

REAL ESTATE UPDATE

Summer 2011

By this time every year, you would have received our Annual Real Estate update. This year, while we were setting about to write about our view of the market and to list some of our accomplishments during the past 18 months, part of our story could not be told. Now it can. Just before Memorial Day, it was announced that Condé Nast had leased a 1 million square foot space at One World Trade Center from a joint venture between the Port Authority of New York and New Jersey and the Durst Organization in what many leading New York real estate experts have referred to as a "Gamechanger" for downtown Manhattan. We were fortunate to be a part of the legal team representing the landlord, WTC Tower 1 LLC, which is indirectly owned by The Port Authority of New York and New Jersey and the Durst Organization, in this complex transaction and landmark lease for downtown and New York City, which took over 9 months to document and finalize. It was not just the size of the transaction that made it complex, but also the unique nature of this landmark building at Ground Zero. Our partners Bob Safron and Lawrence Lenzner and counsel Russell Wohl bore the laboring oar. Not only were we able to conclude that transaction during the end of May but during the same week, Bob Safron and Russell Wohl were also able to close a 188,000 square foot lease on behalf of the law firm of Morrison & Foerster LLP, which is the keystone to Boston Properties' decision to commence construction on its long delayed building (at 250 West 55th Street). This building was put on "hold" in 2007 before construction went underway, but shortly after, Boston Properties had landed its first major tenant, the law firm of Gibson Dunn & Crutcher LLP, which had also been represented by our Real Estate team.

Now that we are at liberty to reveal those two blockbuster transactions, the rest of our traditional Update follows.

"It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to heaven, we were all going direct the other way..."

So said Charles Dickens about Paris during the French Revolution, yet in many ways it rings true about New York real estate in the last eighteen months.

We are seeing a combination of new and exciting development and leasing opportunities, while at the same time many troubled properties have not sunk as low as all envision them falling as existing leases expire and tens of billions of dollars of balloon commercial mortgages predicated on rents never achieved become due. As a result we have seen the following trends:

- The key driver to economic opportunity is capital. To those with assets and available funds, the ability to refinance at very favorable rates has never been better if you do not overleverage. The landlord who is able to unhesitatingly pay for tenant improvements and other upfront costs finds himself extremely attractive to prospective tenants.
- Capital isn't enough. There appear to be many groups with what they describe as having unlimited funds who are unable to find properties to acquire. This is due partly to a lack of an adequate number of sellers and partly due to many well-established owner/developers retaining their historic sources of capital. Many new players think that having money is enough to get them into the game at a high level, but their funds remain uncommitted.

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- Lenders with distressed debt have carried on with restructurings relatively quietly and have zealously tried to avoid disposing of assets in a manner that they feel will embarrass them in the future.
- Securitized debt remains an anomaly. Although defaults in securitized loans have not affected the marketplace in as disastrous a manner as residential loans, billions of dollars of mortgages are underwater without hope of recovery of all of their principal. Yet, while origination of securitized debt was moribund two years ago, it seems to have new legs although it escapes us why, having suffered such severe losses, institutional lenders should again find this product attractive. However, we also hear of lenders still anxious to make mezzanine loans.
- Major corporations, in the financial sector and otherwise, appear poised to make significant office space commitments, yet feel somewhat constrained because of the age of many existing buildings and the dearth of new construction in the last few years. They fear rapidly rising rents for prime office space and would like to lock-in now.
- Moderate and smaller sized tenants remain fearful of making capital commitments and look to landlords to either do their buildouts or provide generous work allowances. Whether or not these potential tenants are being unrealistic has yet to be determined, but rising rental rates diminish their chances of success each month.
- Despite having bought expensive properties at the very top of the market and suffering major losses, well-known real estate developers seem undeterred and are anxiously on the prowl for new developments even, in many cases, with fresh capital behind them.
- Well-endowed not-for-profits see the current environment as presenting opportunities for both expansion and cost-reduction while the less financially secure not-for-profits are struggling to meet their current obligations.

