

9/24/69

First Supplement to Memorandum 69-111

Subject: Study 50 - Leases

Attached (Exhibit I) is a letter from the representative of the California Real Estate Association, commenting on the revised lease bill (attached to Memorandum 69-111).

The letter suggests that the phrase "if the lease so provides" be deleted from paragraph (5) of subdivision (a) of Section 1951.2 of the revised bill. See the letter for the reason.

The problem with paragraph (5) is that it is broad enough to encompass all damages--future rental loss included. The limitation of paragraph (4) to cases where the lease so provides might be defeated if paragraph (5) is not so limited. Paragraph (3), which is not dependent on a lease provision, was added to pick up the normal "proximate damages." The fear is expressed that extensive lease provisions will be necessary to collect other "proximate damages." It is true that a lease provision would be needed under the revised draft to cover anything other than the normal costs of reletting. One possible solution to the problem would be to delete paragraph (3), renumber paragraphs (4) and (5) as (3) and (4), respectively, and revise former paragraph (5) to read:

~~(5) (4) If the lease so provides, any~~ Any other amount necessary to compensate the lessor for all the detriment, other than that described in paragraphs (1), (2), and (3), proximately caused by the lessee's failure to perform his obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

An alternative method of dealing with the problem would be to revise paragraph (3) to read:

(3) A reasonable commission for the reletting of the property and a reasonable amount to compensate the lessor for any damage to the property for which the lessee is responsible ;

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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September 23, 1969

Mr. John H. DeMouilly, Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Subject: Real Property Leases

Dear Mr. DeMouilly:

Your undated letter of transmittal received by us on September 15 soliciting additional comment on recommended legislation on this subject is acknowledged with thanks.

As you are aware, we followed the progress of SB 101 of the 1969 session which incorporated the Commission's recommendations on this subject, through the legislative process this year. We supported that bill and do support the concept which is included in your current proposal.

The changes which are incorporated in Section 1951.2 as compared with SB 101 in its last amended form in print represent the amendments which were proposed to that bill at its last hearing in the Assembly Judiciary Committee and those were in turn an attempt to overcome objections expressed to the measure on the Assembly floor. Primarily, those objections were directed toward the fact that the lessor might obtain judgment under the terms of the bill then under consideration including an award for unpaid rent for the balance of the term after the time of award, and then re-lease the premises and in effect achieve a substantial windfall.

In effect, we believe that the added subsection (4) meets that objection. Let us hasten to add that we do not agree that the objection necessarily is valid but in the process of achieving evolution of a bill possible of legislative enactment we would agree that the change proposed by subsection (4) would accomplish that purpose.

The addition in subsection (3) was mentioned by us in prior comment last year on this subject and it was the expressed belief of the Commission at that time that this would in effect be the law.

Mr. John H. DeMouilly

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September 23, 1969

In your current draft we do object to the added language in subsection (5) which makes the payment of compensation for damage proximately caused dependent upon a provision in the lease. We cannot understand any question of the fact that recovery for proximate damages should be specifically authorized. This is one of the major advantages of the Commission's proposal.

To require that such a provision be placed in the lease in order to make it operative will produce extensive lease provisions, at least on the part of the sophisticated lessor, to effect the same net result on behalf of such parties. We strongly recommend that that provision with respect to proximate damages be restored to that as contained in the printed version of SB 101.

Sincerely,

Dugald Gillies
Legislative Representative

DG/jw

cc: H. Jackson Pontius