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### **1) Tuan's claims against Leo**

#### **Contractual right**

Here, T entered into a 10-year signed contract with L for the use of a warehouse at \$1000 a month with a start date of January 1. L was required to make the space available for T on Jan 1 and ensure that T has access to and availability of reasonable use and enjoyment of his property. Since A was at the warehouse on Jan 1, L breached his contractual duties and T could seek remedies: 1) cancel the contract or 2) sue for breach and seek damages, 3) inform L of the problem, and seek foreseeable damages in the mean time.

Since T has decided to sue. T can claim, breach of contract.

#### ***Fraud***

L entered into two leasing contracts with L and A at the same time. This constitutes fraud on L's part since he did this knowingly.

T is likely to succeed on this claim.

#### ***Reasonable use and enjoyment of property***

T could claim that L did not ensure his end of the bargain by keeping his equipment in the warehouse when T arrived to the property in June.

L is likely to succeed on this claim if it can be shown that L could have fixed this breach and was given the opportunity to fix it.

See further analysis below under L's claims re: T's breach of contract.

#### ***Damages***

L could seek damages from L for the 6 months he stored equipment at B's warehouse for \$500 more than he would have at L's. Thus, 3,000. Since L was not paying T any rent and the warehouse by B was almost identical, T will be unlikely to seek damages for the entire contractual amount. L could also seek damages for the last 6 months at \$3,000 if his claim that there was a material breach in contract by L which resulted in L justifiably refusing the possession of the warehouse.

### **2) Tuan's claims against Annika**

T may not assert any claims against A because she was not in privity to the contract between L and T, and she did not have a separate contract with T for any reason. L, as the landlord is responsible for insuring availability of an open space before the time T arrives at the location. Thus, any claims by T should be made against L and not A.

Even a claim of holdover tenant, one who stays past their leasing agreement, will not be successful because L was aware of A's presence and fraudulently entered into a contract with T,

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who had no knowledge of A.

### **3) Leo's counterclaims against Tuan**

#### **Breach of contract**

L could claim that T breached contract by terminating the lease and refusing to take possession for a breach that was not material. The warehouse lease for T to store his inventory. However, the warehouse was 25% unusable. T was ready to continue his rental lease agreement with L based on his arrival to the property. Thus, T can only **constructively evict** if he gives L a reasonable opportunity to make the space available for T and L fails to do so in a reasonable time.

Here, the facts are silent as to how much of the warehouse L was to make clear for T. If L reasonably assumed that only 75% of the warehouse was needed, L should have been given the chance to fix this breach before L decided to reject performance.

However, T had already been waiting for 6 months for the warehouse, and if L had refused to remove his equipment from the warehouse, this would weigh in favor of T not breaching his contract.

#### **Damages**

Based on this above claim, L could counter-claim damages from T because L suffered one month with no rent and \$500/month less for 10 years than what he would have obtained by T. This claim is based on the above claim of no material breach by L. However, this claim is likely to not succeed because L was receiving payments from A for the first 6 months while T paid \$500 more for the first 6 months at B's warehouse due to L's violation and L is now paying B \$500 more than he was supposed to for the next 6 months, which was supposed to be the end of the contract time between L and T.

#### **Waived right to claim**

L could claim that T waived his right to sue on the contract when he rented another, identical warehouse from B on January 1 instead of telling L of the problem and renegotiating the contract. However, T could argue that it is L's duty to make sure the warehouse was available for rent. This argument will likely succeed even though T did not inform L of his taking another property since L was in another lease with A and would be liable for his fraud.

Again, T returning on Feb 1 and leaving without speaking with L would make L unavailable of any breach. However, T will likely succeed again that L is supposed to make sure the place is available for rent and was engaging in fraud by double-leasing his property.

Question #3 Final Word Count = 865

**END OF EXAM**