

PERC/Dry Cleaners: Wisconsin Appellate Court Addresses Degree of Spill or Release Constituting Breach of Lease



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The Court of Appeals of Wisconsin (“Court”) in a September 28th opinion addressed whether a tenant breached a commercial lease because of contamination originating from its dry cleaning operation. See *In Re the Writ of Restitution: RJR ML LLC. v. Keyhan Sheikholeslami, D/B/A Ogn den Cleaners*, 2018 WL 4621179 (Wis. Ct. App. 2018).

RJR ML LLC (“Landlord”) alleged that Keyhan Sheikholeslami, d/b/a Ogn den Cleaners (“Tenant”) breached the commercial lease:

... by causing or permitting the release or spill of hazardous substances... and by failing to timely remediate such releases.

The hazardous substance at issue was perchloroethylene (“PERC” or “PCE”). This substance is a solvent that has been commonly used in the dry cleaning industry.

The Landlord’s lease with the Tenant stated the following in relevant part:

1. The agreed use was for a dry cleaning business;
2. “Hazardous substance” was “any product, substance, or waste whose presence [or] use is potentially injurious, regulated or monitored by any governmental authority, or a basis for potential liability”;
3. The tenant may use any ordinary and customary materials reasonably required to be used in the normal course of the agreed use.

The Landlord utilized an environmental engineer to undertake an assessment of the property. The engineer’s report was stated at trial to have determined that while Tenant occupied the property, the environmental engineer had conducted an inspection which included sampling and photographing a “sludge material that, when tested, showed the presence of PERC.”

The trial court determined that the PERC – contaminated sludge that the inspection identified was:

. . . “[e]ither new spills that were not cleaned up” or “some combination. . . [o]f existing problems [from prior tenant] that weren’t remedied as they should have been . . . and current spills that were not immediately cleaned” as the lease required . . .

As a result, the trial court concluded there was a basis for the breach of the lease and for an eviction.

Upon appeal, the Tenant did not dispute the trial court’s findings of facts. However, it argued that no breach had occurred, stating:

1. Under the lease, merely detectable levels found in the sludge do not constitute a spill or release of a hazardous substance.
2. To constitute a breach of the lease, a spill or release must have a component of damage, potential injury or liability
3. The determination of a breach was based on an incorrect interpretation of the lease as meaning “that the Tenant breaches the lease by not removing residue even if the Tenant did not cause the purported spill or release.”

The Court affirms the trial court, concluding the lease contains plain and unambiguous language which:

1. Defines hazardous substance in a way that includes PERC;
2. Prohibits the Tenant from causing or permitting any hazardous substance to be spilled or released and the prohibition applies to any spill, not just high-volume spills;
3. Requires the Tenant to promptly take all investigatory and/or remedial action reasonably recommended for the cleanup of any contamination that was caused or materially contributed to by the Tenant; and
4. Provides the lease permits the Tenant to use hazardous substances for dry cleaning, but does not permit the spilling or releasing of them

The Court applies this interpretation to the trial court’s findings of fact and determines:

. . . that the contaminated sludge observed by the inspection was the result of “new spills” by the Tenant or, in the alternative, the result of spills by both the Tenant and the prior tenant – we conclude that the Tenant breached the lease.

A copy of the opinion can be found [here](#).