

Eviction Presentation Case Law

1	<p><i>Blimpie Capital Venture, Inc. v. Palms Plaza Partners, Ltd.</i>, 636 So. 2d 838 (Fla. 2d DCA 1994)</p> <p>Facts: The appellee (Palms Plaza) leased commercial property to Blimpie. Blimpie failed to pay rent and, consistent with the terms of the lease, Palms Plaza filed suit seeking a judgment for both past due rent and accelerated rent for the balance of the term of the lease. Blimpie failed to respond to the complaint, and the trial court rendered a final judgment fixing damages for unpaid rent that included sums due on an <i>accelerated basis</i>. Blimpie appealed.</p> <p>Holding: The Florida Second District Court of Appeal affirmed the trial court's ruling, adding that if Palms Plaza has retaken possession of the premises and is collecting rent from a third party, then Blimpie, upon the presentation of appropriate proof, would be entitled to an accounting from Palms Plaza for the rent it has received and to have this sum applied to the amount due under the final judgment for accelerated rent.</p>
2	<p><i>Bucky's Barbeque of Fort Lauderdale, LLC v. Millennium Plaza Acquisition, LLC</i>, 67 So. 3d 1207 (Fla. 4th DCA 2011)</p> <p>Facts: Landlord (Millennium) brought action against defaulting tenant (Bucky's) and its guarantor seeking possession of the premises and accelerated rent. After landlord retook possession of the premises pursuant to a partial settlement with tenant, the circuit court awarded summary judgment to landlord on its claim for accelerated rent. Tenant and guarantor appealed.</p> <p>Holding: The Florida Fourth District Court of Appeal held that the trial court's failure to make findings regarding landlord's use of the premises after retaking possession pursuant to the partial settlement agreement with defaulting tenant required reversal of trial court's award of summary judgment to landlord on its claim for accelerated rent due under the lease agreement.</p>
3	<p><i>CB Institutional Fund VIII v. Gemballa U.S.A., Inc.</i>, 566 So. 2d 896 (Fla. 4th DCA 1990)</p> <p>Facts: Landlord (CB) brought action against tenant (Gemballa) for failure to pay rent on a commercial lease. The circuit court granted summary judgment in favor of landlord <i>except</i> for accelerated future rent and other charges for balance of lease term. Landlord appealed.</p> <p>Holding: The Fourth District Court of Appeal held that landlord's taking possession of premises for account of tenant entitled landlord to acceleration of future rent.</p>

4	<p><i>Coast Federal Sav. & Loan v. DeLoach</i>, 362 So.2d 982 (Fla. 2d DCA 1978)</p> <p>Facts: Lessor (Coast Federal) brought action against lessee (DeLoach) of office space to recover accelerated rent due upon lessee's breach of agreement. The circuit court entered judgment in favor of lessor for 20% of accelerated rent due plus attorney fees, lessor appealed and lessee cross-appealed.</p> <p>Holding: The Florida Second District Court of Appeal remanded the case and temporarily relinquished jurisdiction to the trial judge to record his findings on the question of whether Coast Federal retook possession of the leased premises for the account of DeLoach. If such a finding was made, then Coast Federal incurred the duty to use good faith in reletting.</p>
5	<p><i>Geiger Mut. Agency, Inc. v. Wright</i>, 233 So. 2d 444 (Fla. 4th DCA 1970)</p> <p>Facts: Lessor (Wright) sought to evict tenant (Geiger) and impress and foreclose a landlord's lien for rent. The circuit court entered summary judgment in favor of lessor, holding that lessor was entitled to possession of the premises and was due a certain amount of money for rent from the period of default to termination of the lease. Lessee appealed.</p> <p>Holding: The Florida Fourth District Court of Appeal held that the landlord is entitled to recover the rental that came due during the period between the occurrence of the default and the date that he resumed exclusive possession of the property for his own use, but he may not recover both his possession of the premises and the rent for the balance of the term accruing by reason of the acceleration clause in the lease as compensation for a vacancy of his own making.</p>
6	<p><i>Grove Restaurant and Bar, Inc. v. Razook</i>, 571 So. 2d 596 (Fla. 2d DCA 1990)</p> <p>Facts: Commercial lessee (Grove) brought suit, claiming that the lessor (Razook) breached the contract by preventing the lessee from opening its business. The lessor counterclaimed and sought to accelerate rent. The circuit court granted partial summary judgment on the lessor's claim for accelerated rent. Lessee and guarantor appealed.</p> <p>Holding: The Florida Second District Court of Appeal held that the lessor was not entitled to accelerate rent if it retook possession of the premises. There were also genuine issues of material fact, thus precluding summary judgment, on whether the lessor retook possession and on whether the lessee's departure was a breach of the lease or a constructive eviction, for purposes of determining whether the lessor was entitled to accelerate rent.</p>
7	<p><i>Horizon Med. Group, P.A. v. City Ctr. of Charlotte Cnty., Ltd.</i>, 779 So. 2d 545 (Fla. 2d DCA 2001)</p>

