balance of rent for the term of the lease as liquidated damages. The Appeals Court, in reversing the Superior Court, held that the simple formula in the lease was reasonable and, therefore, enforceable without regard to whether the landlord even attempted to mitigate its damages.

As a result of this and the Cummings decision, commercial landlords are likely to include liquidated damages clauses in their commercial form leases similar to that contained in the Panagakos and Cummings cases in order to maximize recovery upon a default by the tenant.

In the November 7, 2011 edition of the Massachusetts Lawyers Weekly, Attorney Vincent Pisegna commented on the landmark case, Panagakos v. Collins. For more details on the article, see Massachusetts Lawyers Weekly, vol. 40 issue no. 12. Please contact Attorney Vincent Pisegna (vpisegna@kb-law.com) or Attorney Anthony Cichello (acichello@kb-law.com) with any questions about these developments or other questions regarding commercial real estate litigation.