

Wednesday, October 23, 2019
2:00 PM – 3:15 PM

Seminar 2

Three is a Party: Understanding the Parties and Key Issues in a Franchise Lease

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1. Franchisee Concerns
 - a. Timing Issues
 - i. What document to sign first – the franchise agreement or the lease?
 - ii. When to involve the franchisor in negotiating and reviewing the lease.
 - b. Flexibility
 - i. Franchisee will want the right to assign to another qualified franchisee, or at the very least, the franchisor itself.
 - ii. Franchisee may be opening locations with intent of growing the brand in a region and then selling all locations to one or more buyers.
 - c. Unsuccessful Franchisees
 - i. If the franchise is not successful, does the franchisee have the right to terminate the lease? If so, at what cost to the franchisee?
 - ii. Can franchisee operate a different franchise brand in the same space?
2. Landlord Concerns
 - a. Termination Rights Under the Franchise Agreement
 - i. Just as the franchisor requires notice of defaults under the lease, the Landlord will want notice of defaults under the franchise agreement.
 - ii. If the franchise agreement is terminated, landlord will want the franchisor to assume the lease.
 - b. Assignment/Sublease
 - i. If the lease is assumed by the franchisor, the franchisor will likely want the right to sublease or assign to a new franchisee without consent and at no cost.
 - ii. Landlord should include parameters for an acceptable assignee/subtenant (net worth, operational experience, number of other franchise locations).
 - c. Guaranty
 - i. Ideally, landlord would like a corporate guaranty from the franchisor.
 - ii. More realistically, the guaranty will be a personal guaranty from the franchisee.
 - d. Lien Subordination
 - i. Franchisor will typically request a lien waiver or a subordination of landlord's lien on franchisee's personal property.
 - ii. Landlord may want to include language re: subordination during lease negotiation (and a form of subordination) so that it does not have to be negotiated after lease signing.
 - e. The Franchise Agreement
 - i. Landlord may request to review the franchise agreement itself to review the franchisor's ability to terminate.
 - ii. Landlord may request a warranty from the franchisor that the franchise agreement is co-terminus or extends past the term of the Lease.
3. Franchisor Protections
 - a. Signage and Design Requirements
 - i. The franchisor will likely have certain signage and design requirements so that all franchise locations maintain similar branding.
 - ii. These may conflict with a landlord's requirement for uniform signage and exterior finishes for a shopping center.

- iii. Landlord to pre-approve franchisor's logos, colors and marks.
 - b. Protecting the Franchise Brand
 - i. If the tenant has not already negotiated an exclusive use clause, the franchisor may insist on including one.
 - ii. Franchisor may also have certain prohibited uses that conflict with its use.
 - c. Right to Cure Defaults
 - i. Franchisor will want notice of defaults and an opportunity to cure (oftentimes for a period beyond tenant's cure period).
 - ii. Landlord will want to make sure that there is a requirement that the franchisor cure any default timely.
 - iii. May also include the right for franchisor to assume the lease in connection with curing a default.
 - d. Right to De-Identify Premises
 - i. Franchisor will want the right to remove signage, trade dress and any specific marks or logos from the premises following the expiration of the Lease.
 - ii. Landlord should include language requiring the franchisor to indemnify landlord and repair any damage in connection with its de-identification.
 - e. Consent to Modifications of the Lease
 - i. If landlord must agree to consent it should try to limit this right to only material modifications.
- 4. Incorporating Franchisor Terms
 - a. In the lease
 - b. Addendum to lease
 - c. Collateral assignment of lease
 - d. Separate agreement
 - e. Franchisor as tenant