Problem 1-3. Landlord owns land in Stanley Beach. Tenant owns and operates a restaurant, the Stanley Beach Brewpub, on adjacent land. The current restaurant is too small, and Tenant wants to expand. Last year, Tenant wrote Landlord and suggested that Landlord lease its land to Tenant beginning on November 1, shortly before Tenant’s current lease expires. The parties executed a document entitled “Letter of Intent regarding construction and lease of premises at 120 Stanley Beach Boulevard” (LOI). In the LOI, the parties agreed on the rent to be paid, the parties’ contributions to the cost of the building the new restaurant building, and other matters. The LOI also provided that the parties “represent that each intends, in good faith, to carry out the transaction described in this letter of intent, and that subject only to [Tenant’s] obtaining the necessary [governmental] approvals, this constitutes a binding legal agreement between the parties to negotiate and execute a Definitive Lease Agreement, including the terms and conditions of this letter of intent and other provisions customarily and ordinarily included in the type of transaction contemplated herein ....” The LOI did not include a provision regarding attorneys’ fees, although fee-shifting provisions are commonly included in commercial leases.

After the LOI was executed, the parties exchanged drafts of a lease, which did contain an attorneys’ fee clause. In July, Tenant’s attorney sent Landlord a draft of a proposed Lease which had been signed by Tenant. Landlord was not satisfied with the language of the proposed Lease regarding commencement of the lease and Tenant’s liability to pay rent to Landlord in the event hazardous waste was discovered during construction; thus, Landlord refused to sign the lease. Tenant sued Landlord for specific performance of the LOI (or, alternatively, for money damages for breach of the LOI) and sought to recover the attorneys’ fees expended by Tenant to pursue the litigation.

Should Tenant be able to obtain specific performance of the LOI? Damages for breach of the agreement? Attorneys’ fees?

Problem 1-4. In 2008, Landlord and Tenant entered into a lease (“Lease”) pertaining to commercial property for a term ending July 31, 2018. Tenant had the right to extend the term of its occupancy for a period of 5 years, provided that it complied with certain notice requirements as specified in § 18 of the Lease.

§ 21 of the Lease, entitled “First Refusal Option to Lease” provides as follows:

If at any time during the term of this lease, Landlord shall receive a bona fide offer to lease the demised premises for a term to begin subsequent to the present demised term, and the Landlord desires to accept such offer, Landlord shall immediately submit to Tenant a true and correct copy of such bona fide offer with a full disclosure of all terms, covenants and
provisions thereof and Tenant shall have ninety (90) days after receipt thereof, in which to elect to lease said premises upon the terms and provisions contained in such offer.

On April 30, 2018, Landlord executed a “Letter of Intent” (LOI) with Exxon, a prospective future tenant for a prospective term beginning September 1, 2018. The LOI provided that it was delivered “as part of preliminary negotiations and shall not be deemed a binding contract. Final agreement, if any, between the parties will be subject not only to the terms set forth herein, but such other terms and conditions mutually agreed between the parties.” On May 1, 2018, Landlord sent Tenant a copy of the LOI along with a letter stating that if Tenant did not respond pursuant to § 21 of the lease by matching the terms in the LOI, Landlord expected Tenant to vacate at the end of the term on July 31, 2018.

Instead, Tenant responded not by indicating its intention to match the terms in the Exxon LOI, but instead by indicating its intention to extend the lease term for an additional five years (assume this complied with the notification requirements in § 18 of the Lease). Landlord has admitted receiving this notice. Tenant did not vacate at the end of the term, but has continued to tender rent payments in the amount specified in its original lease. Landlord refused these rent payments, and sued Tenant to recover possession of the land and damages equal to the difference between the rent in Tenant’s original lease and the rental amount stated in the Exxon LOI. How should the court rule?