

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

Seminar 4

(Br)Exit Strategies for Leases – Anticipation, Negotiation, Deal or No Deal – Avoiding an Impasse

David P. Vallas
Shareholder/Practice Vice Chair
Polsinelli PC
150 N. Riverside Plaza
Suite 3000
Chicago, IL 60606
DVallas@Polsinelli.com

Matthew Bordwin
Principal and Managing Director
Keen-Summit Capital Partners
LLC
1 Huntington Quad
Suite 2C04
Melville, NY 11747
MBordwin@Keen-Summit.com

John H. Lewis
Senior Counsel
Hartman Simons & Wood LLP
6400 Powers Ferry Road, NW
Suite 400
Atlanta, GA 30339
John.Lewis@hartmansimons.com

- I. Introductions
- II. Reasons a Party Wants to Exit a Lease Other than Due to a Default or Express Right
 - A. Corporate cutbacks (Starbucks)
 - B. Disappointing sales
 - C. Changing market (Amazon)
 - D. Change of Co-Tenancy (Bankruptcies)
 - E. Occupancy costs too high
 - F. Landlord repositioning of center
 - G. Landlord desire to replace with “more desirable” tenant
- III. General Considerations for Lease Terminations
 - A. Tenant Investments in the Space
 - 1. Tenant Work
 - 2. Equipment and inventory
 - B. Landlord investments in the space
 - 1. Landlord Work
 - 2. Tenant Allowance
 - C. Brokerage costs
 - D. Dark spaces
- IV. Unilateral Right to Terminate the Lease
 - A. Termination by Express Right
 - 1. Unilateral Right Without Cause
 - 2. Relocation of Premises
 - 3. Early Termination Upon Request for Assignment/Subletting
 - B. Gross Sales Kick-out
 - C. Co-Tenancy Kickout
 - D. Evaluating a Tenant’s Liability
 - E. Tenant Defaults
 - 1. Fair Market Value Formula
 - 2. Worth at the Time of Award Formula
 - 3. Acceleration
 - F. Midnight Run?
 - 1. Tenant’s Covenant to Operate and Operate
 - 2. *Simon Property Group v. Starbucks Corporation*

3. *Bellevue Square, LLC v. Whole Foods Market Pacific Northwest, Inc.*,

G. Negotiated Exits

1. Landlords and Tenants on the same team
2. Landlords taking store closure requests seriously

H. Negotiated Lease Termination Agreement

1. Reasons
2. Monetary penalties
3. Method of termination; tying up loose ends
4. Contingencies and payments

V. Negotiating in Bankruptcy

- A. Bankruptcy Code Provides the Right to Reject a Lease
- B. Forces landlords to negotiating table
- C. Bankruptcy may be too late
- D. Holistic approach possible (open-kimono negotiating)