REL: November 1, 2019

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1170708

LNM1, LLC, and Mohamed Alsahqani

v.

TP Properties, LLC

Appeal from Hale Circuit Court
(CV-17-5)

MITCHELL, Justice.

This is a commercial-lease dispute. Since November 2012, LNM1, LLC, has operated a gasoline station and convenience store in Greensboro under a lease agreement with the owner of the property, TP Properties, LLC. In August 2017, TP

Properties sued LNM1 and its owner Mohamed Alsahqani in the Hale Circuit Court, seeking to terminate the lease because LNM1 had not maintained all the required insurance coverages. The trial court entered a summary judgment in favor of TP Properties, holding that LNM1's failure to maintain the insurance required by the lease agreement constituted a material breach of that agreement, thus entitling TP Properties to terminate the lease. LNM1 and Alsahqani appeal. We affirm.

Facts and Procedural History

On October 12, 2012, LNM1 and TP Properties executed a lease agreement with a term of 10 years. That agreement authorized LNM1 to operate a gasoline station and convenience store that TP Properties owned in Greensboro. LNM1 agreed to pay TP Properties "base rent" of $7,000 per month. Under a section of the lease agreement captioned "Additional Rent," LNM1 also agreed to purchase and maintain the following insurance coverages: (1) a general-liability policy written by an insurer rated "A" or better by A.M. Best Company, Inc., providing $1,000,000 of coverage per occurrence and listing TP Properties as an additional insured; (2) a liquor-liability

policy providing $500,000 of coverage and listing TP Properties as an additional insured; and (3) a policy insuring the building and canopy on the property. A separate provision in the lease agreement obligated LNM1 to obtain $1,000,000 of environmental-impairment-liability insurance and to list TP Properties as an additional insured on that policy.

The lease agreement also granted LNM1 an option to purchase the property at any time during the term of the lease for a base price of $850,000, with a credit to be given for all sums previously paid as rent. TP Properties agreed that if a third party offered to purchase the property during the term of the lease, LNM1 would have 45 days to exercise its purchase option after being given notice of the other offer.

Finally, the lease agreement provided that TP Properties could terminate the lease at any time if LNM1 failed (1) "to substantially comply with any material provision of [the] Lease" or (2) "to exert good faith efforts to carry out provisions of [the] Lease."

LNM1 began operating the gasoline station and convenience store in November 2012. Alsahqani has stated in an affidavit that LNM1 made various capital improvements to the property

upon taking possession and that he has invested several hundred thousand dollars in the business. There is no indication in the record that LNM1 ever failed to pay the $7,000 monthly base rent or that there were any disputes regarding the property or the lease until the summer of 2017.

On June 27, 2017, TP Properties notified LNM1 that it had received a bona fide offer to purchase the property. LNM1 thereafter promptly notified TP Properties that it would exercise its option to purchase the property. TP Properties subsequently requested information from LNM1 regarding the insurance policies LNM1 held so that TP Properties could determine any post-sale liabilities it might have related to the property. After LNM1 provided the requested information, TP Properties discovered that LNM1 had not obtained all the insurance coverages required by the lease agreement. Specifically, although LNM1 had, in November 2012, purchased a $2,000,000 general-liability policy listing TP Properties as an additional insured, LNM1 had changed carriers in November 2016; the new policy, also providing $2,000,000 in coverage, did not list TP Properties as an additional insured. Additionally, LNM1 had procured a liquor-liability policy with

a limit of only $100,000, as opposed to the $500,000 limit the lease agreement required, and that policy had never listed TP Properties as an additional insured. Finally, LNM1 had never purchased or held any environmental-impairment-liability insurance whatsoever.

LNM1 and Alsahqani state that TP Properties thereafter told them that it would still proceed with the sale of the property to LNM1 but that it first needed Alsahqani to execute an affidavit and an indemnification agreement. On August 11, 2017, Alsahqani executed an affidavit acknowledging that TP Properties was not listed as an additional insured on the general-liability policy covering the property and that LNM1 had never purchased the environmental-impairment-liability insurance required by the lease agreement.[1] Alsahqani further stated in that affidavit that LNM1 had no knowledge of any "claims, actions, suits, complaints, liens or investigations of any kind" related to the property. Three days later, Alsahqani executed an indemnification agreement agreeing that he and LNM1 would pay any claims or costs that TP Properties

[1]Alsahqani's affidavit did not address the liquor-liability insurance required by the lease agreement.

subsequently became obligated to pay stemming from LNM1's use of the property during the term of the lease agreement.

