

Black Diamond Holding Company, LLC. v. Luhn (04CA2410)

Opening Brief—Summary

1. The Trial Court committed reversible error in refusing to allow Black Diamond to exercise its contractual and statutory rights to declare the term of toe Lease ended. Paragraph 11 of the Lease grants Black Diamond the explicit right to declare the term of the Lease ended where Tenant defaults and fails to cure said default following service of three day's notice pursuant to applicable law.

2. The Trial Court committed reversible error in determining that, "an eviction is equitable in nature", and that, "[t]he Court has discretion to fashion an appropriate remedy". (Order at 18). The cases the Trial Court cites do not support a Trial Court's authority to fashion an equitable remedy that denies Black Diamond its specific right to elect to declare the Lease terminated.

3. The Trial Court committed reversible error in narrowly defining the FED statute as a "forfeiture statute", thus requiring its strict construction, but thereafter not strictly construing the statute and/or the lease to find lease termination. This finding and/or partial analysis was apparently used by the Trial Court as a basis to deny Black Diamond its termination of lease remedy.