



May 2008

## RETAILER BANKRUPTCY UPDATE

Due to economic conditions, more than two dozen national retailers have filed for bankruptcy over the last year, leading to the closing of many of their retail locations. Following is information from public sources regarding a few of these retailers, including the date and jurisdiction of filing:

- **The Bombay Company** (September 20, 2007; Texas). The Bombay Company recently selected DJM Realty to dispose of all 335 of its U.S. retail store leases and all five of its U.S. distribution center leases. The stores range in size from 1,800 square feet to 11,000 square feet and are located in strip, outlet and lifestyle centers across the country. The Bombay Company plans to continue its Canadian operation, which consists of 49 retail stores.
- **Hancock Fabrics** (March 21, 2007; Delaware). Hancock Fabrics plans to close 104 of its 403 stores and is expected to emerge from bankruptcy later this year.
- **Linens 'N Things** (May 2, 2008; Delaware). Linens 'N Things plans to close 120 of its 589 stores.
- **Movie Gallery, Inc./Hollywood Entertainment Corp.** (October 16, 2007; Virginia). Movie Gallery, Inc. operates Movie Gallery stores. Hollywood Entertainment Corp., a division of Movie Gallery, Inc., operates Hollywood Video stores. Together, they closed 520 of 6,849 Movie Gallery and Hollywood Video stores in the fall of 2007 and plan to close an additional 400 stores.
- **Sharper Image** (February 19, 2008; Delaware). Sharper Image plans to close 90 of its 184 stores.
- **Wickes Furniture** (February 3, 2008; Delaware). Wickes Furniture has closed 18 of its 43 showrooms, reduced its staff and instituted certain inventory-reduction programs.

Many other retailers are experiencing financial challenges, and it is expected that several will file for bankruptcy in the near future, and many are scaling back or delaying expansions. According to certain public reports, several retailers plan to close stores in 2008, including Ann Taylor (117 stores), Zales (100 stores), Foot Locker (140 stores), Lane Bryant/Fashion Bug (150 stores), Wilsons Leather, (158 stores) and Pacific Sunwear, 153 stores.

In this environment, it is important for landlords to be aware of the legal issues that arise from retailer bankruptcies. Following is a brief summary of some of the common legal issues that affect landlords when retailers file for bankruptcy:



- **Assumption or rejection.** Under the 2005 amendments to the Bankruptcy Code, a tenant has 120 days (formerly 60 days) from the bankruptcy petition date to assume or reject an unexpired commercial lease. The tenant may obtain, for “cause,” a single 90-day extension of time. The tenant may not obtain any additional extensions of time without the consent of the landlord. If the tenant fails to assume the lease by the applicable deadline, the lease automatically is deemed to be rejected and the tenant must immediately surrender possession of the premises to the landlord. If the tenant decides to assume the lease, it first must cure all pre-petition defaults.
- **Post-petition performance.** The tenant must perform all post-petition obligations under the lease unless and until it decides to reject the lease. If the tenant defaults, the landlord can ask the bankruptcy court to lift the automatic stay so that the landlord can pursue its legal remedies, including state court eviction proceedings.
- **Lease rejection damage claim.** If the tenant decides to reject the lease, the landlord is entitled to file a claim for its lease rejection damages. Such damages are limited by the Bankruptcy Code to the greater of (a) one year’s rent or (b) 15% of the remaining rent (provided the 15% cannot be more than three years’ rent).
- **Rejection after assumption.** Also under the 2005 amendments to the Bankruptcy Code, a tenant may now reject a lease that it previously assumed. Under this new “change of heart” provision, the landlord is entitled to an administrative expense claim equal to “all monetary obligations” due for the two years following the rejection date, with the right to file a claim for the balance due subject, however, to the one-year/15% cap described above.

#### FOR MORE INFORMATION

For more information, including a comprehensive list of retailer bankruptcies, please contact Thomas J. Coyne, Real Estate practice group leader, at 216.566.5781 or [Thomas.Coyne@ThompsonHine.com](mailto:Thomas.Coyne@ThompsonHine.com).

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