

## **No duty to mitigate damages is reaffirmed by Court of Appeals**

By Eric P. Gonchar, Esq.

It has long been an established principal under general contract law that plaintiffs have a duty to reduce or prevent its injury or damages. However, in New York, a commercial landlord has no duty to mitigate damages when a tenant abandons its leased premises prior to the expiration of its lease term.

The New York State Court of Appeals reaffirmed this principal in *Holy Properties Limited, L.P. v. Kenneth Cole Productions, Inc.* based upon following precedent and case law veering from the general principal that a plaintiff has a duty to limit its monetary damages. The Court treats commercial leases differently from other contracts and avoided the prior authority which has adopted a contrary rule for residential leases, which impose a duty to mitigate damages upon residential landlords. While the plaintiff tenant in this case raised the recent line of authority which has adopted a contrary rule for residential leases and imposes a duty to mitigate upon residential landlords, the court determined that the tenant shall remain liable for any deficiency in the

The landlord, Holy Properties Limited L.P., commenced a summary eviction proceeding against the tenant for non-payment of rent. After receiving a judgment and warrant of eviction, the landlord then commenced an action seeking rent arrears and damages. The Supreme Court decided the case in favor of the landlord, finding that the tenant breached the lease without cause and that the landlord had no duty to mitigate damages. The Court of Appeals affirmed the decision.

The defendant tenant argued that New York law imposed upon a party who has been damaged due to a breach of contract to take reasonable steps to minimize the injury (i.e., relet the space). The Court of Appeals took the position that leases are not subject to this rule because a lease has always been interpreted as a present transfer of an estate in real property. Accordingly, a tenant's obligation to pay rent is determined in accordance with the terms of the lease. The Court believed that the landlord was within its rights to do nothing and collect the full rent due under the lease. The landlord was therefore under no obligation to the tenant to relet or even attempt to relet the premises to minimize the damage.

The Court noted that if the landlord did relet the space, the rent collected would be applied first to repayment of the landlord's expenses in re-entering and re-letting the space and then to pay the tenant's rent obligation.

The defendant tenant had cited a rationale recognized by some lower courts in New York and other jurisdictions whereby there is a duty upon residential landlords to re-rent vacated premises and mitigate the damages. In particular, some of these courts criticized the duty to mitigate as outdated, since it allows a landlord to do nothing while a tenant's damages accumulate. The Court of Appeals did not address these cases and followed the settled law relying on the stability of established precedents. The Court stated that following precedent was important in real property where parties engage in business transactions based upon prevailing law.

Finally, the defendant tenant argued that the landlord terminated the landlord/tenant relationship by instituting the summary proceedings and that after the eviction, the tenant's only liability was for contract damages and not rent. The Court of Appeals responded by acknowledging that an eviction terminates the landlord/tenant relationship, but also stated that since the lease specifically provided that the tenant is liable for rent after eviction, such a provision is enforceable even after eviction.

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### **THE LEGAL SPOTLIGHT**

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amount of the rent due for the balance of the lease term and the landlord's failure to re-let shall not release or affect the tenant's liability for such damages.

The facts of the case are as follows: Kenneth Cole Productions, Inc. entered into a lease for premises located in a commercial office building. The lease had a term of 10 years. The tenant vacated the space after six years into the term, alleging that the building had deteriorated in the level and quality of building services.