On August 24, 2017, TP Properties filed a two-count complaint against LNM1 and Alsahqani. The first count of the complaint sought rescission of the lease agreement, alleging that rescission was warranted because LNM1's failure to obtain the required insurance coverages constituted a material breach of the agreement. TP Properties' second count requested that the trial court enter a judgment declaring that LNM1 had materially breached the lease agreement and that the agreement was thus rescinded. TP Properties supported its complaint with a copy of the lease agreement, LNM1's general-liability policy, and the affidavit and indemnification agreement that Alsahqani had executed. TP Properties simultaneously moved the trial court to enter a temporary restraining order and preliminary injunction barring LNM1 from proceeding with its purchase of the property through the exercise of the purchase option in the lease agreement. The trial court entered the requested temporary restraining order that same day and, following a hearing, converted the temporary restraining order to a preliminary injunction.

Over the following weeks, LNM1 took steps to obtain the insurance coverages required by the lease agreement. It first added TP Properties as an additional insured on its general-liability policy effective September 6, 2017. LNM1 subsequently acquired new $500,000 liquor-liability and $1,000,000 environmental-impairment-liability policies that took effect on September 18, 2017; both policies listed TP Properties as an additional insured.

On October 2, 2017, LNM1 and Alsahqani answered TP Properties' complaint and filed a counterclaim seeking a judgment declaring that TP Properties was obligated to sell the property to LNM1 in accordance with the purchase option in the lease agreement. LNM1 and Alsahqani did not disclose in their responsive pleading that, since the filing of the complaint, they had acquired the insurance policies required by the lease agreement.

On January 12, 2018, LNM1 and Alsahqani moved the trial court to enter a summary judgment in their favor, arguing (1) that LNM1 had substantially complied with the terms of the lease agreement; (2) that LNM1 had properly exercised the purchase option before TP Properties gave it notice of

noncompliance or initiated efforts to terminate the lease; and (3) that the parties had modified the terms of the lease agreement by executing the indemnification agreement. TP Properties thereafter filed its own summary-judgment motion, arguing that it was entitled to terminate the lease because, it said, (1) LNM1's failure to obtain the insurance policies required by the lease agreement was a material breach of that agreement and (2) LNM1's apparent failure to make any effort to obtain three of the four required policies in 2012 "and continuing to this day" demonstrated its lack of good faith, which constituted an alternative basis for terminating the lease.

Following a hearing on the parties' dueling summary-judgment motions, the trial court allowed the parties to submit additional materials in support of their arguments. TP Properties did so, emphasizing to the trial court that "[i]t has been five months since this lawsuit was filed and LNM1 hasn't cured anything. LNM1 does not even contest that it has never cured the insurance breaches." TP Properties also submitted an affidavit from a local insurance agent in which the agent stated that it was effectively impossible for LNM1

to fully cure its breach because there was no insurance available that would retroactively cover any claims that arose from incidents that had occurred during the previous years of the lease. LNM1 and Alsahqani also submitted a post-hearing brief, but they did not address the allegation that LNM1 had not cured its default.

On February 6, 2018, the trial court entered a summary judgment in favor of TP Properties in which it made the following findings of fact and conclusions of law:

> "(1) LNM1's obligations to provide insurance coverages, particularly those which the lease instrument calls 'Additional Rent,' are material terms of the lease.
>
> "(2) LNM1 has been in continuous breach of material terms of the lease, from the beginning of the lease in 2012 and continuing to this day, by failing to obtain those coverages and failing to name TP [Properties] as [an] additional insured.
>
> "(3) TP [Properties] is entitled to rescission of the lease.
>
> "(4) LNM1 is not entitled to enforce any purported option in the lease where it admittedly was in breach of material terms of the lease at the time it tried to exercise same, and where it remains in breach today, even many months after purportedly exercising its option. ... Despite having been on notice of TP [Properties'] position at least since this lawsuit was filed in August of 2017 (even though LNM1 obviously knew it was breaching the agreement from the start), LNM1 still has not cured the breaches."

