

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 22nd *day of* July, 2011.

Martin J. Claytor, et al., Appellants,

against Record No. 101236
Circuit Court No. CL09002773-00

Robert Reynolds, Appellee.

Upon an appeal from a
judgment rendered by the Circuit
Court of Prince William County.

Upon consideration of the record, briefs, and argument of
counsel, the Court is of opinion that there is no error in the
order appealed from.

Martin J. Claytor and Elizabeth A. Claytor (the Claytors)
appeal from the circuit court's judgment awarding damages to their
former landlord, Robert Reynolds, in the amount of the rent due
"for the entire remaining lease term," as provided for in the
parties' lease (the Lease). The circuit court concluded that the
Claytors presented no evidence to show that the Lease's
acceleration clause was a penalty "under the facts of this case."
The Claytors challenged below, and now challenge on appeal, the
award under the Lease's liquidated damages clause as "an
impermissible penalty."

"The party challenging the validity of a liquidated damages
clause has the burden of pro[ving that] the opposing party's
damages . . . are susceptible of definite measurement or [that] the
stipulated damages are grossly in excess of the actual damages
suffered by the non-breaching party," and thus a penalty. Boots,

Inc. v. Singh, 274 Va. 513, 517, 649 S.E.2d 695, 697 (2007) (internal quotation marks omitted). Because the Claytors offered no evidence to prove either of these grounds at trial, the circuit court did not err in concluding that the Lease's liquidated damages clause was not a penalty.

Additionally, the Claytors conceded the inapplicability of the Virginia Residential Landlord-Tenant Act, Code §§ 55-248.2 through -248.40, and waived, by not raising in the circuit court, the argument that the Virginia Consumer Protection Act, Code §§ 59.1-196 through -207, applies. Rule 5:25. Accordingly, the Court finds no error in the circuit court's judgment.

For these reasons, the judgment of the circuit court is affirmed. The appellants shall pay to the appellee damages according to law.

This order shall be certified to the said circuit court.

A Copy,

Teste:

Pat L. Hanning

Clerk