

SUPREME COURT OF LOUISIANA

No. 98-C-0715

TIMOTHY W. KITE d/b/a TIMOTHY KITE ENTERPRISES

Versus

GUS KAPLAN INC. AND GUSTAVE KAPLAN

Consolidated With

No. 98-C-0751

GUS KAPLAN, INC.

Versus

TIMOTHY KITE ENTERPRISES

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
THIRD CIRCUIT, PARISH OF RAPIDES

KNOLL, J., dissenting.

The lease in question contained a relocation clause indicating the jewelry department “may be changed from time to time by lessor at its option and expense.” Kaplan asked Kite at least three different times to consider the possibility of relocating. Rather than addressing the issue, Kite avoided Kaplan. In response, Kaplan exercised his option in the lease to relocate Kite’s jewelry department to a different location. The relocation clause that became a part of the executed lease between the parties did not indicate the lessor was required to give notice to the lessee.

In addition, record evidence indicates Kite was conducting business outside of GKI to avoid paying additional rent. This conduct directly violated the terms of the lease, and Kite concedes that he breached the contract. Although the majority recognizes that Kaplan was entitled to “judicial cancellation of Kite’s lease,” and that “Kite operated deceitfully under the lease by diverting sales proceeds,” it awards Kite \$1,500 in general damages for GKI’s relocation of the jewelry department. Because Kite was violating the lease, I disagree with the majority’s finding that he is entitled to general damages.

Accordingly, I respectfully dissent.