LNM1 and Alsahqani thereafter obtained new counsel and filed a postjudgment motion asking the trial court to alter, amend, or vacate the summary judgment entered in favor of TP Properties. In that motion, LNM1 and Alsahqani repeated the arguments they had previously made but also argued that the trial court's emphasis on LNM1's failure to cure its breach was unwarranted because, in fact, LNM1 had obtained all the insurance coverages required by the lease agreement within approximately a month of TP Properties' notifying LNM1 of the deficiency. While recognizing that the trial court was not required to consider evidence submitted after the entry of the summary judgment, LNM1 and Alsahqani argued that the trial court should exercise its discretion to do so. Accordingly, LNM1 and Alsahqani submitted evidence of the insurance policies now held by LNM1 -- as well as evidence of all previous insurance policies held by LNM1 -- and an affidavit from Alsahqani in which he stated that his previous counsel had never asked him about the insurance policies.

TP Properties opposed LNM1 and Alsahqani's postjudgment motion, arguing that the evidence submitted by LNM1 and Alsahqani merely confirmed LNM1's breach of the lease

agreement by establishing (1) that LNM1 had not listed TP Properties as an additional insured on its general-liability policy from November 2016, when it changed carriers, to September 6, 2017; (2) that the liquor-liability policy held by LNM1 from November 2012 to September 2017 had also failed to list TP Properties as an additional insured, while providing only $100,000 of coverage instead of the $500,000 of coverage mandated by the lease agreement; and (3) that LNM1 did not purchase any environmental-impairment-liability insurance until September 2017. TP Properties further argued that the trial court should exercise its discretion by not considering the newly submitted evidence offered by LNM1 and Alsahqani because that evidence had been in their possession at all relevant times and they had failed to produce it earlier, even though TP Properties had repeatedly asked for all evidence of the insurance policies held by LNM1. Following a hearing, the trial court denied LNM1 and Alsahqani's postjudgment motion. LNM1 and Alsahqani filed this appeal.

Standard of Review

"Summary judgment is appropriate only when there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law." Hooper v. Columbus Reg'l Healthcare Sys., Inc., 956 So. 2d 1135, 1139 (Ala. 2006) (citing Rule 56(c)(3), Ala. R. Civ. P.). On appeal, LNM1 and Alsahqani argue that the trial court erred by entering a summary judgment against them and in favor of TP Properties. This Court has explained that, when a party "appeals from a summary judgment, our review is de novo." Nationwide Prop. & Cas. Ins. Co. v. DPF Architects, P.C., 792 So. 2d 369, 372 (Ala. 2000). The Nationwide Court further detailed how we conduct that review, explaining:

> "Once a party moving for a summary judgment establishes that no genuine issue of material fact exists, the burden shifts to the nonmovant to present substantial evidence creating a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989). 'Substantial evidence' is 'evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.' West v. Founders Life Assur. Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989). In reviewing a summary judgment, we view the evidence in the light most favorable to the nonmovant and entertain such reasonable inferences as the jury would have been free to draw. Jefferson County Comm'n v. ECO Preservation Servs.,

> L.L.C., [788 So. 2d 121 (Ala. 2000)] (citing Renfro v. Georgia Power Co., 604 So. 2d 408 (Ala. 1992))."

792 So. 2d at 372. We further emphasize that, in determining whether a genuine issue of material fact exists, we can consider "only the evidence before the trial court at the time it ruled upon the motion for a summary judgment." Smith v. Fisher, 143 So. 3d 110, 124 (Ala. 2013).

Analysis

The parties agree that the lease agreement gave TP Properties the right to terminate the lease if LNM1 failed either "to substantially comply with any material provision of this lease" or "to exert good faith efforts to carry out the provisions of this lease." We dispose of this case by holding that TP Properties was entitled to terminate the lease based on the first ground.

Determining whether a party has substantially complied with the terms of a contract is effectively the same as determining whether that party's alleged breach is material. See Harrison v. Family Home Builders, LLC, 84 So. 3d 879, 889 (Ala. Civ. App. 2011) ("'Substantial performance is the antithesis of material breach. If a breach is material, it follows that substantial performance has not been rendered.'"

