

2000

Tenant estoppel certificates: Plaza Freeway v First Mountain Bank, 2000

Roger Bernhardt

Golden Gate University School of Law, rbernhardt@ggu.edu

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/pubs>

 Part of the [Property Law and Real Estate Commons](#)

Recommended Citation

Bernhardt, Roger, "Tenant estoppel certificates: Plaza Freeway v First Mountain Bank, 2000" (2000). *Publications*. Paper 379.
<http://digitalcommons.law.ggu.edu/pubs/379>

This Article is brought to you for free and open access by the Faculty Scholarship at GGU Law Digital Commons. It has been accepted for inclusion in Publications by an authorized administrator of GGU Law Digital Commons. For more information, please contact jfischer@ggu.edu.

Tenant estoppel certificates:
Plaza Freeway v First Mountain Bank, 2000
Roger Bernhardt

Tenant who signs and delivers estoppel certificate, as required under commercial lease, is bound by certificate's declarations, even if they vary from original lease terms.

Plaza Freeway Ltd. Partnership v First Mountain Bank (2000) 81 CA4th 616, 96 CR2d 865

Plaintiff (landlord) and defendant (tenant) are successors in interest to the original landlord and tenant, respectively, under a 25-year ground lease that required the original tenant to construct a bank on the premises. The lease term was to commence on the earlier of 180 days after delivery of the graded pad to the tenant, or the date the bank opened for business. The parties planned to specify the actual commencement date in a later addendum to the lease, but never did so. Twenty years later, when the landlord purchased the property, the tenant signed an estoppel certificate stating that the lease would expire on October 31, 1998.

The lease gave the tenant the option to renew, exercisable with 12 months' prior notice. Believing that the lease would not actually expire until March 1999, the same officer who signed the estoppel certificate on the tenant's behalf exercised the renewal option on January 26, 1998 (three months past the October 1997 deadline). The landlord rejected the tenant's notice as untimely, and filed an unlawful detainer action when the tenant remained in possession after October 1998. The trial court decided that the October 1998 termination date in the estoppel certificate was incorrect and, in construing various lease terms, that the lease actually ended on June 30, 1999. Thus, the trial court found that the tenant's renewal notice was timely and dismissed the unlawful detainer action.

The court of appeal reversed, holding that the tenant was bound by the termination date in the estoppel certificate even if it was inaccurate. Evidence Code §622 provides that the "facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest." The court rejected the tenant's argument that the estoppel certificate was not a "written instrument" within the meaning of §622. As used in §622, a written instrument need not represent an agreement. An estoppel certificate binds the signatory to the statements made in it and estops that party from later claiming to the contrary. Noting the widespread practice of using estoppel certificates to confirm key terms of commercial leases, the court concluded (81 CA4th at 626):

By definition, an estoppel certificate is exactly the type of document to which application of section 622 would be appropriate. . . . Even if the estoppel certificate contains an erroneous recitation of the lease terms, the facts contained in the certificate are conclusively presumed to be true under section 622.

►**THE EDITOR'S TAKE:** Tenant estoppel certificates are universally employed when landlords seek to sell or obtain new financing, but there is almost no law regarding them. It is one of those documents that everyone has just had to hope will work. This decision confirms that hope with a vengeance, holding that a faulty estoppel certificate binds the tenant/signatory even without proof of detrimental reliance by the landlord.

In terms of practical advice to the tenant, the likelihood or unlikelihood of reliance on such a limitation should not make much of a difference. Tenants should closely examine any estoppel certificate proffered to them, and qualify their responses accordingly, because they won't be able to control the extent to which other parties rely on it. Under either a generous or a niggardly reading of *Plaza Freeway*, the risk of being bound by incorrect information in the certificate is very real.

Now that the certificate has achieved some recognition, we are sure to see an escalation in the use of related forms. Pro-landlord leases are sure to broaden their requirements that tenants execute these documents when requested by the landlord (and to enumerate the appropriate sanctions for noncompliance), and tenant-drafted provisions may limit the amount of information that may be demanded and the haste with which it must be supplied. There will be drafting battles over which party is entitled to rely (the buyer or lender only, or the landlord as well?), the extent of the reliance (even in the presence of actual knowledge to the contrary?), and perhaps the consequences of a false statement (Is the tenant liable for losses on foreclosure if the rent stream wasn't as large as represented?). Some leases now already declare that the tenant will certify that the landlord is not in default; will they next give the landlord power of attorney to make that declaration itself? Will they provide that the tenant's right to renew is lost if the certificate is not appropriately laudatory?

That estoppel certificates have teeth is an important first step in this field, but it is only a first step. The rest will depend on the ingenuity of commercial lease lawyers. —*Roger Bernhardt*