	<p>Facts: Landlord (City Center) brought action against tenant (Horizon) for breach of lease. The circuit court entered final summary judgment for landlord and awarded damages for, among others, accelerated rent for the remainder of the lease term. Tenant appealed.</p> <p>Holding: The Florida Second District Court of Appeal affirmed the final judgment, but qualified that it was error for the trial court to enter a final judgment for the entire amount of the accelerated rent without any reservation of jurisdiction to consider a motion for an accounting should City Center relet the premises during the remainder of the lease term.</p>
8	<p><i>Hyman v. Cohen</i>, 73 So.2d 393 (Fla. 1954)</p> <p>Facts: Tenant (Cohen) turned over possession of premises following the notice to pay rent or move out, subsequently the landlords rented the premises to a corporation they formed for that purpose, and never advised the tenant that they were doing so on the account of the tenant. The circuit court ruled in favor of tenant, declaring cancellation of the lease and return of his deposit. Lessors (Hyman) appealed.</p> <p>Holding: The Florida Supreme Court held that the landlords terminated the lease and took possession of the hotel <i>on their own account</i>.</p>
9	<p><i>In re 2408 W. Kennedy, LLC</i>, 512 B.R. 708 (Bankr. M.D. Fla. 2014)</p> <p>Facts: Commercial landlord moved for relief from stay in order to conclude prepetition eviction proceedings, and Chapter 11 debtor-tenant opposed motion and asserted right to assume lease.</p> <p>Holding: The bankruptcy court held that issuance of the final judgment for possession and a writ of possession did not terminate the lease.</p>
10	<p><i>In re Florida Lifestyle Apparel, Inc.</i>, 221 B.R. 897 (Bankr. M.D. Fla. 1997)</p> <p>Facts: Lessor moved to compel payment of postpetition rent as administrative expense of debtor-lessee's Chapter 11 estate. The lease agreement allowed the landlord to retake possession of the leased premises without terminating the lease, and the landlord did not express an intent to terminate.</p> <p>Holding: The bankruptcy court held the lease survived and was not terminated.</p>
11	<p><i>In re PAVCO Enterprises, Inc.</i>, 172 B.R. 114 (Bankr. M.D. Fla. 1994)</p> <p>Facts: Landlord, debtor under Chapter 11, moved for relief from automatic stay in tenant's Chapter 11 case in order to resume state court eviction proceeding and enforce</p>

	<p>final judgment entered by county court; claiming that lease was effectively terminated prior to tenant's bankruptcy filing and was not property of tenant's bankruptcy estate that could be assumed by tenant.</p> <p>Holding: The bankruptcy court held that regaining the premises is not tantamount to termination of the lease.</p>
12	<p><i>In re Spice Modern Steakhouse, Inc.</i>, 6:11-BK-15109-ABB, 2011 WL 5563545 (Bankr. M.D. Fla. 2011)</p> <p>Facts:</p> <p>Holding:</p>
13	<p><i>Jimmy Hall's Morningside, Inc. v. Blackburn & Peck Enterprises, Inc.</i>, 235 So. 2d 344 (Fla. 2d DCA 1970)</p> <p>Facts: Landlord (Blackburn) sought to recover accelerated from tenant (Jimmy). The circuit court entered final judgment in favor of landlord for the sum of money still due under the lease.</p> <p>Holding: The Florida Second Circuit Court of Appeal held that although landlord was entitled to accelerate rent payments for unexpired portion of lease after original tenants who had assigned lease refused to accept possession after assignee quit premises, landlord could not collect full amount due and then relet premises to third party and retain those proceeds also. The latter proceeds would have to be applied against amount due from original tenants to mitigate liability for damages.</p>
14	<p><i>Kanter v. Safran</i>, 68 So. 2d 553 (Fla. 1953)</p> <p>Facts: Assigns of hotel tenants sought declarations of their rights under a lease and for cancellation of the lease along with an order enjoining any claim of landlords for past due rent. The tenants executed a written relinquishment of possession of the hotel. In response, the landlord submitted a written refusal and notice that if the tenant's conduct necessitated retaking possession, such retaking would be on the tenant's account. Furthermore, the lessor performed repairs to the property.</p> <p>Holding: The Florida Supreme Court held that the tenant's writing was an express surrender and that the lessor took possession of the premises <i>on the account of the tenant</i>. The repairs were not inconsistent with the intention of the landlord to relet the premises on account of the tenant.</p>
15	<p><i>Nat'l Adver. Co. v. Main St. Shopping Ctr.</i>, 539 So. 2d 594 (Fla. 2d DCA 1989)</p> <p>Facts: Landlord (Main) of space for construction of highway billboard sued tenant (National) for breach of lease. The circuit court entered judgment in favor of landlord, awarding damages for acceleration of rent, despite the absence of an acceleration</p>

