



Southern Nevada CCIM Chapter

# Perspective

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## President's Message

Bobbi Miracle, CCIM, SIOR  
2022 Southern Nevada CCIM Chapter President



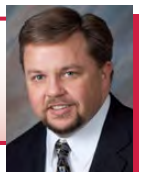
Just when we all thought life was getting busy. OUR INDUSTRY GOT BUSIER! It has been truly a pleasure to see everyone's smiling faces and thank you for coming back to network and enjoy our events. I am so proud of this chapter and our members, as well as the positivity that continues to increase as our months fly by. In January, we had the opportunity to hear from KC Conway with Red Shoe Economics and without a doubt he was entertaining even renaming our city the Nashville West, however he also made it clear that we are going to continue to see inflation, but real estate is still moving forward. I think back to 2007 when our industry was going crazy and at times this market feels similar. The news discusses our housing market with prices still increasing and inventory being low. As we know, Commercial is also experiencing the same issues with inventory of good product decreasing, construction costs are continuing to increase, and cap rates at times do not seem to matter to investors that just need to place money quickly. We are about to again see unprecedented times for many of us that have been in the industry less than 20 years. I am proud to say that our CCIM Designees and Candidates will have an advantage having realized the value of our education, because it is going to be a true asset as we move into this next stage to help guide our Landlords/Tenants and Sellers/Buyers. I must mention we have our CCIM CI 101 Class here March 14-17 if you want to start your adventure into the Designation!

In closing, I want to say thank you to our Sponsors! Your dedication to our Chapter does not go unnoticed and is a huge reason we are still one of the best in the country. Our amazing committee chairs and their volunteers are excited to make this year the best yet! From new and exciting programming at our lunches, to another family event, our Putt Putt is back, the Sponsor/Designee event is going to

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### PRO Tip

*If you're not trying to be the best, who are you trying to be? Nobody cheers for average. You don't get "good" by never making a mistake. Admit it, fix it, move on.*



Terence J. Farr, MAI, SRA, AI-GRS, CCIM

# Legal Brief

## Upcoming Supreme Court Decision: Habitability in the Commercial Leasing Context

Nicholas J. Klein, Esq.

Although it's often mispronounced or misused, the implied warranty of habitability has long been a claim of residential tenants against landlords for failing to maintain a livable rental property. Over the years, there have been a number of cases brought in several states across the country by commercial tenants. Until now, the Supreme Court of Nevada has never clearly addressed whether a commercial landlord has an obligation to maintain a commercial property in a "habitable" condition. Lawsuits brought by commercial tenants often rely on claims that their landlord has breached the lease by failing to perform their maintenance and repair requirements under the lease. However, the Nevada Supreme Court is considering this very question.

In a current case before the Nevada Supreme Court, *Bour Enterprises, LLC v. 4520 Arville*, a commercial tenant sent a letter to the landlord indicating the leased property was uninhabitable claiming the landlord's failure to maintain the property resulted in sick employees and health hazards in the workplace. The tenant's arguments rest in part on what they claim is an unclear and inconspicuous term in the lease: the "AS-IS" clause. The lower court took an unusual approach and evaluated other leases for spaces which included different language in the "AS-IS" clauses. The lower court initially denied landlord's early motion to dismiss the case, but after discovery was exchanged between the parties the court was persuaded by the landlord's arguments that:

- (1) The lease contained a term stating that the tenant accepts the property "as-is" upon signing; and
- (2) The implied warranty of habitability should not apply to commercial leases in Nevada.

The tenant filed an appeal of the lower court's decision to the Nevada Supreme Court. Even though the case is still pending, this case provides landlords of commercial property some drafting and enforcement reminders:

- Make sure both parties want the "AS IS" condition. "AS IS" generally means that the tenant is accepting the premises in their existing condition which would mean any physical defects, code violations or other

problems with the condition. To the landlord, "AS IS" generally means that the landlord does not have to spend money on improvement costs. Thus, the tenant should have had the opportunity to conduct proper due diligence concerning the condition of the premises.

- Make sure the timing of the "AS IS" condition is clear. Generally, "AS IS" means the condition of the premises at the time the lease is executed. If there is any work to be done by either the landlord or the tenant, the timing of the acceptance of the premises must be clear in the language of the lease.
- Make sure that the condition of the premises upon that the premises must be returned to the landlord in the condition at the signing of the lease. If the

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parties agreed to "AS IS" and then improvements were made during the lease, the tenant could be obligated to remove valuable improvements which the landlord would normally want to keep (depending on use, new tenant, etc.). Thus, the language should give some options to the landlord as to condition on termination or expiration of the lease.

- Make sure that maintenance is not tied to an "AS IS" condition. Under some leases, landlords are responsible for structural repairs simply because landlords want control over their property. If the premises is given to the tenant in an "AS IS" condition but there are structural problems at the onset of the lease, a conflict exists already. The landlord could argue that the tenant took the premises "AS IS" and therefore is responsible for the repairs; the tenant could argue that the provision governing structural repairs controls. The lease language should be consistent and address such conflicts.

The value of clear lease drafting is exhibited by the pending case. The tenant's attorneys disclosed their attorneys' fees prior to the Supreme Court appeal were nearly \$30,000, and the landlord's attorneys' fees were nearly \$90,000. Provisions regarding maintenance of the leased premises should be carefully considered to avoid such disputes and to properly outline the duties of the parties.

fees were nearly \$90,000. Provisions regarding maintenance of the leased premises should be carefully considered to avoid such disputes and to properly outline the duties of the parties.



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**PRO**  
*Tip*

*Managing the property is the easy part, it's the people that make it complicated. Treat your team better than your best customer. Understand your customer so well that you know what they want before they do. The Golden Rule is garbage. Don't treat others the way You want to be treated. Treat others the way they want to be treated.*



Matthew Kammeyer, CCIM

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— HENRY FORD

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