

Why It's Important to Know the Difference Between a "Floor" and "Foundation"

by Isaac Benmergui, Esq on February 25, 2014

No, this isn't going to be some discussion on construction, home improvement or DIY techniques. This isn't wood shop from school. This is about real estate law. Unfortunately, though, that may include some deliberations about issues regarding structures, buildings, floors, foundations and everything else. But at least it's interesting!

Take a look, first of all, at this case between Aeroground, Inc. and CenterPoint Trust. This is an incredible issue where something as simple as a "floor" and a "foundation" can be argued until everyone's faces are blue. To start off, we have Menzies, an air cargo handling business, working with Aeroground, Inc. on leasing a 185,280-square-foot warehouse owned by CenterPoint Trust. The start of the problem, though, began with the actual leasing contract – apparently, according to the rhetoric, Menzies was responsible for ensuring repair of the "floor," whereas CenterPoint's own contract responsibility for its own warehouse is to maintain the "foundation."

This became an issue when Menzies noticed deterioration of the concrete "slab" used to support Menzies' equipment. Business went on, and CenterPoint agreed to set up improvements, costing upwards of \$1.4MM. However, they ceased all actions in renovation. Why? Because they felt it wasn't in their contract to replace the "floor." This wasn't good for Menzies as the slab became so irreparable to the point that he couldn't place the equipment on there, limiting his productivity, and to make it worse, the slab was going to cost an alarming \$1.23MM to completely replace. *That*, of course, would come out of Aeroground's pocket.

Menzies then filed for an action of breach of contract while CenterPoint counterclaimed that Aeroground was responsible for the damage due to the written contract itself. You can now see where the confusion's going to be. In surprising fashion, though, *neither* party could gain any compensation at all, much to Menzies' dismay, as it was determined that the slab in question was *neither a floor, nor a foundation*; so therefore, *both* contracts didn't apply to it except for the fact that the slab was directly related to the floor on which Menzies operated. You know what that means? He'd have to pay for the replacement or repair. I guess the moral of the story is to keep an eye on the language of your contract to make sure there is no ambiguity.

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