In the United States Court of Federal Claims

Case No. 01-220C
(Filed: September 9, 2005)
NOT TO BE PUBLISHED

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INVERSA, S.A. *
*
and *
*
ASSEMBLY OF TORRE MIRAMAR *
CONDOMINIUM, *
Plaintiffs, *
*
v. *
*
THE UNITED STATES OF AMERICA, *
Defendant. *
*

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Jon W. van Horne, Gaithersburg, M.D., attorney of record for the Plaintiffs.

William K. Olivier, Commercial Litigation Branch, Department of Justice, Washington, D.C., attorney of record for the Defendant. With him on the briefs were ***Peter D. Keisler***, Assistant Attorney General, ***David M. Cohen***, Director, ***Robert E. Kirschman, Jr.***, Assistant Director, and ***James W. Poirier***, Attorney.

Tahmineh I. Maloney, law clerk.

OPINION

BASKIR, Judge.

This case concerns disputes arising out of the landlord-tenant relationship between the United States Department of State, Office of Foreign Buildings Operations, and the Plaintiffs. On August 17, 1990, Inversa and the United States entered into a lease agreement, No. 1030-040003, for the lease of space in the Torre Miramar Building, located in the City Of Panama, Republic of Panama. The Lease included the entire ground, first, second, third, fourth, fifth, sixth, seventh, fourteenth (penthouse), and fifteenth (rooftop) floors. In Count Five of the Complaint Plaintiffs seek payment of rent for Floors 14 and 15 during the period from March 15, 1998 through March 14, 2000, for a total amount of $291,777.32. (The Complaint originally sought $307,567.84; however, Inversa pled a lower amount of damages in its briefing).

The Defendant maintains that it terminated the Lease for those floors prior to its exercise of an option to extend the original Lease and owes no additional rent. Inversa alleges two separate grounds upon which we may hold the United States liable for additional rent: the United States failed to follow the notice requirements of the Lease and also failed to vacate the premises in the manner required by the Lease, creating a holdover tenancy. The parties have filed cross-motions for summary judgment on these issues.

The Defendant's motion for summary judgment is denied in part and granted in part. A material dispute of fact exists as to whether the United States delivered notice of termination on January 31, 1996. However, we hold that as of July 29, 1996 Inversa received notice of the United States' intent to terminate floors 14 and 15, in accordance with the terms of the Lease. We deny without prejudice Plaintiffs' cross-motion for summary judgment with respect to whether the United States had an extended obligation to restore floors 14 and 15, and whether it created a hold-over tenancy by failing to restore those floors to the Lease specifications.

Procedural History

On November 20, 2003, the Defendant filed its Motion for Summary Judgment Regarding Count Five. Its motion was not fully briefed until June 15, 2005, due to numerous delays on the part of the parties, including filings that failed to comply with this Court's rules and orders and a Rule 56(f) discovery request. Briefly we review the tortuous path of these motions.

On January 22, 2004, Plaintiffs filed their Corrected Opposition to Defendant's Motion and Plaintiffs' Corrected Cross-Motion for Summary Judgment on Count V. On April 14, 2004, the Defendant filed its Unopposed Motion for Leave to Serve Discovery Related to Count V, pursuant to Rule 56(f), and its Unopposed Motion for Leave to File Response to Plaintiffs' Cross Motion for Summary Judgment Regarding Count Five.

The Defendant's Rule 56(f) motion sought discovery with respect to the Plaintiffs' claim that the Defendant failed to restore floors 14 and 15 in accordance with the Lease. The motion sought copies of the Plaintiffs' files as they were maintained in the course of business, documents related to the lease of floors 14 and 15 during the period of 1995 through the present, copies of the documents relied upon by the Plaintiffs' legal expert, and depositions of the persons who provided affidavits in support of the Plaintiffs' Opposition and Cross-Motion. By order dated April 23, 2004, we granted the Defendant's motions.

On October 14, 2004, the Defendant filed its Response to Plaintiffs' Cross-Motion and Reply to Plaintiffs' Opposition to Defendant's Motion for Summary Judgment Regarding Count Five. On October 22, 2004, the Plaintiffs filed Plaintiffs' Reply to Defendant's Response to Plaintiffs' Cross Motion for Summary Judgment Regarding Count Five. The parties completed the briefing on this Count by filing the

Consolidated Statement of Uncontroverted Fact (CSUF), required by our Special Procedures Order, on November 5, 2004.

