



**Wednesday, October 23, 2019
3:30 PM – 4:45 PM**

Peer to Peer 2

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

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Hypo #1 – A Smoking New Tenant Mix

Owner

- Lease – “Compliance with Laws”
- Proper zoning/permit issues
- Consents from tenants/lenders/insurance
- Exclusive/Use prohibitions
- *PharmaCann* case – declaratory judgment over deed prohibition to use drug store for “unlawful purpose”

Two Existing Tenants

- “Compliance with Laws”
- Expansion right
- Share of CAM charges
- Impact on lease termination/tenant improvements/surrender

Hypo #1 - A Smoking New Tenant Mix

Other Tenants

- Consent rights/unreasonably withheld
- Exclusive/Use prohibitions
- Share of CAM charges
- Violation of other agreements

Third Parties

- Reasonable regulations/restrictions
- Tortious interference – Greensun, 436 P.3d 397 (Wash Ct. App. 2019)
- Consent rights – lender/insurance

Hypo #2 – The Drop Box Locations

I. Exclusives

1. Drop box violate exclusive?
2. “Selling” in the leased spaces
3. Primary business
4. “Grocery” items
5. Injunctive relief/proving damages?

Hypo #2 – The Drop Box Locations

II. Co-tenancy

1. “Gross Leasable Area” – space where drop box located count?
2. Drop box – open and operating
3. Prove financial impact?
4. Consider whether a penalty?

III. Lifestyle

1. Drop box – still a lifestyle center?
2. Injunctive relief/money damages?

Hypo #3 – Peaceful Surrender

- I. Return to “Pre-Lease Condition”
 1. Typical verbiage used in leases
 2. Substantial vs. strict compliance
 3. Violation if improvement to pre-lease condition?
 4. Measure of damages for violation

Hypo #3 – Peaceful Surrender

- II. Personal Property vs. Fixture vs. Trade Fixture
 1. Factors to be considered
 2. “Intent” of the tenant and ease of removal
 3. Causes of action for wrongful removal

- III. Holdover Tenant
 1. Constructive vs. actual possession
 2. Rental rate when not specified by the lease
 3. Need to show loss of opportunity to re-lease or otherwise use the space?

Hypo #4 – Assignment

1. Assignment & Subletting –
 - a. Distinction between an assignment and a sublease
 - b. Landlord Consent – issues to consider
 - c. What is Reasonable
2. Impact of Other Lease Provisions
 - a. Signage
 - b. Permitted Use
 - c. Renewal and Option Rights
 - d. Alterations to Premises

Hypo #4 – ASSIGNMENT

1. Impact of Bankruptcy Code Section 365
 - “Shopping Center” landlords
2. Key Area to Attack: Adequate Assurance of Future Performance
 - a. Assignee’s ability to pay rent/percentage rent
 - b. Use Provisions
 - c. Exclusivity Provisions
 - d. Tenant Mix

Hypo #4 – ASSIGNMENT

1. Exclusive Use Provisions
 - a. Drafting considerations
 - b. Related concerns (continuous use, default)
2. Enforcement
 - a. Lease vs. Reciprocal Easement Agreement
vs. Restrictive Covenants
 - b. Rent abatement, litigation/injunction, costs



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