Commercial Breach of Lease: To Pursue or Not to Pursue?

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Once possession is no longer an issue, many of our commercial landlord and property management company clients struggle with the decision of whether or not to pursue their former tenant for past and future rent and other losses incurred including damage to the property, tenant improvement costs and lost broker’s commissions. In order to make the right decision, and avoid chasing good money after bad, a prudent property manager or landlord will evaluate the potential for collecting against the former tenant, and, in the event a lawsuit is pursued, negotiate an appropriate attorney’s fee arrangement with their legal counsel. This article will review some of the more important considerations in determining whether or not to pursue a former commercial tenant and the type of attorney’s fees arrangements available.

If an unlawful detainer was filed in order to regain possession of the commercial space, pursuit of the monetary judgment for unlawful detainer would be a good “test” to determine if it is worthwhile to pursue a breach of lease lawsuit. Assuming there is an attorney’s fee provision in the lease, the judgment should also include an award of attorney’s fees and costs expended in the breach of lease case. In addition, when pursuing a money judgment, the judgment creditor is entitled to prejudgment interest at the legal rate of 10%. This continues to accrue even after a judgment has been entered until paid in full. Further, the judgment is good for 10 years and can be renewed for another 10 year period. Keep in mind, however, that the statute of limitations for written breach of lease cases is four years. In other words, a lawsuit must be filed within four years from the time of the breach, or the lawsuit cannot be pursued.

Oftentimes a prudent landlord requires a personal guaranty of the tenant’s monetary performance of the lease. If there is a personal guaranty, the likelihood of collection is doubled, as there are two prospective individuals or entities that are liable for all losses suffered. However, before a lawsuit is filed, it would be worthwhile to first run an asset search against the guarantor and the tenant to determine what assets, if any, are available once a judgment is final. The strength or weakness of the asset search greatly assists our clients in making the right decision.

The attorney’s fee arrangement you engage with legal counsel is also very important in making a decision of whether or not to go after a former commercial tenant. Our firm, for instance, charges our clients on a contingency fee, flat fee, or hourly rate for a standard breach of lease case. The type of fee arrangement depends heavily upon the results of the asset search. Matching the most sensible attorney’s fee arrangement with the prospects of collection make it easier for our clients to determine which fee arrangement is right for them.

This article is for informational purposes only. Before you act, you should speak with one of our attorneys. Kimball, Tirey & St. John LLP regularly pursues breach of commercial lease actions against our clients’ former tenants. We offer a variety of attorneys’ fees arrangements including contingency, flat fee and hourly attorneys’ fees. For more information, please contact the KTS office nearest you. For contact information, visit our website: www.kts-law.com.