On January 26, 2005, we held oral argument on the parties' pending motions. Subsequent to the argument our review of the papers submitted on Count Five led us to conclude that a more extensive treatment of Panamanian law was required in order to resolve those outstanding motions. *See* Compl. Ex. E, Article 22.B (requiring the Lease to be interpreted and construed in accordance with the laws of the Republic of Panama). We held a status conference on March 21, 2005, addressing our concerns and subsequently adopted the supplemental briefing schedule suggested by the parties. *See* Order dated March 30, 2005. The parties completed supplemental briefing on June 15, 2005.

Standard of Review

We apply the well-known legal standards for resolving motions for summary judgment. *See generally* Rule 56 of the Rules of the United States Court of Federal Claims (RCFC); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-8 (1986). One precept precludes a decision on the merits of the motion if material facts are in dispute. *See* RCFC 56(c); *Anderson*, 477 U.S. at 247-8 ("the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact"). Material facts are those facts that may affect the outcome of the litigation. *Id.* at 248. The governing substantive law identifies the facts that are material. *Id.*

The Plaintiffs allege that disputes of material fact exist that would preclude this Court from granting the Defendant's motion for summary judgment. Rule 56(e) of both our rules and the Federal Rules of Civil Procedure "requires the nonmoving party to go beyond the pleadings and by [its] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). The non-moving party may not establish a factual dispute merely by disagreeing with the movant's assertion, or by a general denial: "[t]he party opposing the motion must point to an evidentiary conflict created on the record at least by a counter statement of fact or facts set forth in detail in an affidavit by a knowledgeable affiant." *Barmag Barmer Maschinenfabrik AG v. Murata Machincery, Ltd.*, 731 F.2d 831, 836 (Fed. Cir. 1984). The non-movant must offer contrary facts, putting the movant's assertion in doubt, and requiring a resolution by the trier of fact: "Mere denials or conclusory statements are insufficient." *Id.*

Discussion

On August 17, 1990, the Plaintiff, Inversa, S.A., and the Defendant entered into the Lease, the initial term of which ran from March 15, 1990 to March 14, 1998, with the exception of the fourteenth floor, which was to commence no later than December 31, 1990, and end on March 14, 1998. Article 14 of the Lease allowed the Lessee, the

United States, to terminate the Lease, in whole or part, by providing 180 days written advance notice:

> A. LESSEE's Right to Terminate: LESSEE may, for its convenience, terminate this Lease in whole or in part at any time, if it determines that such termination is in the best interest of the LESSEE by giving written notice of termination to LESSOR 180 days in advance.

Compl. Ex. E, Article 14. The Lease specified the manner in which notice was to be provided:

> Any notice required or permitted to be given under this Lease shall be in writing and may be served personally, by confirmed facsimile transmission, or by registered mail, postage prepaid, return receipt required, addressed to the party for whom it is intended at the address stated below or such other address as it may have designated by written notice as provided herein:
>
> ... FOR LESSOR:
>
> Inversa, S.A.
> P.O. Box 6164
> Panama 5, Republic of Panama
> Attn: Dr. Juan A. Arias Z.
> FAX: 25-94-00

Compl. Ex. E, Article 25.

Article 4 of the Lease required the United States to prepay the rent in advance at the beginning of each two-year option period:

> C. Option Period Rent: The rent for each two (2) year option period will be payable in advance at the beginning of each two (2) year option period (e.g., on March 15, 1998 for the 1998-2000 lease years), payable in a lump sum consisting of rent for the two year period...

Compl. Ex. E, Article 4.C. In the event of early termination the pre-paid rent would be adjusted in accordance with Article 4.D. of the Lease.

On March 13, 1997, Mr. Bernardo Segura-Giron, Counselor for Administrative Affairs, wrote to Dr. Juan A. Arias Z., the President of Inversa, for the purpose of exercising the United States' option to extend the lease:

> We are hereby notifying you, in accordance with Article 3.B. of the referenced lease agreement, that we wish to exercise our option to renew this lease for a two-year period commencing March 15, 1998. The rental rate for said renewal period shall be determined pursuant to Articles 4.B and 4C. of the lease.

