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| **Case Name** | **Synopsis** |
| Skylake Ins. Agency, Inc. v. NMB Plaza, LLC, 23 So.3d 175 (Fla. 3d DCA 2009). | The landlord drafted the lease and signed it, but failed to have his signature witnessed by two witnesses. He could have cured the deficiency at any time, but failed to do so and instead rely on the absence of witness to disavow the contract. The court held that the landlord could be estopped from cancelling the lease. The court reasoned that because the tenant had already taken possession of the property and the landlord had accepted the rent, the landlord will need to show more than simply that the lease was not witnessed in order to get a lease cancelled. The court stated, in one such case that the lessors were “estopped from contending that the lease here involved is invalid for the reason that it was executed in the presence of only one subscribing witness. [The lessors] have accepted benefits under the lease have placed the lessee in possession, have negotiated to convey the lands subject to the lease, and in an all respects have recognized it as being an effective conveyance, and in equity they ought not to be permitted to disavow it now. Id. at 178. |
| S & I Investments v. Payless Flea Mkt., Inc., 36 So. 3d 909 (Fla. 4th DCA 2010). | A commercial landlord filed a complaint for tenant eviction claiming that the lease was unenforceable because it was not signed by two witnesses as required by Florida law. In response, the tenant declared that the lease was enforceable because it was a renewal lease as opposed to a new lease and was executed in the same manner as the earlier lease in 1995, which also did not have two subscribing witnesses. The court held that the lease was unenforceable because it only had one subscribing witnesses. Id. at 914. The court stated, “we find that, regardless of whether the lease was deemed new or renewal, two signatures were required under the applicable statute of fraud. We further find that, given the particular facts herein, the doctrine of estoppel does not apply.” Id. |
| Taylor v. Rosman, 312 So. 2d 239 (Fla. 3d DCA 1975) | A landlord filed a lawsuit against the tenant seeking to recover rent payments due under the terms of a rental agreement as well as damages done to the appellee’s apartment under an almost identical prior rental agreement and attorney fees. The tenant argued the lease was unenforceable under section 689.01 because there was only one subscribing witness. The court held that “[t]he two rental agreements are substantially the same form contracts, and both agreements were even executed in a similar manner (including one witness to the signature of the landlord and tenant.)” Id. at 240. The court further held that the tenant was estopped to defeat the second lease agreement by asserting section 689.01 because she and her husband occupied the apartment for almost two years under the similar first rental agreement, making rental payments thereunder. Id. at 241. The court concluded that “the second agreement was not a ‘new lease’ as contended by the appellee, but merely constituted an extension by renewal of the first lease. Id. at 240 |
| Gill v. Livingston, 29 So.2d 631 (1947). | A tenant leased a piece of land for five years with the option of purchase later in the future. The land was held as estates by the entireties. The lease was executed with only one witness; tenant took possession of the lands and payed rent for the first year, which was accepted by the defendants. At the end of the first year, tenant moved to make a purchase and the landlords resist the right to reformation because of the defect in attestation of the lease. The Supreme Court held that the defendants were estopped from contending that the lease was invalid for the lack of two witnesses. The Court stated, “they have accepted benefits under the lease have placed the lessee in possession, have negotiated to convey the lands subject to the lease, and in all respect have recognized it as being an effective conveyance, and in equity they ought to not be permitted to disavow it now.” Id. at 632. |
| Steen v. Scott, 198 So. 489 (Fla. 1940). | A married woman owning property as her separate estate who accepted rent from a lessee for years was estopped to contend that the lease was invalid because of the failure of the notary to certify that the wife acknowledged execution of the lease separate and apart from her husband as required by statute. |
| Medina v. Orange County, 147 So.2d 556 (Fla.2d DCA 1962). | Plaintiff brought suit seeking the cancellation of a deed because of alleged mistakes as to quantity of land described and lack of consideration; and also for the alleged lack of two subscribing witnesses as to plaintiffs’ execution of their deed. The court held that the statute requires that a conveyance of land be effected: 1) by way of a writing; 2) executed by the grantor; 3) in the presence of two witnesses. Florida case law interpreting the statute reveals that while two witnesses to the execution of a deed are in fact necessary to its validity, the failure of a witness to affix his or her signature to the deed at the time of the initial execution of the deed does not make the conveyance ineffective. Id. at 556. The court stated, “Although the provisions of Section 689.01, Fla. Stat., require that such an instrument be executed in the presence of two subscribing witnesses, the statute does not require that such witnesses shall subscribe in the presence of the grantors, or in the presence of each other. Likewise, the statute does not by express terms require that subscribing witnesses shall sign the document before delivery thereof is accomplished.” Id. at 557. |
