



# Michael J. Forino Successfully Defeats Landlord's Lawsuit against Restaurant Owners for 1.5 Million Dollars

Press Releases

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**Michael J. Forino**, a member of Archer's Business Litigation Practice Group, successfully defended restaurateurs Suketu Shah and Kedar Shah in a trial before the Superior Court of New Jersey, Law Division, Bergen County in the case *Abramson-Obal, LLC v. Suketu Shah, et al.*, Docket No. BER-L-7636-17. The case concerned the plaintiff-landlord's claim against Archer's clients under a personal guarantee of a 20-year lease held by a Bennigan's franchisee, which filed for bankruptcy and vacated before the lease expired. The claim on the guaranty was for \$1.5 million. As a result of Forino's effective trial strategy and advocacy, the Court rendered a no-cause verdict and held that the plaintiff was entitled to no damages following a four-day trial. Forino's strong cross-examination and impeachment skills played an important role at trial, as the Court concluded that the plaintiff's principal and real estate expert were not credible and rejected their testimony on the plaintiff's alleged mitigation efforts.

This ruling serves as an important caution to commercial landlords who seek to recover damages under an unexpired lease in New Jersey. While Abramson-Obal, LLC promptly listed the property and negotiated with numerous prospective tenants and purchasers after Bennigan's vacated, the Court found it still had not met its duty to mitigate damages, as it unreasonably rejected offers to lease the premises which were consistent with the market, and diminished the value of the premises by stripping it of equipment and assets. As the Court noted, the offers tendered by prospective tenants would have put the landlord in a better position than it was in the first place, as it would have recovered more rent over time than it would have under the Bennigan's lease. Given the landlord's "indecisive actions," the Court found that the landlord was not entitled to any recovery, even though the commercial space remained vacant, with no rental income, including up to the date of trial.

In addition, the Court held that a landlord cannot "contract away" its duty to mitigate damages, rejecting the landlord's reliance on a lease provision stipulating that the landlord had no such duty.

The Superior Court's full decision can be found [here](#).

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## Related People



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