(quoting John D. Calamari & Joseph M. Perillo, The Law of Contracts § 11.18(b) (4th ed. 1998))); see also Restatement (Second) of Contracts § 237 cmt. d (1981) ("The considerations in determining whether performance is substantial are [the same as those] for determining whether a failure is material."). This determination is typically for a jury to make, but "'if in a particular case the question is so clear as to be decided only in one way, it is a question of law for the court.'" Harrison, 84 So. 3d at 890 (quoting Birmingham News Co. v. Fitzgerald, 222 Ala. 386, 388, 133 So. 31, 32 (1931)); see also Karl Storz Endoscopy-America, Inc. v. Integrated Med. Sys., Inc., 808 So. 2d 999, 1013 (Ala. 2001) ("Whether a breach is material is ordinarily a question for the trier of fact." (emphasis added)). Accordingly, we must determine whether the evidence in this case is so clear that the trial court could only conclude that LNM1's breach of the lease agreement was material, thus permitting TP Properties to terminate the lease.

It is undisputed that LNM1 breached the terms of the lease agreement by not purchasing the insurance policies the lease agreement required. TP Properties states that the

provisions in the lease agreement requiring LNM1 to purchase those policies were obviously material terms, as evidenced by the fact that LNM1's obligation to purchase the required insurance was denominated in the lease agreement as "Additional Rent." TP Properties further argues that those insurance policies were as critical as the base rent paid by LNM1. Because of the nature of the business conducted on the leased premises -- a gasoline station and a convenience store at which alcoholic beverages were sold -- TP Properties faced not only potential liability for the typical slip-and-fall accidents that might occur with a business open to the public, but also ongoing potential liability to governmental regulators and neighboring property owners for any leaks associated with the property's underground gas tanks and liability on any dram-shop claims that might result from the sale of alcoholic beverages at the convenience store. TP Properties asserts that it is self-evident that the failure to make rent payments is a material breach of any lease.

LNM1 and Alsahqani argue in response that, although the provisions in the lease agreement obligating LNM1 to purchase and maintain certain insurance policies may be material terms,

it does not necessarily follow that the breach of those terms constitutes a material breach of the lease agreement. They note that this Court has described a material breach as a breach "that touches the fundamental purposes of the contract and defeats the object of the parties in making the contract," Sokol v. Bruno's, Inc., 527 So. 2d 1245, 1248 (Ala. 1988), and they argue that the fundamental purpose of the lease has not been defeated by LNM1's failure to hold the required insurance coverages. Rather, they argue, LNM1's breach has had no impact on TP Properties because (1) no claims have been filed against TP Properties that would have been covered by the insurance LNM1 failed to acquire and (2) LNM1 and Alsahqani have agreed to indemnify TP Properties for any such claims that might be asserted in the future. Thus, LNM1 and Alsahqani conclude, TP Properties has not been harmed by LNM1's failure to purchase the required insurance policies and LNM1's breach of the lease agreement cannot be considered material. See Crestview Mem'l Funeral Home, Inc. v. Gilmore, 79 So. 3d 585, 592 (Ala. 2011) (holding that there was a question of fact about whether a funeral home's failure to use a licensed embalmer was a material breach of a contract

providing that a licensed embalmer would be used where there was no evidence that the embalming "was done improperly or that it did not serve its alleged purposes").

The parties have identified no Alabama caselaw discussing whether a tenant's failure to maintain insurance coverages required by a lease agreement constitutes a material breach of that lease agreement. But TP Properties has cited several cases from other jurisdictions in which courts have held that such a failure is a material breach of the lease agreement. A review of those cases is instructive.

First, in Bouwkamp v. McNeill, 902 P.2d 725 (Wyo. 1995), the Supreme Court of Wyoming considered a summary judgment entered in favor of landlords who had terminated a lease allowing the tenants to operate a restaurant on the leased premises. The landlords claimed that the tenants had "breached the lease agreement in several significant ways," including failing to make timely rent payments and not maintaining insurance coverage required by the lease agreement. Id. at 726. The Bouwkamp court concluded that, although there was an issue of fact about whether the tenants were late in paying their rent, "the failure of the [tenants]

to have maintained the insurance coverages required by the unambiguous terms of the lease were obviously material breaches of the lease." 902 P.2d at 727. The court further emphasized that the tenants' failures in that regard were "not trivial, inadvertent, or technical problems but are violations which went to the heart of the agreement between the parties." Id. Although the tenants had obtained the required insurance coverage at the time the landlords terminated their lease, the Bouwkamp court affirmed the summary judgment entered by the trial court.

