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Daily Journal Verdicts and Settlements
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LANDLORD/TENANT
Commercial Lease

SETTLEMENT: \$456,000

Case/Number: Atlas Inc. v. Financial 21 Community Credit Union/ GIC847733

COURT/DATE: San Diego Superior/ Jan 2, 2007

JUDGE: Hon. Kevin A. Enright

ATTORNEYS: Plaintiff- Pamela J. Scholefield, Edward N. Benito (Scholefield & Associates, San Diego) for Atlas Inc., dba Darband Fifth Avenue Grill.

Defendant: Duane Tyler (Moore Brewer, Jones & Tyler, La Jolla) for Financial 21 Community Credit Union; Mark Hagarty (Luce Forward, Hamilton & Scripps, LLP, San Diego) for Skandia Construction Services Inc. and Craig Allen Gustafson.

FACTS: Defendant Financial 21 Community Credit Union purchased a building in which Tony Dowlat had been operating his restaurant for a number of years. The credit union was provided a seller's disclosure that the building was subject to an earthquake retrofit requirement ("the mandatory retrofit") which was not disclosed to Dowlat.

Dowlat incorporated into Atlas Inc. dba Darband Fifth Avenue grill. Dowlat/Atlas exercised the five-year renewal option under the lease and discussed with defendant the option of expanding the restaurant into the bookstore that occupied the rest of the building. Atlas and Financial 21 then entered a new 7-year lease, with 19 years of renewal options. However, the city denied the tenant improvement plans because the mandatory retrofit had not been performed. Dowlat demanded that Financial 21 perform the mandatory retrofit and addition retrofitting if required for his proposed tenant improvements. Defendant Financial 21 refused and claimed that Dowlat was obligated to perform any retrofit. Meanwhile, Financial 21 was negotiating a contract to sell the building to defendant Skandia Construction Services Inc., who planned to level the restaurant and bookstore and build condominiums.

The plaintiff sued for breach of contract and fraud against Financial 21 and interference with economic relationship against Skandia and Gustafson. According to defense counsel, the earthquake retrofit requirement was not discussed when the lease was renewed because the credit union employee who know of the requirement was no longer employed by the credit union, and the officer who negotiated the lease renewal was unaware of the requirement.'

But, according to plaintiff's counsel the former credit union employee testified that he had advised the credit union board and officers of all disclosures he received and the disclosure documents remained in the credit union's files. Further, Financial 21 eventually produced a punch list created by the credit union employee specifying structural issues with the property, which included the need to stabilize the masonry on the roof of the bookstore and restaurant.

Financial 21 also produced emails which discussed a plan between Financial 21 and Skandia for Skandia to possibly seek condemnation of the building if Atlas did not agree to move. Then, a couple week before trial, Financial 21 hired a contractor to begin performing the mandatory retrofit requirement.

RESULT: On the morning the jury was to be empanelled, after the court reserved it's ruling on defendants' motion in limine, plaintiff accepted defendants' joint CCP section 998 offer. The offer required that Financial 21 complete the mandatory retrofit work to the acceptance of the city, and included \$250,000 in damages against all defendants, plus attorneys fees and costs against Financial 21 as awarded by the court, for a total judgment of \$456,000 on all claims other than fraud, which was dismissed with prejudice in accordance with the CCP 998 offer.