Def.'s App. (Nov. 20, 2003) at 11. The parties dispute whether or not this blanket renewal included floors 14 and 15.

January 31, 1996 Notice of Termination

The Defendant alleges that it provided notice to Inversa of its partial termination of the Lease, for floors 14 and 15, on January 31, 1996. Once the 180 day advance notice period required by the Lease expired the Defendant claims that it tendered back the leased premises to Inversa on July 29, 1996. Inversa disputes this basic fact.

The parties disagree whether there is a material factual dispute with respect to the actual date when notice of termination was properly delivered to Inversa. The Defendant's Motion for Summary Judgment rested on the following proof that notice of termination was delivered on January 31, 1996: (1) a declaration by Mr. Danny Corsbie and (2) a copy of the notice of termination, signed and dated by Ms. Olinda del Carmen Ramos, an employee of Plaintiff Torre Miramar, S.A.

The Defendant alleges that Mr. Corsbie, an employee of the State Department, delivered the notice to Inversa. Mr. Corsbie stated, with some uncertainty, that he "believes" that he personally delivered the notice of termination to Dr. Arias. In a declaration executed in November of 2003 he stated:

> 6. I have reviewed a copy of a letter from Mr. Segura-Giron, an employee of the State Department, to Juan Arias Z, INVERSA, S.A., Panama City, dated January 31, 1996 ("Floors 14 and 15 Termination Notice)....The initials "C.F." contained on the facsimile message refer to Carmen Fergerson, my secretary at the time.
>
> 7. Based upon my recollection of my practice of delivering documents to Inversa, based upon my recollection of personal involvement in discussion about the termination of the lease for floors 14 and 15, and based upon my review of the copy of the Floors 14 and 15 Termination Notice...*I believe that I personally delivered the Floors 14 and 15 Termination Notice to the office of Inversa, and I believe that the date of the delivery was January 31, 1996. Based upon my practice, I believe that I hand-delivered the Floors 14 and 15 Termination Notice to Dr. Arias personally.*

Def.'s App. (Nov. 20, 2003) at 18-9 (emphasis added). Personal delivery meets the notice requirements of Article 25 of the Lease.

The Defendant's second piece of evidence is a copy of the notice of termination, allegedly signed and dated January 31, 1996, by Ms. del Ramos, an employee of Plaintiff Torre Miramar, S.A.

The Defendant's evidence appears to be in conflict. Mr. Crosbie stated that he "believes" that he hand-delivered the notice of termination personally to Dr. Arias.

Ms. del Ramos' signature on the copy of the notice of termination suggests that Mr. Crosbie delivered it to her, rather than Dr. Arias. In any event, Inversa disputes either form of receipt of the January 31, 1996, termination notice.

Inversa's response to the Defendant's motion for summary judgment includes a declaration by Ms. del Ramos, in which she unequivocally denied receipt of the notice of termination. She also stated that she lacked the authority to receive a notice of termination:

> 1. I am the Accounting Clerk of Torre Miramar, S.A. in Panama City, Panama. As the Accounting Clerk of Torre Miramar, S.A., I am responsible for providing daily accounting and bookkeeping services, including those related to the administration of the Torre Miramar Building.
>
> 2. I am not authorized under my responsibilities, or under the lease between Inversa, S.A. and the U.S. Government, to either receive notice of termination, or to decide over any administrative matters related to it. I have only been authorized, from time to time, to receive small administrative matters under very special and specific circumstances, but always trivial in nature.
>
> 3. *I did not receive a notice of termination dated January 31, 1996.*

Pl.'s App. (Jan. 22, 2004) at 31 (emphasis added). In a subsequent telephonic deposition held on September 22, 2004, Defendant's counsel and Ms. del Ramos held the following inconclusive exchange with respect to the signed copy of the notice of termination:

> Q. [Defendant's counsel]: Is that your handwriting?
>
> A. [Ms. del Ramos] It looks like it.
>
> Q. Do you have any reason to believe that it's not your handwriting?
>
> A. You see, the fact is I don't recall having received this.

Sept. 22, 2004, Telephonic Deposition of Olinda del Ramos, Def.'s App. (Oct. 14, 2004) at 44.