Second, in Kyung Sik Kim v. Idylwood, N.Y., LLC, 886 N.Y.S.2d 337, 66 A.D.3d 528, 529 (N.Y. App. Div. 2009), a New York appellate court considered similar facts and reached the same conclusion, holding that the tenant's subsequent purchase of insurance in no way cured the previous breach:

> "The motion court found, after a hearing, that plaintiffs had not previously and continuously maintained insurance coverage as required by their commercial lease. This violation was a material breach of the lease (see C & N Camera & Elecs. v Farmore Realty, 178 A.D.2d 310, 311 [(N.Y. App. Div. 1991)]) and, in these circumstances, an incurable violation .... Plaintiffs' attempt to demonstrate their ability and readiness to cure the alleged violation by procuring, during the cure period, insurance coverage prospectively for the remaining 10 months of their lease term is unavailing, as such

> policy does not protect defendant against the unknown universe of any claims arising during the period of no insurance coverage."

Third, in D & D Realty Trust v. Borgerson, 2015 Mass. App. Div. 115 (Mass. Dist. Ct. 2015) (not reported in North Eastern Reporter), a Massachusetts appellate court concluded that a tenant's failure to comply with mandatory insurance provisions in a lease agreement constituted a material breach of that lease agreement. The tenant in D & D Realty, like the present case, operated a leased gasoline station and convenience store, and the governing lease agreement required the tenant to maintain certain insurance policies and to list the landlord as an additional insured on those policies. Partway through the term of the lease, the landlord sued the tenant, alleging that the tenant had breached the terms of the lease agreement by not acquiring the required insurance. The evidence presented at trial established that the tenant had, in fact, not complied with the provisions of the lease agreement requiring it to procure insurance coverage. The D & D Realty court concluded that the tenant's breach was "material and significant," explaining:

> "[The tenant's] at least intermittent failure to insure the property against claims for personal

> injury, property damage, or hazardous waste contamination, and to name [the landlord] as an insured, was the equivalent of playing financial Russian roulette. The fact that no potentially covered loss occurred during that period does not minimize the seriousness of [the tenant's] failure to insure against it, as the lease explicitly required."

Accordingly, the D & D Realty court affirmed the judgment of the trial court allowing the landlord to terminate the tenant's lease.

Finally, the Minnesota Court of Appeals emphasized in Las Americas, Inc. v. American Indian Neighborhood Development Corp., No. A04-505 (Minn Ct. App. 2004) (not reported in North Western Reporter), the risk to a landlord that accompanies a tenant's failure to acquire insurance coverage mandated by a lease agreement. In Las Americas, the court held "as a matter of law" that the failure to provide proof of insurance required by a lease agreement was a material breach of that agreement and that the tenant's "failure to maintain the required liability insurance exposed [the landlord] to a potentially significant liability risk [that] could not have been corrected by [the tenant] paying insurance premiums or obtaining coverage after the fact."

The cases cited by TP Properties demonstrate that LNM1's breach of the lease agreement was not harmless. As the D & D Realty court explained, a tenant's failure to procure required insurance coverage protecting a landlord is tantamount to playing "financial Russian roulette," and the fact that no claims were incurred during the period when insurance coverage was lacking "does not minimize the seriousness of [the tenant's] failure to insure." In this case, it appears that no claims were filed against TP Properties for incidents occurring during the period in which LNM1 did not have the insurance required by the lease agreement before this appeal was initiated in April 2018. But because LNM1 did not obtain the required insurance coverages until September 2017, TP Properties asserts that it will be exposed to potential claims until at least September 2019 (assuming the general two-year statute of limitations in § 6-2-38(l), Ala. Code 1975, would apply). Moreover, TP Properties asserts that it will be approximately 20 years until it can be absolutely assured that no claims will be filed against it based on incidents that occurred before LNM1 obtained the required insurance, because minors have 2 years after they reach the age of majority to

assert claims belonging to them. See § 6-2-8(a), Ala. Code 1975 (providing that the statute of limitations applicable to a claim held by a minor is tolled until the minor reaches the age of majority).

