**Nit-picking or Significant Contract Choices?—Part III**

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In the March "Scrivener," I quoted three examples of revisions proposed in a lease negotiation that were characterized by one reader as "nit-picking." In the June article, I summarized the general responses I received about nit-picking from a number of readers. Two of those readers were kind enough to give me very specific feedback about the three clauses listed in the March article. This article addresses each clause individually to provide help to other readers with their negotiations. Overall, these readers concluded that each of the proposed revisions listed raised legitimate concerns for their clients that were worth discussing with opposing counsel.

**—Lease:** "At all times during the continuance of this lease, Landlord shall . . ."

**Change:** Delete the word "continuance" and substitute therefor "term."

**Response 1:** "In the first example, I have no idea what the 'continuance' of a lease would be. 'Term' seems more appropriate because it is a term of art; it has legal significance. I would guess that elsewhere in the lease agreement, there is a specified 'term.' It may even be a defined term in the agreement. While one could infer that 'continuance' means the same thing as 'term,' it's better to be precise with the language so as to prevent later question and possible dispute."

**Response 2:** "I assume that the lease has a term clause, not a 'continuance' clause. (Black's Law Dictionary defines 'continuance' only in the sense of the adjournment or postponement of an action.) While the word 'continuance' in the lease clause is probably okay under the 'Like, yeah man, you know what I mean, Dude!' standard, there is nothing wrong with exercising a bit of craftsmanship and using the word 'term.' But whether the change is made or not would seem to have no substantive effect on the meaning of the clause. (Still, a question may arise as to whether, in the case of a hold-over tenant, the lease may have a 'continuance' after the 'term' has expired. (Cf. First Na-
Response 1: “The third example, in my opinion, is the most tenuous edit, because simply adding the word ‘reasonable’ does not seem to advance the ball at all. It would only lead to an argument down the road of whether the lighting expenses were ‘reasonable’—an argument that probably would have ensued regardless of whether the word ‘reasonable’ appeared in the agreement or not. Perhaps the better thing to do would be to place a cap on the amount the tenant would pay on the gross expense of lighting, or draft some other mechanism that makes clear exactly what the tenant’s obligations would be.”

Response 2: “I think that a lawyer who relies upon the court implying the term ‘reasonable’ in any particular covenant of a lease is taking the risk that the court will not do so. After all, it is possible, contractually, to give the landlord carte blanche to spend money that the tenant must reimburse, in whole or in part.”

Conclusion

Several readers have contacted me about these articles on nit-picking. While many voiced their frustrations about proposed revisions in the negotiation phase of a contract, most have confided to me that they would much prefer spending the time to make revisions during this initial phase rather than litigating these issues down the road—when the handshakes have turned to fist-shakes.

NOTES

3. The first response in each of the comments to follow is from Chuck Sensiba, of Van Ness Feldman, P.C. in Washington, D.C.; the second response is from George Reeves of Denver, Colorado. Also, Stanton Rosenbaum submitted a letter to The Colorado Lawyer regarding the March article. See “From Our Readers,” 31 The Colorado Lawyer 57 (June 2002).