

19 Misc.3d 129(A), 859 N.Y.S.2d 907, 2008 WL 711995 (N.Y.Sup.App.Term), 2008 N.Y. Slip Op. 50528(U) (Table, Text in WESTLAW), Unreported Disposition (Cite as: 19 Misc.3d 129(A), 2008 WL 711995 (N.Y.Sup.App.Term))



NOTE: THIS OPINION WILL NOT BE PUBLISHED IN A PRINTED VOLUME. THE DISPOSITION WILL APPEAR IN A REPORTER TABLE.

Supreme Court, Appellate Term, New York,
9th and 10th Judicial Districts.
2039 JERICHO TURNPIKE CORP., Respondent,
v.
Yusuf CAGLAYAN, Mehmet Bolat and Muhterem
Bal d/b/a Pit Stop Meridian Fuel Corp., Appellants.
No. 2006-1890 S C.

March 11, 2008.

Present: **McCABE**, J.P., **TANENBAUM** and **MOLIA**, JJ.

*1 Appeal from a final judgment of the District Court of Suffolk County, Fourth District (Gigi A. Spelman, J.), entered October 30, 2006. The final judgment, after a nonjury trial, awarded landlord possession and the sum of \$21,421.

Final judgment reversed without costs and petition dismissed.

In this commercial holdover proceeding, tenants' lease, the term of which expired on April 20, 2006, contained a renewal option that required tenants to provide notice of renewal at least six months, but not more than one year, prior to the expiration of the lease, via certified mail, return receipt requested. At trial, it was undisputed that tenants never sent the notice via certified mail, return receipt requested, and landlord's principal testified that he never received notice of tenants' intent to renew the lease. However, the evidence also established that tenants' attorney, who had been dealing with landlord's attorney and, in particular, had been attempting to negotiate a renewal period that would extend beyond the five years provided for in the lease, fur-

nished landlord's attorney with timely written notice of the intention to renew the lease in a facsimile dated October 11, 2005. It was not refuted that said facsimile was received by landlord's counsel.

In our view, in light of the course of dealings between landlord's attorney and tenants' attorney, and under all the circumstances, the notice given to landlord's attorney was a sufficient exercise of the option even though it was given to landlord's attorney rather than to landlord, and not sent by certified mail, return receipt requested (see *Dean v. Tappan Wire & Cable, Inc.*, 2002 N.Y. Slip Op 40377[U] [App Term, 9th & 10th Jud Dists 2002]; see generally 52 CJS, Landlord and Tenant x 95). Accordingly, the final judgment is reversed and the petition dismissed.

McCABE, J.P., **TANENBAUM** and **MOLIA**, JJ., concur.

N.Y.Sup.App.Term,2008.

2039 Jericho Turnpike Corp. v. Caglayan
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