It is impossible for LNM1 or TP Properties to fully mitigate the unknown risk that TP Properties faces going forward. TP Properties' expert indicated that he was unaware of any insurance that could be obtained to cover retroactively the gaps in coverage created by LNM1's failure to maintain the required coverages. LNM1 and Alsahqani have submitted no evidence that would refute the expert's testimony. And, although Alsahqani executed an agreement promising to indemnify TP Properties for any liability it incurs as a result of LNM1's breach, that indemnification agreement cannot take the place of the insurance coverages for which TP Properties bargained. The indemnification agreement is contingent on LNM1 and Alsahqani's future ability to fulfill their obligations under that agreement, and there is no evidence in the record regarding their ability to do so. Even if there was such evidence, however, an indemnification agreement from parties that would likely be codefendants in

any legal action covered by the agreement is clearly not the same as insurance written by an insurer rated "A" or better by A.M. Best -- which is what the lease agreement required with respect to the general-liability policy LNM1 was obligated to obtain. Cf. Austin Props. LLLP v. Huntington Beach 2, LLC, No. A-16-CA-1080-SS (W.D. Tex. 2017) (not reported in the Federal Supplement) (holding that a subtenant's self-insurance statement did not meet the requirement in a lease agreement that the tenant maintain insurance written by a "responsible insurance company").

LNM1 and Alsahqani argue that the out-of-state cases cited by TP Properties are distinguishable. This argument is not convincing. Bouwkamp, Kyung Sik Kim, D & D Realty, and Las Americas are all cases involving commercial leases in which it was established that the tenant had breached the terms of a lease agreement by not obtaining the required insurance coverage. In each case, the court concluded that the tenant's breach was material and that the landlord was entitled to terminate the lease. The reasoning of those cases is persuasive, and we agree that LNM1's failure to acquire the required insurance was not a "trivial, inadvertent, or

technical problem[]" but was instead a "violation[] which went to the heart of the agreement between the parties." Bouwkamp, 902 P.2d at 727. Or, to state it in terms that this Court has previously used, LNM1's failure was a breach "that touche[d] the fundamental purposes of the contract and defeat[ed] the object of the parties in making the contract." Sokol, 527 So. 2d at 1248. That breach was therefore material. Because the evidence supports no other conclusion, the trial court did not err in making that determination as a matter of law.[2]

Conclusion

The provisions in the lease agreement requiring LNM1 to purchase and maintain insurance coverages for both its own benefit and the benefit of TP Properties were an integral part of the lease agreement. As discussed above, LNM1's undisputed failure to comply with those provisions was a material breach

[2]LNM1 and Alsahqani have also argued that the trial court exceeded its discretion by not considering the evidence they submitted after the summary judgment was entered establishing that LNM1 had acquired all the required policies by September 2017. Even if considered, that evidence would not have created an issue of fact regarding whether LNM1 had materially breached the lease agreement by failing to maintain the required insurance. See Kyung Sik Kim, 66 A.D.3d at 529 (concluding that the tenant's subsequent purchase of insurance covering the remainder of its lease was insufficient to cure the material breach already committed when insurance was not procured for the initial lease period).

of the lease agreement, which entitled TP Properties to terminate the lease. Accordingly, the summary judgment entered by the trial court in favor of TP Properties is hereby affirmed.

AFFIRMED.

Parker, C.J., and Wise, Mendheim, and Stewart, JJ., concur.

Bryan, J., concurs specially.

Bolin, Shaw, and Sellers, JJ., concur in the result.

BRYAN, Justice (concurring specially).

The lease agreement at issue relates to a "fuel dispensing station" owned by TP Properties, LLC, and leased and operated by LNM1, LLC ("LNM1"). Under certain circumstances, owners and operators of such facilities may be subject to substantial liability under both state and federal law for environmental impacts resulting from underground storage tanks. See § 22-36-1 et seq., Ala. Code 1975; and 42 U.S.C. § 6991 et seq.

In light of the potential liability for owners and operators of such facilities, I view LNM1's undisputed failure to obtain environmental-impairment-liability insurance in accordance with the applicable lease provision as significant. Taking into consideration LNM1's breach in this regard along with its failure to comply with the other lease provisions discussed in the main opinion, I agree that the trial court's judgment should be affirmed.