

Legalquotes *News*

PROVIDED BY RANKIN NATHAN LAWYERS

LESSEES BEWARE EXERCISING YOUR OPTION!

In a Supreme Court of NSW case, a lessor, Henry, granted a lease to Lewis for three years with an option for renewal for three years in respect of restaurant premises in Sydney. The following year, McGregor and another person purchased the restaurant business and took an assignment of the lease. The option for renewal contained in the Lease provided that the tenant must serve on the landlord a notice of exercise of option no earlier than 1 August 2004 and no later than 1 November 2004. These dates were incorrect in the Lease as the year should have been noted as 2003. The lessees purported to exercise the option by letter dated 3 November 2003 which was delivered to the lessors on 3 or 4 November 2003.

At the time of service of the notice of exercise, the lessees were then

in arrears in rent. On 1 September 2003 before the service of the notice of purported exercise of the option, the lessor's solicitors advised the lessees that the lessors would enter into a fresh lease on certain conditions. The conditions included the payment of arrears of rent, a security deposit and one months rent in advance.

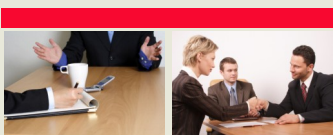
On 15 October 2003, the lessor's solicitors wrote to the lessees informing them that they were no longer prepared to enter into a new lease and, provided that the rent was paid, the tenancy could continue on a month to month tenancy. In February 2005, the lessees instituted proceedings in the Supreme Court of NSW against the lessors seeking a declaration that they validly exercised the option for renewal of the lease and an order for specific performance and an order that the lessors be



restrained from taking possession of the property.

The Court held that the option had not been exercised effectively.

The case demonstrates that an option for renewal needs to be exercised by lessees strictly within the time specified in the lease, and in the manner specified for exercise in the lease. In other words, late exercise of an option for renewal cannot be relied on to be cured by the Courts.



Rankin Nathan Lawyers

1300 727 813

NEWCASTLE • SYDNEY • PERTH • CANBERRA

