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## Tenants in Pa. Have Right to Select Cable Provider of Their Choice

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Under Pennsylvania's Tenants' Right to Cable Television Act, a tenant may select a cable television service provider of their own choosing so long as the provider actually agrees to provide such service to the tenant. As a corollary, a provider cannot enter into an exclusive arrangement with a landlord to provide cable television service in a residential building, thus preventing a competitor provider from servicing otherwise willing tenants.

In that vein, the Philadelphia County Court of Common Pleas in *Viking Communications Inc. v. SAS-1600 Arch Street L.P.* recently refused to enforce an exclusivity clause contained within a cable television service agreement with a landlord and a cable television service provider.

SAS-1600 Arch Street L.P., the owner of The Phoenix, an apartment building located in Philadelphia, entered into an agreement with Viking Communications Inc., under which Viking was to provide satellite master antenna television and cable television services to tenants in the building. Under the agreement, SAS specifically granted Viking the exclusive right to provide "satellite, cable, or any other type of subscription or pay television programming, insofar as such right and services are permissible by law" and to market its services to SAS' tenants.

After the agreement was executed, a tenant, who was an executive with Comcast, demanded that he be permitted to receive cable television service from Comcast, as per the act. Subsequently thereafter, SAS and Comcast entered into an agreement permitting Comcast to provide cable television service to willing tenants in the building, "only insofar as defined and allowed under the Tenants' Right to Cable Television Act." Moreover, under its agreement with SAS, Comcast was prohibited from directly marketing or promoting its services to the tenants in the building, "except through the Comcast [s]ystem, telemarketing and direct mail pieces."

Afterward, an onslaught of tenants in the building agreed to receive cable television from Comcast instead of Viking.

Viking then brought suit against SAS for breach of contract and for the intentional interference with Viking's exclusive relationship with the tenants in the building, as well as against Comcast for inducing SAS to breach its agreement with Viking and for intentionally interfering with SAS' performance of that agreement and Viking's contracts with the tenants. In the complaint, Viking also asserted a claim for civil conspiracy against both of them. Both SAS and Comcast filed a counterclaim seeking declaratory judgment that the exclusivity provisions of the agreement between Viking and SAS were void under the act.

SAS then filed a motion for summary judgment on Viking's claims as well as the declaratory judgment action contained within its counterclaim. Comcast later joined in on the motion.

The trial court granted SAS' and Comcast's summary judgment motion, dismissed the complaint, and granted the counterclaim declaring that the exclusivity provision contained within the agreement between SAS and Viking was void under the act. After Viking appealed the trial court's decision, the trial court issued a memorandum opinion setting forth its rationale.

The trial court first rejected Viking's contention that SAS violated the exclusivity provisions of its agreement with SAS when it had entered into a separate agreement for cable television service with Comcast. In doing so, the trial court relied entirely upon the plain language of the act.

Under the statute, a landlord is required to enter into an agreement with a cable television service operator, such as Comcast, if a tenant requests the operator's services and the operator decides that it will provide such services. If the landlord refuses to do so, the landlord can be compelled by an arbitrator or a court to enter into such a contractual relationship with the operator.

Since one of the tenants, albeit a Comcast executive, requested cable television service from Comcast, the trial court found that SAS had no choice but to enter into an agreement with Comcast to provide such service to the tenant.

The trial court also pointed out that Viking recognized in the agreement itself that the exclusivity provisions were limited by what was "permissible by law," or, in other words, the Tenants' Right to Cable Television Act.

The trial court further believed that the exclusivity provisions were otherwise "contrary to the public policy expressed in the act that prevents a landlord from denying any [cable television] system access to the premises so long as the tenant requests it and so long as it complies with negotiating requirements."

Viking next unsuccessfully argued that SAS' agreement with Comcast was overbroad because it permitted Comcast to install an entire competing cable television system in the building and not just wiring sufficient to provide service for tenants who requested such service from Comcast.

The trial court found that the statute "demonstrates a legislative preference for a single [cable television] installation", under which "[a] second or subsequent installation of cable television facilities, if any, shall conform to such reasonable requirements in such a way as to minimize further physical intrusion to or through the premises." Relying on this section of the statute, the trial court concluded that allowing Comcast to install a single cable television system that could reach all the tenants in the building was thus permissible.

The trial court finally noted that Comcast's limited marketing in the building did not violate SAS' agreement with Viking. At every turn, the trial court noted that normal competitive activities do not constitute tortious interference.

In its agreement with SAS, Comcast was allowed to market its services on its own cable television system, by mail and by telephone. The trial court found SAS' permission as "simply recognition of modern marketing realities."

The trial court was also not persuaded by allegations that Comcast directly solicited tenants while in the building. The trial court emphasized that either no evidence existed substantiating these allegations or, even if Comcast actually behaved in such a manner, such solicitations were normal competitive activities and did not constitute tortious interference by Comcast.

This part of the trial court's ruling is the most problematic for SAS and Comcast on appeal. Comcast certainly knew of Viking's exclusive arrangement with SAS. Although Viking could not statutorily prevent any tenant in the building from selecting another cable television service provider, the statute does not immunize Comcast from civil liability if it specifically targeted and encouraged these tenants to change their cable television service provider, in spite of the existence of Viking's status as the building's exclusive cable telephone service provider. Such conduct would certainly not fall into "normal" competitive activities, as insinuated by the trial court. Rather, Comcast would be engaging in tortious interference in the most classic sense.

As illustrated by *Viking Communications Inc.*, a landlord may not contractually obligate a tenant to a cable television service provider. The question, however, remains if a cable television service provider may actively market to that tenant in a building where another provider has an exclusive relationship with the landlord.

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