
**To Be Or Not To Be –
Unreasonable In Withholding Consent
In Commercial Leasing Transactions:
A Selected Synopsis Of Jurisprudence**

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- A. American Book Company v. Yeshiva University Development Foundation, 59 Misc. 2d 31 (Sup. Ct., NY Cty, 1969).

Facts: Landlord was a foundation affiliated with a religious university. Landlord refused permission to plaintiff, tenant, to sublease its space to an organization that supported abortion.

Holding: Tenant awarded declaratory judgment that Landlord **unreasonably withheld** its consent and court grant injunction compelling Landlord to consent to sublease.

Rationale: 1. When a religious or religiously affiliated or educational institution operates a commercial enterprise or owns commercial property it is held to established commercial standards.

2. Reasonableness of withholding consent under such commercial standards is judged by objective standards.

3. Those objective standards include: i) the legality of the proposed use; ii) the nature of the occupancy; iii) the proposed tenant's financial responsibility; iv) the identity or business character of the subtenant – suitability for a particular building.

4. The "ideas" of the proposed tenant is not an objective standard.

- B. 57th Street Luce Corp. v. General Motors Corp., 182 Misc. 164, *aff'd* 267 App. Div. 978, *aff'd* 293 N.Y. 717 (1944).

Facts: Lease provided that the premises were to be used for "an automobile showroom, warehouse, garage or allied business." Tenant requested to sublet to a tenant for manufacturing and printing of paper cartons.

Holding: Landlord **unreasonably withheld** consent. Sublease approved because "nothing in the lease restricted tenant from utilizing the demised premises in any lawful manner not materially different from that to which it is adopted and construed."

- C. Time Inc. v. Tager, 46 Misc. 2d 658 (Sup Ct., NY Cty. 1965).

Holding: Subdivision of the space into multiple subtenancies was a **reasonable** basis for Landlord to refuse consent to the sublease.

- D. Matter of Cedarhurst Park Apts. v. Milgrim, 55 Misc. 2d 118 (Sup Ct., Nassau Cty. 1967).

Holding: Corporate Landlord's refusal to approve a sublet of an apartment to an otherwise acceptable tenant because it wanted the apartment for one of its corporate officers was held **unreasonable**.

- E. Roundup Tavern v. Pardini, 68 Wn. 2d 513 (Sup Ct., Wash. 1966).

Holding: Refusal to consent to assignment of lease to one who desired to operate a Tavern because of the Landlord's personal objection to that type of business, even though there was no restriction on the nature of the business in the lease, was held to be the personal objection of the landlord, a subjective criteria, and could not be the basis for the reasonable withholding of consent, therefore **unreasonable**.

- F. Broad v. Branford Place Corp. v. Hockenjos Co., 132 N.J.L. 229 (Sup Ct., NJ 1944).

Holding: Landlord's objection to tenant who was going to use the premises as a poultry dressing establishment, where there were no restrictions in the lease, was improper "arbitrary considerations of personal taste, sensibility or convenience" and are not objectively reasonable. "Personal satisfaction" is not the sole determining factor. **Unreasonable**.

- G. 425 Park Avenue Company v. 425 Park Avenue Ground Lessee, L.P., 69 A.D. 3d 467 (1st Dept., 2010).

Facts: 1. Lease obligated plaintiff Tenant to restore or replace fire damaged premises “as nearly as possible to its value, character and condition immediately prior to such damage or destruction.”

2. Defendant Landlord withheld consent to the restoration plans for “safety reasons.”

3. Defendant Landlord also argued that the obligation to maintain premises in first class order, repair and condition required upgrade to electrical system.

4. Restoration plans had been approved by NYC Dept. of Buildings.

Holding: Defendant’s Landlord’s consent to restoration plans was **unreasonably withheld**.

- H. Golden Eye, LTC d/b/a Big Drop v. Fame Company, 2008 N.Y. Misc. LEXIS 8571 (Sup Ct., NY Cty. 2008).

Procedural Posture: Tenant, “Golden Eye” sought specific performance from Fame Company, Landlord, where Landlord refused to consent to proposed assignment between Golden Eye and Aerogroup Retail Holdings.

Facts: Tenant could assign to 3rd parties, subject to Landlord’s consent which could not be unreasonably withheld and:

- a. Proposed Assignee had good financial credit.
- b. At least 30 days prior to the assignment Tenant was to provide to Landlord, name and address of proposed assignee, and all of the terms of the proposed assignment.
- c. At the time of the request the tenant shall not be in default of any terms, covenants or conditions of the lease.
- d. A guaranty from a financially capable principal of the proposed assignee.

Holding: 1. When the issue of reasonableness of withheld consent is based upon objective standards it constitutes a question of fact that precluded summary judgment. When denial is based upon subjective factors such as arbitrary considerations of personal taste, sensibility or convenience, such subjective criteria are unreasonable as a matter of law.

2. Landlord’s denial based upon change in use is not reasonable as a matter of law.

3. **A court maynot determine reasonableness of withholding consent based upon grounds not included in letter refusing consent.**

4. However, motion for specific performance requires showing of irreparable injury and tenant failed to meet burden so specific performance denied.

- I. Filmways, Inc. v. 477 Madison Ave., 30 N.Y. 2d 597 (1972).

Holding: Where there is a provision denying assignment without Landlord’s consent, he may withhold consent for any reason or for no reason. However, where a Landlord covenants not to unreasonably withhold consent, and the Landlord **unreasonably withholds** consent, the Tenant has a cause of action for damages.

- J. Butterick Publishing v. Fulton & Elm leasing Co., 132 Misc. 366 (Sup Ct., NY Cty. 1928).

Holding: Consent **unreasonably withheld** but Tenant had no claim for consequential damages.

- K. 200 Eighth Avenue Restaurant Corp. et al v. Daytona Holding Corp., 293 A.D. 2d 353 (1st Dept., 2002).

Holding: Proposed assignee of lease between Landlord and Tenant was not in contractual privity with Lease and therefore could not bring action against landlord for wrongful withholding of consent.

In any event, Landlord's denial of consent was **reasonable** as proposed assignee did not timely tender adequate financial background information.

- L. Kenney v. Eddygate Park Associates, d/b/a Eddygate Park Apartments, 19 A. D. 3d 859 (3rd Dept., 2005).

Facts: Tenant operated a barbeque restaurant; Tenant prohibited from selling Chinese food at premises; Tenant's restaurant began to fail and sought to assign lease to a Korean or Vietnamese restaurant. Landlord refused consent. Subsequent to expiration of lease term, Landlord leased to operator of a Korean restaurant.

Holding: Landlord's **unreasonable** withholding of consent precluded summary judgment on its motion for damages for unpaid rent.

- M. Astoria Bedding, Mr. Sleeper Bedding Center, Inc. v. Northside Partnership, 239 A.D.2d 775 (3rd Dept., 1997).

Procedural Posture: Tenant retail bedding establishment appealed from Albany County Supreme Court Judgment finding Landlord's conduct in refusal to allow Tenant to sublet to packaging and mailing service as reasonable- proposed assignee had a different use

Holding: 3rd Dept. Reversed- Landlord's conduct **unreasonable**.

Rationale: 1. While Landlord's have the right to control the use to which their property is put, such covenants are viewed more stringently when they are restraints on the free alienation of land, such as with assigning and subletting premises.

2. Defendant's Landlord's sole reliance on the use clause as it's justification for holding consent cannot be deemed reasonable as a matter of law.