Inversa also provided a declaration by Dr. Arias countering the Defendant's factual claim that he received the notice of termination on January 31, 1996:

> 4. I did not receive notice of termination dated January 31, 1996, at any time in 1996 or 1997.
>
> 5. The first time I learned of the purported January 31, 1996 termination notice was on January 27, 1998 when a copy of the letter was hand-

delivered to me. It was this copy that was subsequently produced during discovery by my attorneys to the Defendant in this litigation.

6. I had no reason to believe that notice of termination occurred on January 31, 1996....

7. The January 31, 1996 termination notice was maintained in our business files only after January 27, 1998 when I was hand-delivered the letter. It is our common practice to put all correspondences in our business files.

Pl.'s App. (Jan. 22, 2004) at 28.

Inversa also provided a declaration by Ms. Priscilla Orillac, the Administrator of the Torre Miramar Building. In her declaration Ms. Orillac stated that she is responsible for providing personal secretarial and administrative services to Dr. Arias. As to the January 31, 1996 termination notice, she stated:

2. I did not receive notice of termination dated January 31, 1996.

3. I have no knowledge of the notice of termination being delivered on January 31, 1996.

4. The January 31, 1996 termination notice was maintained in our business files after January 27, 1998 when Dr. Arias received the letter. It is our common practice to put all correspondences (sic) in our business files.

Pl.'s App. (Jan. 22, 2004) at 30.

Because of the numerous factual disputes surrounding the January 31, 1996 delivery of the termination notice - including contradictions in the Defendant's factual assertions - we leave the determination of whether Inversa received notice on January 31, 1996, as an issue for trial. We do not reach the Defendant's legal arguments with respect to the custom of commerce in Panama because a factual dispute exists as to whether any delivery of the termination notice occurred on January 31, 1996. For this reason, among others, Plaintiffs' belated motion to remove Paragraph 19 from the CSUF, relating to this supposed custom, is moot.

July 29, 1996 Memorandum of Agreement

On July 29, 1996 the United States delivered Dr. Arias a copy of a proposed Memorandum of Agreement, dated July 29, 1996, signed by Mr. Segura-Giron. The memo stated in relevant part, "The Lease on the above mentioned premises [14th (penthouse) and 15th (roof top) floors] is considered cancelled and terminated effective July 29, 1996." Def.'s App. (Oct. 14, 2004) at 112. The date of the memo corresponds to 180 days from January 31, 1996 - the date the Defendant alleges it

delivered the notice of partial termination. The memo also contained a release of claims against the United States resulting from the termination.

In a deposition held on September 23, 2004, Dr. Arias admitted that he received the memo on July 29, 1996, but states that he refused to sign it:

> ...I had been given a letter in July [of 1996], a memo which was brought in, in July, which I refused to sign, so I was aware that the embassy in some way wanted to release those floors. We were just in disagreement with the way it was being done, because we had never – and I'll say it as many times as you want to – I, Juan Arias, have never, ever received in my hand a copy of the letter of January 31, 1996. Ever.

September 23, 2004, Deposition of Dr. Arias, Def.'s App. (Oct. 14, 2004) at 55-6. We find that the July 29, 1996 letter met the Lease's notice requirements. Inversa's claim that proper notice was not delivered until January 1998 fails in light of this document and the subsequent correspondence between the parties, acknowledging the termination with respect to floors 14 and 15.

August 15, 1996 Meeting

On August 13, 1996, Dr. Arias wrote a letter to Mr. Segura-Giron containing a list of suggested topics for the upcoming meeting, to be held on August 15, between Inversa and the United States. The suggested topic list acknowledges both the partial termination of the Lease and the return of the floors at issue:

> 4. Interpretation of certain clauses of the contract due to recent release of the penthouse and rooftop floors....
> 5. Allocation of parking spaces in view of the recent return of penthouse and rooftop floors.

Def.'s App. (Nov. 20, 2003) at 6. Inversa does not dispute the authenticity of this letter, nor does it offer any contrary interpretation of its contents. Inversa and the United States met on August 15, 1996.

On August 26, 1996, Mr. Segura-Giron sent a letter to Dr. Arias summarizing the requests Dr. Arias made during the August 15 meeting. Inversa requested, in part, that the United States "pay for any damage to top two floors, which have been returned to you. You indicated that you had not yet confirmed such damage, but that you would notify us of the results of your walk-through." Def.'s App. (Nov. 20, 2003) at 7.

