

# Chicken Restaurant Case Serves Up A Bucket of Sound Contract Principles for Commercial Leases

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In *Tufail v. Midwest Hospitality LLC*, 2013 WI 62, the Wisconsin Supreme Court highlighted the importance of including precise language in commercial leases, especially if the lease includes an integration clause. The court confirmed that when dealing with a fully integrated lease, it is guided by the terms of the lease as written rather than by extrinsic evidence or unwritten understandings between the parties. While this may seem obvious, this case serves as a good reminder for those who negotiate commercial leases to always include all specific business and legal terms.

Tufail ("Landlord") and Midwest Hospitality LLC ("Tenant") entered into a lease for commercial property that was then being used by Landlord as a "New York Chicken" restaurant. Tenant leased this property with the intent of operating a "Church's Chicken" restaurant. However, during build-out, Tenant discovered that a special use permit would be required to operate its fast food restaurant with a drive-through. While Tenant was able to obtain the permit it needed, the permit was conditioned upon the restaurant being closed by 9 p.m. (as opposed to the 4 a.m. close time allowed for the prior restaurant).

Tenant terminated the Lease and notified Landlord that it would stop paying rent due to the adverse effect the earlier closing time would have on its profitability. Tenant argued that the permit requirement was contrary to Landlord's representation that Tenant would not be prevented from using the premises for the permitted uses set forth in the lease. The lease contained the following use clause: "[t]enant may use and occupy the Premises for any lawful purposes, including, but not limited to, the retail sales, consumption, and delivery of food and beverages which shall include, but not be limited to, Chicken products, Fish products, bread products, salads, sandwiches, dessert items, promotional items, and any other items sold by any Church's Chicken store."

After reviewing the lease's integration clause and finding it to be complete, the court rejected Tenant's argument that the general reference to "Church's Chicken" in the use clause required that a fast food restaurant with a drive-through be allowed because the understanding between the parties was that Church's Chicken restaurants were in fact drive-through fast food restaurants. The court concluded that the lease did not include a false representation and also limited its review to the specific language used in the use and representation clauses of the lease due to its conclusion that the lease was fully integrated.

The court also concluded that the terms of the representation clause as written required simply that Tenant not be prevented from using the property for the purposes set forth in the use clause. The court stated that there was nothing that prevented Tenant from specifically addressing hours of operation, the requirement that a drive-through be allowed, or other specific requirements it considered to be vital to the successful operation of its restaurant in the lease. However, the court was bound to interpret only the contract to which the parties actually agreed, and these requirements were not included therein.

While this is a misrepresentation case on its face, the case ultimately turned on basic contract principles and is an important reminder of the effects of integration clauses. Not only can these "boilerplate" clauses intensify the scrutiny of the specific language chosen by the parties, but, as shown in this case, they can be used to support the theory that even the smallest of deal points should have been included in the agreement if they were important to the parties. This case demonstrates that it is extremely important to include precise, unambiguous language in leases and to double check that even the seemingly minor deal points are included in the lease if they are necessary to make the deal viable.

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