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Peer to Peer 2

Resolving Disputes: A Peer to Peer Discussion of Thought Provoking Dilemmas from a Litigator's Lens

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Summary: The presentation will use peer to peer discussions of recurring issues which arise in disputes and which serve to frustrate both landlords and tenants. The goal of the session is to collectively unravel these issues and provide practical and helpful strategies for navigating through the dispute resolution process whether it be through mediation, arbitration or litigation.

#1: A Smoking New Tenant Mix

The City of HappyVille has passed a law allowing the sale of marijuana for both medical and recreational use. Two existing tenants, Mary's "Pot"tery, which sells exotic plants and vegetables, and The Smoke Shop, which sells cigarette and cigar smoking accessories, want to expand their existing stores at the Happyville Friendly Shopping Center. The owner of the Shopping Center has a loan with a national bank, which paid for the purchase of and maintenance of the Shopping Center. Mary's wants to be able to dispense marijuana at the store, and the Smoke Shop wants to sell marijuana accessories. The Shopping Center is located within a 10 mile radius of a school and hospital. One of the anchor tenants, The Federal Shop, which sells all clothing, toys and miscellaneous items associated with the United States and adjacent to Mary's "Pot"tery and The Smoke Shop, has approval rights over any expansion of businesses adjacent to the store, which shall not be unreasonably withheld upon proper notice. Mary's "Pot"terry and The Smoke Shop have the right to expand its business within its existing space to sell like products that are used in the local industry. All stores at the Shopping center share pro rata the CAM expenses, including security, lighting and other necessities. All the leases at the Center have clauses where the owner warrants compliance with all Laws, and that each tenant is in compliance with all Laws.

1. What issues will the owner face in allowing or not allowing the expansion of the businesses and what issues does the owner need to be thinking about for future implementation with respect to these two tenants and other tenants?

2. What issues do the two tenants and the owner need to think about and negotiate in amending their existing leases?

3. What rights do the Federal Shop or other tenants have with respect to the stores and what arguments are there for the Federal Shop and against the Federal Shop in objecting to the expansion.

4. What rights or objections do other third parties not in the center have against the expansion of these two businesses?

5. How do we bring peace and harmony back to the Happyville Friendly Shopping Center

#2: Invasion Or Welcome The Drop Box Locations

In order to fill space on one of its exterior pads, The I Still Want To Be a Lifestyle Center has leased space to Drop Box USA, which is a location to pick up on-line items. The Drop Box USA alerts customers that their on-line purchase is ready to be picked up and allows those customers to add on purchases, such as grocery items, which will be ready upon their pickup. In addition, several in-line tenants have added Drop Box's boxes in their respective stores at the other end of the mall that takes up gross leasable area of the stores for customers to simply pick up or return Drop Box purchases. The anchor tenant, The General Store, has an exclusive that prevents the landlord from leasing space where a primary business is to sell any grocery items. The in-line tenants all have a co-tenancy clause that requires the landlord to have open and operating 90% of the gross leasable area of the in-line space. All the tenants have a representation in their leases that the landlord is operating and maintaining a Lifestyle Center.

1. What rights do existing on-line tenants have with respect to the various Drop Box boxes?

2. What rights does the General Store have with the landlord's lease to Drop Box's exterior pad space?

3. Are there any issues for the landlord with respect to the Lifestyle Center?

4. What defenses do the landlord and Drop Box USA have with respect to these types of drop off locations?

#3 Is this a Peaceful Surrender?

Landlord owns and operates a large, mixed used retail shopping center. KC Technology leases space for the operation of its business, which requires heavy duty computer equipment. KC Technology's computer equipment requires substantial electrical wiring, which it undertakes to install. The installation involves replacing some of the space's existing wiring with upgraded wiring compatible with KC Technology's equipment. At the end of its lease term, KC Technology removes all of its equipment and the electrical wiring, leaving behind a leased space that, on the interior, is exactly the same as it was before the lease except for upgraded electrical wiring. KC Technology also left trash dumpsters in the parking lot of the premises after its lease termination date.

1) Assuming KC Technology's lease includes a requirement to return the premises to its pre-lease condition, has it violated this provision by leaving the upgraded wiring in place?

2) What about by leaving dumpsters in the parking lot?

3) Did the superior electrical wiring that KC Technology installed to operate its computer equipment become a fixture, or trade fixture, such that its removal was improper? Would the answer be different if the wiring installed by KC Technology <u>supplemented</u> existing wiring instead of <u>upgrading</u> existing wiring?

4) Did KC Technology become a holdover tenant, such that continued rent payments were required, by leaving dumpsters in the parking lot after the lease terminated? Has KC Technology constructively possessed the premises beyond the lease term?

#4 A Different Kind of Tenant Mix Issue

Landlord owns and operates a large, mixed used retail shopping center. BK Books is a tenant who operates a bookstore. Code Kids is another tenant in the shopping center who provides classes and training for children to learn to code. As a result of the retail apocalypse and changing demographics, BK Books' business is in decline. Its owner is considering converting the business to a new franchise opportunity in which he has invested. He has a choice to either change the use of the space and have BK books operated the franchise or file bankruptcy. If BK Books chooses to file bankruptcy it will propose to assume its unexpired lease and assign the same to a franchisee in which the owner of BK Books will be an owner. The franchisee is Millennial Mixology. Millennial Mixology is a combination trade school that trains young persons for jobs in the lucrative "club" marked but also as part of this training program is licensed to serve alcoholic beverages. The BK Books lease requires Landlord's prior consent to change its use and to assign or sublet and Landlord cannot unreasonably withhold, condition or delay its consent to either request. The Code Kids lease, as well as other tenant leases within the shopping center, restrict Landlord from leasing to a tavern, bar or other like facility. However

1) What is the impact of the proposed assumption and assignment on other tenants in the shopping center and what rights to Landlord or other tenants have to object?

2) If BK files for bankruptcy can BK Books change its use without Landlord's consent as required under its lease and operate the franchise?

3) What if BK books was not in bankruptcy and merely attempted to assign to Millennial Mixology?