

Thinking of Not Paying Rent Amid COVID-19? Landlords Sue Ross Stores, Other Commercial Tenants

One lawyer warns that parties to these types of lawsuits must understand how intertwined their businesses are, so they can come to a resolution.

By Michael A. Mora | May 05, 2020 at 03:29 PM



from left, Danielle Garno, head of the retail legal practice at Cozen O'Connor in Miami; Mark A. Levy, a partner at Brinkly Morgan; Aleida Martinez-Molina, a partner and chair of the insolvency and creditors' rights practice groups at Weiss Serota.

In the past 24 hours, landlords have filed at least two lawsuits against major retailers over nonpayment of rent. And South Florida lawyers say these are just the start as brick-and-mortar retail faces a new and unexpected hurdle: the coronavirus.

The lawsuits follow the Florida governor's executive order requiring store closures and mandating social distancing restrictions.

In one case, discount clothing retailers Ross Dress for Less and Ross Stores are defendants in a suit from Palm Springs Mile Associates and Philips Lake Worth, pending in the Miami Division of the U.S. District Court for the Southern District of Florida.

Intertwined interests

Attorneys including Danielle Garno, head of the retail legal practice at Cozen O'Connor in Miami, are bracing from a trend of lawsuits from commercial landlords against major retail tenants.

Garno warns that parties to the lawsuit must understand how intertwined their businesses are in order to come to a resolution, rather than just enforcing obligations under the lease.

"Their success and survival in this pandemic depends on each other and coming to a resolution that benefits both parties," Garno said. "If the tenant fails, then the landlord is going to fail."

Palm Springs Mile and Lake Worth brought the lawsuits to enforce the payment of rent on three separate locations where Ross has storefronts, according to court pleadings. The plaintiffs are seeking damages in excess of \$5.5 million from Ross Dress for Less and Ross Stores.

In the court filing, the plaintiffs claim that the tenants failed to pay rent due May 1 under the terms of their contract. In addition, Palm Springs Mile and Lake Worth assert that the force majeure provision is not applicable because that provision expressly excludes its application to the “making of payments.” A force majeure provision excuses performance under a contract due to an “act of God” or similar natural disaster.

Bankruptcies looming?

Mark A. Levy, a partner at Brinkley Morgan, says these types of cases will increase if landlords fear their tenants might go bankrupt. He said landlords are being proactive to recover their rent before multiple competing creditors enforce claims.

“It is no secret retailers are trying to conserve cash in not paying rent, and landlords are willing to work with some of the retailers,” Levy said. “Landlords are trying to do the best they can for themselves, and generally that’s trying to be, if not aggressive, proactive to move themselves on the top of the list to getting paid.”

Aleida Martinez-Molina, a partner and chair of the insolvency and creditors’ rights practice groups at Weiss Serota in Miami, says several factors make it difficult for both parties right now.

“I was talking to a retail client of mine this morning about how even if the government were to lift the emergency orders, this particular retail place, people tend to touch the merchandise and it is impossible to social distance,” Martinez-Molina said.

While Martinez-Molina sees these types of cases increasing, she says the coronavirus pandemic has become an impetus to move one segment of the population that commercial landlords and major retailers could traditionally depend upon as reliable shoppers. This segment may no longer be as loyal as they were before the pandemic hit.

“This whole experience is showing those older folks who were less inclined to go online that not only is it feasible, doable and fairly easy, but if they are over 65 and have issues and are really concerned about venturing outside of their homes, shopping online is almost a necessity,” Martinez-Molina said.

<https://www.law.com/dailybusinessreview/2020/05/05/050520lawsuitsmajorretailersmiami/#>