

New Ruling Could Void Your Lease Option

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In its recent decision in *Jahangiri, et al. v. 1830 North Bayshore, LLC*, the Third District Court of Appeal asserted that a lease extension option based on “market rate” is insufficient to create a binding and effective option, and is therefore legally unenforceable. The Court reasoned that because rental amount is an essential term, any lease that fails to provide a specific rental amount, or, in the alternative, a definitive method of calculation, lacks the elements necessary to constitute a binding agreement.

Presumably, the issue faced by landlords and tenants revolves around the question: how definitive does a rent calculation method need to be? This is the very question that multiple courts have sought to address over the past several years.

In *Edgewater Enters., Inc. v. Holler*, 426 So. 2d 980 (Fla. 5th DCA 1982), the Fifth District Court of Appeal was faced with a lease provision that stated that the parties to the lease would negotiate the renewal term rent at the time the renewal option was exercised. The Court acknowledged a then current split of authority but adopted the view that “the amount of rental is an essential element of a lease” and therefore that a renewal provision must include “either the amount of rental or a definite procedure to be followed to establish the amount of rental.” *Id.* at 983.

In *Lubal Development Co. v. Farm Stores, Inc.*, 458 So. 2d 781 (Fla. 3d DCA 1984), the Third District considered a lease extension provision that stated that the parties to the lease would negotiate the rental price at the time of extension, or, “in the event the parties could not agree on a new rental price, that [lessee] would be given the right of first refusal of any bona fide offer received by landlord.” *Id.* at 782. The Court found this provision to be enforceable because while there was no price term specified, “there was a method provided by which rental price could be established in the event the parties could not reach an agreement.” *Id.*

In *Jahangiri*, the Court found the provision in question – “renewal at the then prevailing market rate for comparable commercial office properties” – to be too indefinite to constitute a valid extension option. The Court noted that the provision left more for the parties to decide before the rent could be fixed with certainty, and proffered several questions,

such as: “Who is responsible for obtaining ‘comparables’? . . . May the other party object and who will resolve any such objections? What factors are to be considered in determining that another property is truly comparable? . . . [W]hat is the ‘prevailing market rate’? Is it the mean, medium, or mode of the three comparable commercial properties? . . . Is it the comparable sales rate or the rental rate that sets the ‘market’?”

In sum, *Jahangiri* further narrows the proposition that renewal rental rate must be calculable based on the language of the renewal provision. Absent a future ruling to the contrary, the “prevailing market rate” benchmark is no longer sufficient to constitute a valid extension option. The Court did, however, suggest examples of definite procedures including fixed percentage increases and increases based on the federal Consumer Price Index.

Given the complexity of these types of provisions and their legal significance, it may prove invaluable to review your existing leases. Your attorney should be able to provide specific suggestions to ensure the value and enforceability of your extension options. Whether as a landlord or tenant, a proper legal review will be necessary to protect your leasehold interest.