| Sweat v. Yates, 463 So.2d 306, (Fla. 1st DCA 1984). | On September 18, 1982, William G. Yates signed a deed to property owned by him. The deed purported to convey the property to Yates and his daughter, Cheryl Yates Sweat, as joint tenant with right of survivorship. Yates entered the hospital on September 19, 1982. The next day, September 20, 1982, two persons, who had not been witnesses to the signing of the deed, signed their names to the deed as witnesses. Yates died on Saturday, September 25, 1982. Sweat recorded the deed on Monday, September 27, 1982. Thereafter, two persons said to have been present when Yates signed the deed added their names as witnesses and the deed was re-recorded on October 5, 1982. Sweat took possession and claimed ownership of the property. On July 2, 1983, Marie Yates, as personal representative of the Estate of William Yates, filed a complaint seeking cancellation of the deed. Mrs. Yates moved for summary judgment on the basis that the deed was void as a matter of law because it was not executed in the presence of two subscribing witnesses as required by Section 689.01, Florida Statutes. The court held that, “[s] ection 689.01, Florida Statutes, does not require that witnesses must subscribe in the presence of the grantor or in the presence of each other, nor does it require that the subscribing witnesses sign the document before delivery is accomplished. (Citation omitted). Moreover, a deed takes effect from the date of delivery, and the recording of a deed is not essential to its validity as between the parties or those taking with notice. The failure of Sweat to record the subject deed before the grantor died did not render the deed void. The recording statute has always been primarily intended to protect the rights of bona fide purchasers of property and creditors of property owners, rather than the immediate parties to the conveyance.” Id. at 307. |
| Bodden v. Carbonell, 354 So.2d 927 (Fla. 2nd DCA 1978). | A landlord sought to terminate a tenant’s possession on the basis that the agreement under which the tenant occupied the premises was a mere license rather than a lease, or, in the alternative, that the lease did not comply with § 689.01. The court held that “[a]lthough the lease does not comply with [§ 689.01] for lack of one witness to the five-year agreement, [landlord] is estopped by his conduct in accepting rental payments to assert this as a defense.” Id. at 929. |
| Lipkin v. Bonita Garden Apartments, Inc., 122 So. 2d 623 (Fla. 3d DCA 1960). | Landlord leased an apartment to tenant for a term of thirteen months by written agreement, executed by the parties, but subscribed to by only one witness. Tenant went into possession under the terms of the lease and remained in possession for five months paying the specified rent before vacating the premises and ceasing to pay the rental payments as they became due. Landlord brought suit claiming damages for the rent which was due under the terms of the lease. Tenant contended that the lease was void because it was executed by an agent of the corporation and was subscribed by only one witness. The court held that the tenant was estopped by their conduct to contend that the lease was invalid. “It is undisputed that they accepted the lease from the corporate lessor, took possession and occupancy of the subject apartment, orally requested permission to move to another apartment in the same building and, the lessor having consented, occupied the second apartment under the same terms and conditions stipulated in the lease of the first apartment, and made rental payments for a portion of the term of the lease.” Id. at 624. |
| Florida Women's Med. Clinic, Inc. v. Sultan, 656 So. 2d 931 (Fla. 4th DCA 1995). | Landlord (Fred Sultan and Henrietta Sultan) and tenant entered into a lease agreement for five years. The lease did not contain Henrietta’s name and was attested to by only one witness. When tenant attempted to move in, the landlord declared the lease null and void. The letter lists five reasons for the invalidation of the lease including, improper attestation. Id. at 933. Tenant filed a complaint seeking specific performance. The court held that under its plain language section 689.01 is applicable to a conveyance of real estate, including a lease of more than one year. Id. at 933. |
| Arvanetes v. Gilbert, 143 So. 2d 825 (Fla. 3d DCA 1962). | Appellants as lessees entered into a written five-year lease with William and Rose Goldstein which called for the payment of rent in equal monthly installments. The lease was signed by the appellants and William Goldstein, but there were no subscribing witnesses. Appellants took possession of the leased premises and began making rental payments. On May 31, 1960, the Goldsteins assigned their interest in the lease to the appellees. This assignment was in writing and signed by the parties, but there were no subscribing witnesses. At the time of execution of the assignment, appellants were still making monthly rental payments though they had sublet the premises. In March of 1961, the appellants abandoned the premises and discontinued the monthly rental payments. As a result, the appellees brought suit in the small claims court for the payments due in April and May, 1961. Subsequently, the appellants brought this action in the circuit court seeking a declaration of rights and liabilities and cancellation of the lease. The complaint alleged, inter alia, that the lease was not binding since it did not contain the signatures of two subscribing witnesses and that in any event it was terminated upon appellants' vacation of the premises in conformance with the terms of a contemporaneous oral agreement between appellants and the Goldsteins. The court held that lessee’s contentions were without merit. The court stated, “It is undisputed that the appellants accepted the lease from the lessor, took possession and occupancy of the subject premises, sublet them to a third party, and made rental payments for a substantial portion of the term of the lease. We hold that they are estopped by this conduct to contend that the lease and assignment were invalid under the provisions of § 689.0.” Id. at 826. |
