

Real Estate Litigation and Disputes

In the real estate world, there is little doubt that the economic fallout from the COVID-19 pandemic will persist for years, and possibly decades, beyond the immediate health crisis. As long-held assumptions about work, offices, retail — and, indeed, cities themselves — are being fundamentally tested, commercial leases have seen rapid and precipitous losses in value, with turbulent repercussions. Especially in New York City, large numbers of tenants are balking at paying high rents for drastically underused space, while landlords — under pressure from their own lenders — demand that leases stand as written, with rents paid in full.

While the more traditional landlord/tenant dispute has been put “on pause” due to Federal and State eviction moratoriums, it has been replaced with high-stakes litigation, but not litigation as usual. With trillions of dollars in such leases at issue in Manhattan alone, our litigators are now regularly asked to present innovative legal arguments to resolve complex commercial landlord-tenant disputes. Representing both commercial tenants and landlords, we have developed and litigated arguments that have broken new legal ground. Our team has been immersed in these novel legal theories — of impossibility, impracticability and frustration of purpose — and presented them in arguments of first impression before the New York Supreme Court and federal judges.

Experience Across the Board

While these new types of pandemic-fueled disputes currently dominate our caseload, we remain known for our strengths in resolving every sort of real estate dispute, especially at the high end of the New York City real estate markets. We have vast experience guiding clients through all types of litigations and arbitrations relating to leases, including disputes arising over building repairs, operating expense escalation, tax escalation, fair market value renewal options, brokerage commissions, as well as more commonplace nonpayment and holdover proceedings. We also handle Yellowstone injunctions as well as a wide range of construction disputes, including mechanics’ lien defense, foreclosure defense and fire code and criminal violations.

Encouraging Modifications

From our vantage point, we can confidently predict a deluge of high-stakes disputes, which will fundamentally change how the real estate industry conducts business. Consequently, we see a pressing need, where possible, to negotiate modifications in current leases that clearly cannot function as they were intended. Financially strapped tenants turn to us to find ways to shift the leverage in matters where the pandemic has made it impossible for them to operate as anticipated at the time they negotiated their lease. At the same time, we advise our landlord clients to come to terms with the new reality, to see the value of keeping the tenants they have in a rental market that is spiraling downward — all while protecting their interests and rights under the written lease and its language. While the object is to avoid costly litigation, in all cases, we work with our clients to find the best business solution in a fraught situation.

Representative Matters

- Secured injunctive relief for a clothing retail company, whose operations had been significantly impacted by COVID-19, preventing numerous landlords from terminating the company's leases at various locations in the New York City area.
- Represented a national clothing retailer in over a dozen NY lease litigations involving evolving legal issues related to the COVID-19 pandemic. Obtained favorable decisions from multiple New York courts in contrast to the losses suffered by other retailers in similar cases.
- Defeated a motion for preliminary injunction against a national fast food chain in a dispute with its landlord at a mall in NY. The client had terminated its lease due to co-tenancy violations and the landlord sought a preliminary injunction barring the termination. We defeated the motion, the client left the mall and the case settled on favorable terms.
- Represented an American fashion company in an expedited arbitration concerning the company's right to sublease one of its New York City retail premises to a first-class international "fast fashion" retailer. Arbitrator's award unequivocally confirmed the company's right to place its selected subtenant in the space, despite the subtenant's lack of status as a "luxury" retailer.
- Brought claims in arbitration on behalf of a major media and marketing services company arising from a New York City landlord's overcharges in connection with a lease's rent escalation clause. Reached a settlement that saved hundreds of thousands of dollars in escalation rent on the eve of the hearing.
- Settled a breach of lease claim brought against a fashion retailer by its landlord regarding its surrender obligations under various leases around the country. Convinced Landlord that its position was not supported by the lease or by relevant common law after extensive analysis, leading to an agreement that saved the client upwards of \$5 million.
- Prevailed in a multimillion dollar arbitration for a high-fashion retail apparel company against its landlord after the landlord unreasonably withheld consent to a dignified first-class prospective retail subtenant. Case not only clarified the real estate industry term "first class" as an operational standard (as opposed to price point), but also allowed our client to sublease space that had been empty for several years.