	<p>clause in the lease agreement.</p> <p>Holding: The Florida Second Circuit Court of Appeal held that the landlord was not entitled to total rent due under the multiyear lease as damages for lessee's breach of lease, since lease did not provide for acceleration of rent in event of lessee's default.</p>
16	<p><i>Quintero-Chadid Corp. v. Gersten</i>, 582 So.2d 685 (Fla. 3d DCA 1991)</p> <p>Facts: The circuit court entered default judgment for the entire amount of future rents for a landlord against tenant. Tenants appealed the entry of final default judgment.</p> <p>Holding: The Florida Third District Court of Appeal held that the landlord's exercise of the acceleration option did not terminate the lease. It reversed the entry of final judgment since the landlord was additionally required to account for rents received from reletting through the end of the lease term.</p>
17	<p><i>Rodeway Inns of America v. Alpaugh</i>, 390 So.2d 370 (Fla. 2d DCA 1980)</p> <p>Facts: The circuit court held tenant (Rodeway) liable on a mortgage it has placed on the premises in order to obtain financing to construct a motel, even though landowners (Alpaugh) had evicted the tenant and taken possession. Tenant appealed.</p> <p>Holding: The Florida Second District Court of Appeal held that where lease agreement specifically and unequivocally dictated that landlord had right to reimbursement for mortgage payments even though landlord had terminated lease and regained possession, such provision was enforceable in connection with business lease despite contention that claims of landlord were subject to set off, under equitable doctrine of unjust enrichment.</p>
18	<p><i>Siboni, Hamer & Buchanan, P.A. v. N.W. Third St. P'ship, Inc.</i>, 84 So. 3d 477 (Fla. 5th DCA 2012)</p> <p>Facts: The circuit court entered final judgment for damages based upon tenant's (Siboni) breach of a commercial lease.</p> <p>Holding: The Florida Fifth District Court of Appeal reversed and remanded judgment for the limited purpose of instructing the trial court to reserve jurisdiction to address any post-judgment accounting if landlord is able to relet the premises within the term of the lease.</p>
19	<p><i>Vareka Investments, N.V. v. Am. Inv. Properties, Inc.</i>, 724 F.2d 907 (11th Cir. 1984)</p> <p>Facts: The district court awarded damages to a landlord (Vareka) resulting from a commercial lease transaction and the termination of the lease. Tenant (AIP) appealed.</p>

	<p>Holding: The 11th Circuit Court of Appeals affirmed and enforced the lease provision which specifically provided that when the landlord takes possession upon default and re-lets for the account of the tenant, the tenant is liable for minimum rent due minus net proceeds of re-letting.</p>
20	<p><i>Wagner v. Rice</i>, 97 So.2d 267 (Fla. 1957)</p> <p>Facts: Landlord filed suits to recover damages for breach of a lease agreement of packing house by tenant. The circuit court entered judgment in favor of tenant, landlord appealed.</p> <p>Holding: The Florida Supreme Court construed the landlord's action for double the rent available to a landlord "at the end of the [tenant's] lease" as the landlord's termination of the lease on <i>account of the landlord</i>. Nonetheless, the court reversed and remanded the case because the landlord was entitled to a third annual payment which had become due before termination of the lease.</p>
21	<p><i>Williams v. Aeroland Oil Co.</i>, 20 So. 2d 346 (Fla. 1944)</p> <p>Facts: Landlord (Williams) filed to recover damages from tenant (Aeroland) for breach of gasoline station lease.</p> <p>Holding: The Florida Supreme Court held that where no acceleration clause was in the lease, the future rent was demandable only in the amounts and at the times named in the lease.</p>