Inversa does not directly address the Defendant's argument that Dr. Arias acknowledged the partial termination. Rather, it argues that it did not receive notice of partial termination in accordance with the requirements of the Lease until January 1998. Specifically, Dr. Arias' declaration fails to address either his August 13, 1996 pre-meeting letter to Mr. Segura-Giron, or the latter's August 26, 1996 post-meeting letter. Both the pre-meeting and the post-meeting letters clearly acknowledge that

Inversa received notice that the United States intended to release floors 14 and 15, rendering any contrary interpretation of the July 29, 1996 memo without substance.

Inversa fails to directly contradict this piece of evidence, and therefore, fails to create a material factual dispute. We hold that as of July 29, 1996, the United States provided notice to Inversa, in accordance with the terms of its Lease, that it intended to terminate with respect to floors 14 and 15. The Lease's requirement of written notice is clearly met by the United States' July 29, 1996 Memorandum.

Failure to Restore

In its cross-motion for summary judgment, Inversa contends that the Defendant failed to restore floors 14 and 15 to the condition required by the Lease, and therefore created a holdover tenancy. Articles 7 and 9 of the Lease allegedly required the Defendant to return the property to its original condition upon termination. Article 7.A., entitled "Lessee Fixtures and Equipment," states in part:

> Unless otherwise specifically agreed in writing 90 days prior to the date of termination of this Lease, the LESSEE is responsible at its sole cost and expense to remove all such items installed by LESSEE and restore the Leased Space to its original condition as shown on Exhibits A, B and F.

Compl. Ex. E, Article 7.A.

Article 9, entitled "Maintenance, Improvements, and Repairs," sets out the responsibilities of both parties with respect to maintaining the integrity of the premises. Sub-paragraph F.i. permits the tenant to "alter, remodel and reconstruct," with landlord approval. It concludes:

> Unless waived pursuant to Article 7, Paragraph B, LESSEE shall restore those areas which have been altered, remodeled or reconstructed hereunder to their original condition as shown in Exhibits A, B and F.

Compl. Ex. E, Article 9.F.i.

Inversa argues that these provisions, and especially Article 7, require the Defendant to restore the property to the conditions shown in Exhibits A, B and F, including changes made by prior tenants.

Inversa further argues that the Defendant's failure to restore the property to the condition shown in the exhibits was a failure to properly surrender possession, and thus created a holdover tenancy. Inversa interprets Article 27.A. to require the Lessee to comply with the restoration requirements as a condition precedent to the Lessee's surrender of possession. Article 27.B. states that in the event the tenant does not surrender possession at the termination of the Lease a holdover tenancy is created:

> If LESSEE shall not immediately surrender possession of the Leased Space at the termination or expiration of this Lease, LESSEE shall be deemed to have exercised an option to extend the term of the Lease for an additional two year period, provided rent shall be immediately due and payable and shall be calculated....

Compl. Ex. E, Article 27.B. Inversa alleges that to date the Defendant has not restored and has not purported to have restored floors 14 and 15.

At oral argument Inversa argued for the first time that this obligation would continue in perpetuity, the Lease extending two years at a time, until the United States restored the premises. *See* Oral Argument Transcript (Jan. 26, 2005) at 101-2. In its briefing Inversa argued that the Defendant's actions triggered a *single* two-year extension:

> Plaintiffs are entitled to recover damages from the loss of rent for the rental period from March 1998 through March 2000 incurred due to the United States' improper termination of the lease and failure to surrender the premises with respect to floors 14 and 15.

Pl.'s Opp. (Jan. 22, 2004) at 14. Our Special Procedures Order, filed on July 30, 2002, limits oral presentations to arguments raised in the parties' briefs. Therefore, Inversa's new argument that the Lease continued to extend beyond a two-year period is out of order and disregarded.