| Reed v. Moore, 109 So. 86, (Fla. 1926). | Landlord and tenant entered into a five years lease with the option to renew for a further term of five years. The lease was attested by only one witness. The original lessees executed an assignment of their interest in the lease in compliance with the Statute. The first assignee then assigned to an oil company, which assigned to the appellant Reed. The lessor sold the land to the appellee, Moore, who demanded possession of the leased premises. Reed, the lessee, brought an action to enforce the lease on the premises. The court granted relief stating: “While the lease attested by only one witness was not effectual as an executed conveyance of the term, it was effectual as a contract to lease, and the lessee having possession under the contract may have specific performance; no forfeiture being shown. The assignments to the successive assignees were at least in equity sufficient to pass the interest in the contract to lease, and the grantee, A. B. Moore, took the title subject to the contract to lease and accepted rents from the assignee in possession under the contract to lease; therefore such assignee is entitled to specific performance of the contract against the grantee of the fee-simple title, and is entitled also to appropriate incidental relief.” Id. at 88. |
| In re Belize Airways Ltd., 12 B.R. 387 (Bankr. S.D. Fla. 1981). | In 1977 BAL entered into an agreement for the sublease of Hangar 8 at Miami International Airport from Pan American World Airways, Inc. (hereinafter, “Pan Am”). (This sublease was assumed by the Trustee and after the commencement of this action was assigned to Air Florida, Inc.) On February 14, 1979, BAL and the Defendant executed two agreements, one captioned “Agreement” and the other captioned “Agreement of Sublease”. Because the terms of the sublease between Pan Am and BAL required the prior written consent of Pan Am for the assignment or sublease of any of BAL's rights in Hangar 8, BAL sought Pan Am's approval of the Agreement of Sublease. The Agreement was devised to give the Defendant a non-possessory right to use certain facilities within Hangar 8 pending Pan Am's approval of the Agreement of Sublease. Pan Am acknowledged receipt of the Agreement of Sublease and stated that its approval or disapproval would be forthcoming. In fact, Pan Am never approved or disapproved of the Agreement of Sublease (at least prior to the commencement of this case on February 25, 1980) and has never given any approval or disapproval in writing. At some point in time in February or March of 1979, the Defendant began using certain of the facilities in Hangar 8 and certain office space in Hangar 8, and it has continued to use the office space to the present time. Id. at 388. Subsequent to the Trustee's assumption of the sublease between BAL and Pan Am, the Trustee, with the Court's approval, rejected the Agreement and the Agreement of Sublease between BAL and the Defendant. The Defendant then asserted a right to remain in possession of the premises pursuant to 11 U.S.C. Sec. 365(h). Id. The Trustee asserted [among other things] that the Defendant has no right to remain in possession of the premises under Sec. 365(h) because the Agreement of Sublease is invalid for the reasons that Pan Am never gave its approval of the Agreement of Sublease, and, alternatively, the Agreement of Sublease was not signed by BAL in the presence of two subscribing witnesses, as required by Sec. 689.01, Florida Statutes. Id. The court concludes that the Trustee is not entitled to a declaration that the Agreement of Sublease is invalid under Florida law. Id. at 389. The failure to have two subscribing witnesses to the execution by BAL is not fatal. It has been held that that statutory requirement may be waived by the accepting of rent and performing under a lease. (Citation omitted). The Court finds that BAL did accept rent from the Defendant and did accept performance under the Agreement of Sublease, which conduct by BAL constitutes a waiver of the statutory requirement. Id. |
| Grable v. Maroon, 40 So. 2d 450 (Fla. 1949). | The petitioners instituted suit in the Circuit Court of Dade County seeking a declaratory decree with respect to their rights as lessees under a certain 99-year lease entered into with the respondent as lessor, and their right to assign their interest in and to the same to a third party. The respondent answered the bill and also interposed a counterclaim which alleged, in substance, that prior to the institution of suit the petitioners had orally agreed with the respondent to cancel the lease and surrender their leasehold interest for a consideration of $25,000 to be paid by the lessor; that respondent had accepted the offer to cancel and surrender and had prepared the papers necessary to carry into effect the oral understanding of the parties; that after the papers had been prepared the petitioners had refused to execute the agreement to cancel the lease and surrender their interest, although the respondent lessor had been at all times ready, able and willing to perform under the terms of the oral agreement. Id. at 451. The petitioner moved to dismiss the counterclaim on the ground that the oral executory contract was unenforceable under F.S. 689.01. The court held that the respondent had not made out a case entitling him to the specific performance of his contract. “Section 689.01, Florida Statutes 1941, F.S.A., provides, in part, that ‘no estate or interest, either of freehold, or of term of more than one year shall be assigned or surrendered unless it be by instrument signed in the presence of two subscribing witnesses by the party so assigning or surrendering or by the act and operation of law.’ This statute must be considered in connection with the contract which the respondent seeks to enforce, for a decree of specific performance will result in a surrender and termination of the estate or interest and the possession of the property held by the petitioners under the 99-year lease.  The counterclaim shows on its face that the contract sued on was oral and that there has been no performance or part performance of the contract by either party. Therefore, specific performance will not lie for its enforcement.” Id. |