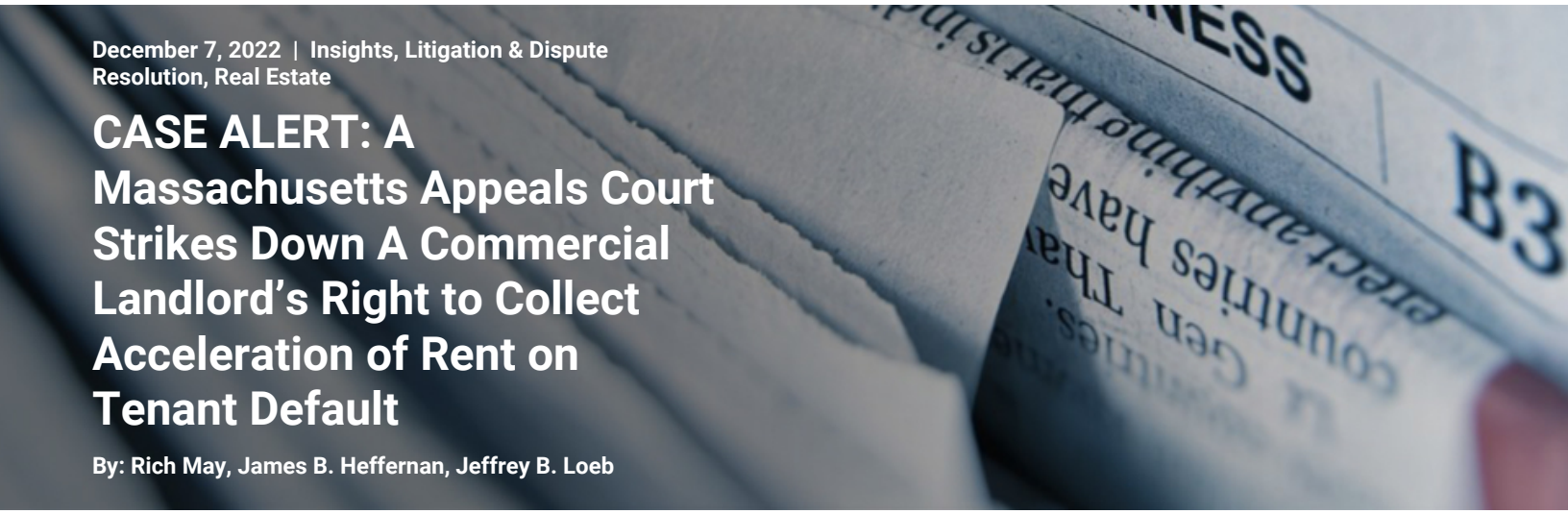

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CASE ALERT: A Massachusetts Appeals Court Strikes Down A Commercial Landlord's Right to Collect Acceleration of Rent on Tenant Default

By: Rich May, James B. Heffernan, Jeffrey B. Loeb

An accelerated rent clause gives the Landlord the right to collect the entire amount of rent due under the lease as liquidated damages upon default of the tenant. They are a common element in commercial leases. Previous case law in Massachusetts has allowed acceleration of rent clauses so long as they are stated in the lease. The courts in Massachusetts have also stated that landlords do not have the duty to mitigate damages by reletting the premises. Meaning they are not required to relet the premises and reduce the amount of the liquidated damages due (unless stated in the lease).

Mitigation of damages, however, was not the focus of the Appeals Court in the recent *Cummings Properties, LLC vs. Darryl C. Hines* case (No. 21-P-1153, December 5, 2022). Rather, the question was whether the landlord could collect accelerated rent as liquidated damages after reletting the premises. The Appeals Court in *Cummings* said, no, that doing so was an unenforceable penalty. In particular, the lease in *Cummings* allowed the landlord to collect both the full amount of rent owed (accelerated rent) and rent from a new tenant. By doing both, the court determined that the accelerated rent was excessive and an unenforceable penalty.

The Court was also not convinced on the landlord's argument that it would be difficult for the landlord to adjust the amount due. Here, the landlord did in fact relet the premises but still pursued the guarantor under the lease for the full accelerated rent as liquidated damages after the fact. The timing of litigation may be a factor here.

In short, the Massachusetts Appeals Court is taking a sharper look at acceleration clauses in commercial leases. We expect that the landlord may appeal this case and that the Massachusetts Supreme Judicial Court may decide on it soon. For now, commercial landlords need to be mindful that their accelerated rent clauses may not be enforceable and should consider an update to the language in their leases. Commercial tenants may in turn need to be mindful that a smart landlord will have a well drafted remedies clause to deal with this recent case law and should consider a more detailed review of such clauses.

We will provide an update if and when the Supreme Judicial Court takes this on.

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Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney(s) Jeffrey B. Loeb and James B. Heffernan.

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