

Virginia Practice Tip Enforceability of Leases under Statute of Conveyances

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On May 10, 2018, the Virginia Supreme Court issued a unanimous opinion in an appeal regarding the enforceability of a commercial lease. In *The Game Place, L.L.C., et al. v. Fredericksburg 35, LLC* the justices reviewed and applied the Statute of Conveyances, which is set forth in the Code of Virginia §55-2. The Statute of Conveyances requires that any freehold in land for a term of more than five years, including leases, must be accomplished by deed or will.

In this case, a commercial lessor, Fredericksburg 35, LLC, sued a lessee, The Game Place, L.L.C., for unpaid rent under a 15-year lease after The Game Place vacated the premises before the expiration of the 15-year term. The Game Place was current on its rent at the time it vacated the premises and terminated what it referred to as its month-to-month periodic tenancy. The Game Place claimed that the lease was unenforceable under the Statute of Conveyances, Code §55-2, because it was not in the form of a deed, featuring the common-law formalities of a seal or the relaxed seal substitutes available under Code §11-3. The court rejected the trial court's reasoning that the law looks at substance not form, countering that [u]nder the common law, a sealed contract means just that, a contract with a seal.

The court found the 15-year lease unenforceable as a matter of law with respect to its 15-year lease term, because the lease violated the Statute of Conveyances and the common-law seal requirements of a deed. In recognizing that the lessor-lessee relationship could only be enforced as a month-to-month tenancy, the court reversed the trial court, and entered final judgment in favor of both The Game Place and its personal guarantor.

In light of this decision, it is clear that the Virginia Statute of Conveyances is alive and well and will be applied and enforced by Virginia courts. Virginia leases with a term of more than five years that do not meet the requirements of a deed executed under seal run the risk of not being enforceable as to their term. As such, all lease agreements in Virginia should be prepared with the Statute of Conveyances in mind.