

Evict Like a Jerk and Suffer the Consequences

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As the pandemic shows little signs of abating, and many sectors of the economy continue to struggle, the relationship between

commercial landlords and tenants may be strained.

Commercial landlords may no longer be willing or able to grant lease deferrals or concessions to their tenants. For landlords with the right to terminate leases, but who are getting push-back from tenants, here is a cautionary tale about the limits of self-help eviction in North Carolina. The upshot is that just because you have a commercial -- as opposed to residential -- lease, you still don't have the right to be a jerk.

Lola Salamah and Amro Elsayed were franchisees of a Family Fare gas station and convenience store in Winston-Salem. Donald Pilcher was the day-to-day liaison for Family Fare. In 2015, Salamah and Pilcher discovered that an employee was stealing lottery tickets. Pilcher told Salamah to fire the thief, mark the stolen tickets as sold, and repay the stolen amount to Family Fare in monthly increments. Salamah followed Pilcher's advice and did not report the theft to Family Fare. In 2018, Salamah still owed \$10,000 so she told Family Fare about the theft. Family Fare immediately terminated the franchise agreement and the lease.

On the same day as termination, Pilcher entered the store, confiscated the key to the safe, pushed a worker out of the way to seize the cash register, and called Salamah to ask her to come to the store. Pilcher also called the police. When the police arrived, Salamah told them she thought Pilcher needed a court order to force her to leave. The police officer said that he was not evicting anyone and was just there to keep the peace (as tempers flared). While the officer was present, Pilcher summoned a locksmith and changed the locks.

Plaintiffs Salamah and Elsayed sued Family Fare, Pilcher, and others in federal court. One of their claims was that the Defendants violated North Carolina's Unfair and Deceptive Trade Practices Act ("UDTPA") by wrongfully evicting them and by repossessing goods in the store. To prevail on a UDTPA claim, a plaintiff must demonstrate (1) the defendant committed an unfair, deceptive, or unethical act that offends public policy, (2) the act or practice in question was in or affecting commerce, and (3) the act or practice proximately injured

the plaintiff. A loser on a UDTPA claim can be forced to pay treble damages and attorney fees.

North Carolina allows self-help eviction if the landlord does not breach the peace. But it prohibits forcible self-help eviction. A landlord may use peaceful means to reenter and take possession of leased premises or may do so with the tenant's consent or cooperation. Any objection by a tenant, however, elevates the reentry to a forceful one, and the landlord must use the judicial process to evict the tenant. An improper eviction can create a UDTPA claim in North Carolina.

The United States District Court for the Middle District of North Carolina held that Pilcher committed an unethical and unfair act in violation of public policy when he forcibly evicted Plaintiffs over their repeated objections and pushed an employee. The Court also held this was in or affecting commerce.

This left only whether Pilcher's conduct proximately injured the Plaintiffs. The plaintiffs alleged that the incident caused Elsayed to have a severe anxiety attack. He went to an emergency room on the day of the eviction, resulting in several medical bills, and was treated for anxiety ever since. Without ruling on whether the medical bills were proximately caused by the eviction incident (rather than the franchise termination or another cause), the Court found the allegation sufficient for the case to proceed.

Defendants could have used the judicial process and taken possession of the store with minimal incident and cost. Instead, because Pilcher acted the bully, Defendants are embroiled in litigation and have the specter of having to pay treble damages and legal fees. During the pandemic and beyond, commercial landlords would be wise to show restraint and common sense when dealing with recalcitrant tenants.

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