As to the restoration requirement, the Defendant argues that Inversa attempts to read into Article 27 Article 9's requirements as a condition precedent to the termination of the Lease or part of the Lease. Article 27.A. reads:

> Surrender of Possession: LESSEE covenants, at the expiration or other termination of this Lease, to remove all goods and effects from the Lease Space not the property of LESSOR, to comply with LESSEE's obligations under Article 9 hereof, and to yield up to LESSOR the Leased Space and all keys, locks, and other fixtures connected therewith in good repair, order, and condition in all respects, excluding however, reasonable wear and use thereof, LESSOR's waiver of restoration under Article 9 hereof and damage by fire, or other casualty, not caused by LESSEE's act or neglect and not otherwise LESSEE's responsibility under this Lease.

Compl. Ex. E, Article 27. The Defendant interprets the restoration provision to require damages upon a failure to restore, rather than as a provision which prevents termination of the Lease or as a requirement that the Defendant continue leasing the premises until it restores them.

In the Defendant's view no restoration obligation was triggered. It is undisputed that the Defendant did not perform any alteration, remodeling, or reconstruction with respect to floors 14 and 15. The Plaintiffs concede this, but

argue that the Defendant was required to restore the premises in accordance with the exhibits to the Lease. (We note the parties have not supplied those exhibits). An earlier tenant had apparently remodeled those floors and, in the Plaintiffs' view, the Defendant assumed that tenant's restoration obligation by occupying the floors as is and accepting the Lease's requirement that the floors be restored in accordance with attached exhibits. In addition to its other arguments, the Defendant claims that Inversa is not entitled to the restoration costs it alleges because those costs are only estimates.

We regard the Plaintiffs' reading of Article 7 to be unpersuasive. Article 7 deals with fixtures and equipment. By its terms, it permits the tenant to replace fixtures as set out in Exhibits A, B and F, which must remain with the premises. We believe the natural reading of the "restore" phrase in the last "unless" sentence relates to the prior "removal" phrase, and has only to do with the subject of Article 7 - fixtures and equipment. We do not read this last "restore" phrase as imposing a new and entirely unrelated obligation - to restore the premises to correct all changes made not by the United States, but by a prior tenant.

Moreover, Inversa has not asserted with any particularity what restoration it contends the United States is obligated to perform. Even assuming the Government is obligated under Article 7 to remove and restore the premises with regard to fixtures installed by the prior tenant, we have no idea what this might entail. And, of course, that obligation would have to relate to "fixtures and equipment" as those terms are understood in Panamanian law.

With respect to Article 9, subpart F outlines the procedure by which the Lessee may "alter, remodel and reconstruct" the property - activities which trigger a duty to restore pursuant to the attached exhibits. Read in this context, the Article relates to the restoration of alterations made by the United States, and contains no language suggestive of the assumption of a prior tenant's restoration obligation.

We also believe the question of the date of termination significantly affects the question of any holdover tenancy. To the extent that a penalty may extend the Lease by two years, our finding that at least by July 29, 1996 the United States gave proper notice of its intent to terminate would result in a two-year Lease extension to January 1999 - a date the Plaintiff disputes. An earlier notice date would result in potentially no rent being due since the United States had already paid rent through March 14, 1998. At most then, it appears the Plaintiffs' holdover theory would include rent from March, 1998 to January, 1999, a period of about ten months. The Plaintiffs however, read the penalty clause to extend the Lease from March 1998 to March 2000, since the United States had already paid rent through March 14, 1998.

The parties, however, have not briefed this issue in accordance with Panamanian law, despite our order that they do so. The Defendant's brief cites exclusively to American law for the legal principles it relies upon - an incorrect standard given the contract's mandate that Panamanian law apply. The Plaintiffs offer expert opinions on the issue of the automatic extension of the Lease; however, the opinions mainly address the *enforceability* of the clause, rather than the legal

framework under which we would interpret it. Neither party has provided a satisfactory statement of the Panamanian legal framework governing this dispute. We therefore deny the Plaintiffs' cross-motion for summary judgment, without prejudice.

Conclusion

The Defendant's motion for summary judgment is denied in part, and granted in part. We hold that as of July 29, 1996, Inversa received notice of the United States' intent to terminate floors 14 and 15, in accordance with the terms of the Lease. We reserve for trial the matter of the purported earlier termination notice. We deny without prejudice Plaintiffs' cross-motion for summary judgment with respect to whether the United States had an extended obligation to restore floors 14 and 15, and whether it created a hold-over tenancy by failing to restore those floors to the Lease specifications.

IT IS SO ORDERED.

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LAWRENCE M. BASKIR
Judge