



Tenant's Termination Rights Upheld Despite Lender Consent Clause

In a decision clarifying the relationship between lease provisions and lender consent clauses, the Massachusetts Appeals Court recently upheld a trial court's order in favor of the tenant, allowing the tenant to terminate a long-term lease and service agreement without first obtaining the mortgage lender's written approval.

Hasseltine House, LLC (the landlord) leased a Newton residential facility to Jewish Family and Children's Services, Inc. (the tenant) under a sixteen-year lease and a companion service agreement. The agreements between the landlord and the tenant provided "special termination rights," permitting the tenant to end the tenancy if five of the facility's fourteen residents gave notice of intent to vacate. Weeks later, the landlord, tenant, and Brookline Bank executed a Subordination, Non-Disturbance, and Attornment Agreement (SNDA) in connection with the landlord's \$2.6 million mortgage. The SNDA subordinated the lease to the bank's mortgage and prohibited termination without the bank's prior written consent, though such consent could not be unreasonably withheld.

Between May and August 2017, five residents gave notice to leave to the tenant. After notifying the landlord, the tenant formally invoked its termination rights in January 2018. The landlord sued, alleging that termination without Brookline Bank's consent breached both the

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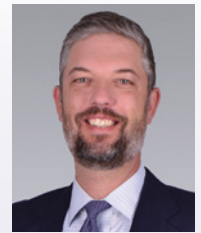


Marc Laredo

Congratulations to Marc Laredo, Mark Smith, Matt Kane, Payal Salsburg, Will Cosmas and Darshana Indira on being recognized by *Best Lawyers in America*®!



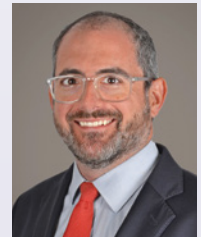
Mark Smith



Matthew Kane



Payal Salsburg



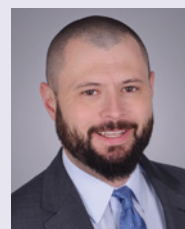
Will Cosmas



Darshana Indira

Darshana Indira was appointed vice chair of the Mass Bar Association's 2025 Business Law Council.

Payal Salsburg was appointed to the Mass Judicial Nominating Commission for a one-year term.



Brendan Cox

Brendan Cox was quoted in *Law360* article where he analyzed a precedent-setting immigration bail case.

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lease and service agreement and violated the implied covenant of good faith and fair dealing.

After motion practice, the trial judge entered judgment in the tenant's favor. The Appeals Court agreed, holding that the SNDA did not override or limit the tenant's termination rights clearly established in the lease and service agreement between the landlord and the tenant. The court reasoned that those agreements,

Exercising an expressly negotiated right, the court concluded, cannot constitute bad faith.

executed together, defined the essential terms of the tenancy – including the special termination clause – and that the later SNDA could not “render illusory” the rights the tenant had already secured with the landlord.

The court emphasized that all three documents must be read together to discern the parties' intent. Because the SNDA expressly preserved the tenant's rights under the lease, the absence of written lender consent did not amount to a contractual breach between landlord and tenant – even if it might have violated obligations owed to the bank.

The landlord also claimed the tenant failed to “promptly” report residents' notices to vacate, as required under the service agreement, and acted in bad faith by waiting until enough notices accumulated to justify termination. But the court found no evidence that the landlord suffered harm from any delay or that earlier



notice would have changed the outcome. Exercising an expressly negotiated right, the court concluded, cannot constitute bad faith.

This case reinforces that:

- Contract integration matters – when multiple agreements form a single transaction, courts interpret them together to preserve the original bargain.
- Lender consent clauses in SNDAs do not automatically supersede negotiated lease rights unless the parties clearly intend that result.

By upholding the tenant's right to terminate, the Appeals Court underscored the importance of clear contractual language, especially when sophisticated parties structure multi-agreement real estate transactions.

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