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A Real Estate & Business Deal Firm

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Recent Developments - Summer 2013

See This Quarter's Notable Closed Deals Below

LIEN ON ME

Like so many apparently simple commercial lease provisions, the devil is in the detail when it comes to the "landlord's lien" and the important considerations for both landlords and tenants.

Arizona law grants commercial landlords a statutory "landlord's lien" against a tenant's personal property located on the premises to secure the payment of rent, which also extends to personal property owned by a subtenant or assignee (but not that of third-parties which may be in the possession of tenant). Commonly, commercial leases also include express provisions separately granting such a lien, and sometimes even going so far as to include granting language for UCC filings and other mechanics for perfecting such a lien.

The reality of a lien against a tenant's personal property can easily spark back and forth lease negotiations balancing a tenant's comfort in allowing such a lien against a landlord's willingness to proceed without it.

In choosing whether to forfeit their rights, Landlords must balance the overall creditworthiness of the tenant and the existence of security for the payment of rent in the form of a guaranty or letter of credit. Rarely will a security deposit provide ample protection compared to the right to seize and sell all of the tenant's personal property.

Tenants should no doubt tread carefully in protecting their personal property and analyze this risk as part of their overall liability exposure under the lease. The risk to landlord should be balanced against the tenant's operating needs. Many tenants utilize outside financing facilities secured by all of their assets, or put in place equipment financing or leasing arrangements (i.e., phone systems, office copiers, etc.). Obviously, these forms of financing are necessary for tenants to operate and grow their businesses, but tenant's lenders do not want to fight a landlord for their collateral. While landlords can agree to subordinate their lien where a tenant's property is subject to financing that was used to purchase the personal property, issues can arise when things are not so clear and questions arise as to which party has priority following a default under both the lease and the loan. Typically, the landlord's lien will relate back to the date that the tenant first brings the property onto the premises.

The granting or waiver of a landlord's lien need not be an all or nothing situation. The parties can certainly agree to limit the lien to only certain types of property as Landlords are typically most interested in property that is reusable for a future tenant or items that can be sold at auction to satisfy the tenant's monetary obligations and should try to avoid situations that can result in fights with other creditors.

Should the parties agree to proceed without the lien, then Tenant's should require an express waiver and not simply rely on deleting the provision in the lease to avoid the applicability of the statutory lien rights available under A.R.S. 33-362. After all, if the lease is simply silent as to granting of a lien, then the landlord would still have its lien rights granted by the Arizona statute.

Landlord's liens also raise concerns for some of tenant's customers, which may entrust tenant with their property (for example, everything from dry cleaners to law firms). A tenant's property or business records may be proprietary or confidential. In almost all cases computers, contain confidential or sensitive information. Caution abounds for Landlords rely on, or eventually execute, on their lien, as the statutory requirements and mechanics for holding and selling the tenant's property can be confusing to navigate.

We help our landlord and tenant clients make the appropriate legal and business decisions in their leasing activities while staying focused on the goal of arriving at a successful lease - that can be leaned on.

For more information please call (480) 889-8948, send an email to info@steinlawplc.com or visit www.SteinLawPLC.com.

Stein Law, PLC is a boutique business and real estate deal firm focused on:

- Real estate acquisitions and sales, development and leasing (both tenant and landlord);
- Business transactions, operating agreements, joint venture structuring and corporate contracts;
- Loan financings, workouts and

Below are some of the exciting representations Stein Law handled in 2Q13:

- Developer client closed major construction loan for development of large mixed use center (Phoenix, Arizona - June, 2013)
- Client transferred/restricted decreed wells and water use rights under Arizona Water Settlement Act (Graham County, Arizona - June 2013)

modifications, and

- Hospitality development, management and licensing matters.

The following is a link to our Stein Law, PLC Recent Developments Archives:

- [Recent Developments Archives](#)

- Purchase of two side by side multifamily complexes with private equity and traditional financing (Temp, Arizona - June, 2013)
- Client refinanced multiple development properties with various lenders (Arizona - April/May, 2013)

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