

# Small Business Matters

## Derek Jeter, Park City Mountain Resort and a tenant's right under a lease

Derek Jeter, aka "Mr. November," one of the greatest professional baseball players of all time, retired this year after a storied 19-year career with the New York Yankees. It is well known that Jeter proclaimed as a child that he would one day play shortstop for the Yankees, a statement that countless Little Leaguers have undoubtedly made.

Jeter credits his parents a lot for helping turn his proclamation into a reality. As the story goes, each year before school began Jeter's parents would present him with a contract in which his parents promised to allow him to play sports. In exchange, Jeter would keep high grades, participate in extracurricular activities and avoid drugs and alcohol. He says he signed the contract each year and always strictly followed the terms of each contract for fear of disappointing his parents.

Tenants in Utah need to follow Derek Jeter's example when it comes to strict compliance with the terms of their lease agreements. Strict compliance is important because, in Utah, plain and unambiguous terms in contracts are enforced by courts against the parties to a contract. Where contract terms are clear, Utah judges refrain from looking beyond those terms to interpret the contract's meaning. Courts will

look outside of the "four corners" of a contract only if an ambiguity exists that cannot be resolved within the contract itself. With leases, over 100 years of Utah precedent require strict compliance with terms of options to renew, options to purchase, and other lease options.

The recent highly publicized case involving the right to renew the lease of a large tract of land used to operate the Park City Mountain Resort (PCMR) emphasizes that strict compliance is required under Utah law with respect to a tenant's exercise of an option to renew its lease — regardless of purported "equitable" considerations.

PCMR enjoyed a below market lease rate for the large tract of real property on which much of the upper terrain of its ski and summer resort was operated. The lease commenced in 1971 and expired on April 30, 1991 with three, 20-year extensions available to the tenant. In order to exercise its option to extend, the lease required that the tenant "give written notice of such election to the [landlord] at least 60 days prior to the end" of the initial term or applicable extension term. Although the amount of advance notice varies from lease to lease, advance written notice from a tenant to a landlord is a common requirement for lease extensions found in most commercial leases.

Presumably due to an oversight, PCMR failed to give the required advance notice to the landlord to extend the term of the lease. After the deadline to give notice of renewal

had passed, PCMR sent a letter to the landlord "confirming" its exercise of the option to renew, but the landlord took the position that PCMR had failed to properly extend the term of the lease. PCMR brought suit against the landlord requesting that the court order that PCMR was entitled under the lease to continue to occupy the premises for the extended term.

Despite the magnitude of the impact to PCMR, including the potential loss of the significant capital improvements made to the premises following the expiration of the term, the court followed binding Utah case law regarding options to renew under lease agreements. Specifically, the court followed various Utah cases which stand for the proposition that strict compliance is required with lease renewal provisions under Utah law, particularly since this right is "unilateral" to the tenant.

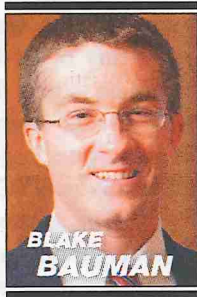
Due to this stricter standard, tenants under commercial leases who fail to timely exercise an option to extend under a lease, or otherwise fail to exercise the option to extend in compliance with the procedure established by the lease, will have an uphill battle in a Utah court if the validity of the tenant's exercise of the option is challenged. One of the few examples in Utah where the tenant received equitable relief was a case in which a severe snowstorm made travel and delivery of the tenant's written notice difficult — email and fax were not yet available at that time — and thus the tenant's attorney contacted the landlord's agent by phone and received permission to exercise the option one day late.

In light of this well-established Utah law, tenants need to follow Derek Jeter's example of "strict compliance" with their lease contracts — particularly when it comes to options to renew, to purchase or to expand into new space, rights of first refusal and other similar rights in favor of tenants commonly found in leases.

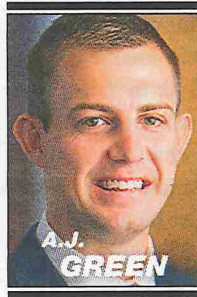
Businesses should designate individuals to track key dates and obligations under their leases and these key dates and obligations should be periodically discussed and reviewed during management-level meetings. Importantly, tenants should not assume that others are monitoring these dates and obligations for them — real estate brokers and outside counsel involved in initial negotiation of the lease are rarely in a position to provide notice to tenants of these key dates and deadlines (many of which do not arise for five, 10 or even 20 years after lease execution). Lease management and administration software is available to assist tenants and is particularly useful for businesses that have multiple leases to monitor.

Tenants who take steps to monitor and review their lease deadlines and dates regularly will avoid surprises and serious mistakes and will be in a better position to make sound business decisions relating to their commercial leases.

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