To give you a perspective of the types of transactions we have been seeing, the following is a list of representative transactions:

- We are presently representing The Durst Organization in the modification and extension of its lease for approximately 400,000 square feet at 114 West 47th Street (the U.S. Trust Building) to Bank of America.
- We represented the Official Committee of Unsecured Creditors of Tarragon Corporation and 24 other affiliated companies, with the assistance of attorneys from our Business Reorganization and Creditors' Rights, Tax, and Corporate groups, in their jointly-administered bankruptcy cases, which have been pending in the United States Bankruptcy Court for the District of New Jersey. The Debtors operated a real estate development and homebuilding enterprise that had assets of approximately \$800 million and liabilities in excess of \$1 billion upon their filing in January 2009. Last June, the Bankruptcy Court confirmed a plan of reorganization for all 25 Debtors.
- We represented a New York City hotel developer with a long-term ground lease of a prime development site near Times Square (having a total value in excess of \$150 million) and also negotiated a hotel management agreement with an international boutique hotel brand.
- We represented the law firm of Seward & Kissel LLP in the long term extension and expansion of their current lease for approximately 155,000 square feet in downtown Manhattan.
- We serve as primary outside real estate general counsel for a major international media company in its domestic and international property matters (including a 150,000 square feet headquarters office lease, the sale of industrial sites throughout the United States, and the leasing of representative offices in over 30 different countries).
- One of our partners was appointed by a state court judge to serve as temporary receiver in the \$50 million mortgage foreclosure of the office building at 216 West 18th Street, New York, New York, which needed to be completed and leased.
- We represented an independent Episcopal day school in Manhattan in net leasing an existing building at which a new high school will be established and in refinancing their existing debt. We are also counsel to several other religious day schools and provided ongoing real estate advice to them in a variety of matters.

- We represented a major international bank in acquiring lease amendments for their lease at 1251 Avenue of the Americas, adding a portion of the 23rd floor (4,295 rentable square feet) and the entire 43rd floor (44,000 rentable square feet) to their existing space.
- We represented the law firm of Vinson & Elkins LLP in its lease of approximately 81,000 square feet at 666 Fifth Avenue, New York, New York.
- We are advising the owner of a vacant family owned development site in lower Manhattan in negotiations with a joint venture partner to construct a new luxury condominium project.
- We negotiated for the owners of 11 West 19th Street, a new \$55,000,000 first lien mortgage with John Hancock Life Insurance Company (U.S.A.).
- We negotiated a 10-year lease extension for a major international bank at Harborside Financial Center, Jersey City, New Jersey. They occupy 2 floors in this building, totaling approximately 137,076 rentable square feet.
- We represented the law firm Friedman Kaplan Seiler & Adelman LLP in negotiations for a long term sublease of space at Seven Times Square from O'Melveny & Myers LLP.
- We represented a major foreign investor in its joint venture negotiations in the development of a luxury condominium building in lower Manhattan.
- We acted as counsel for a major midtown art gallery in renewing and extending its lease.
- On behalf of a major pension fund, we negotiated numerous office leases for their midtown Manhattan office buildings.
- We have been advising a major New York arts not-for-profit, in their search to own a new home for their organization.
- For one of the largest hedge funds, we have negotiated a lease of expansion space.
- On behalf of a major long term manufacturing tenant, we analyzed and strategized their first refusal rights to acquire their building.
- We are negotiating a 100,000 square feet headquarters lease for a major not-for-profit in midtown Manhattan.
- We are advising the limited partners of a national real estate development company on their buyout and future participation rights.
- We acted as local mortgage financing counsel for the Hertz Corporation in connection with a \$3 billion financing.

Pro Bono Matters

- The firm is representing residents of two apartment buildings in Chinatown, 283 and 285 Grand Street, that were devastated by a seven-alarm fire. In order to prepare a complaint of gross negligence against the land owners the firm had to interview all of the victims of the fire, many who spoke only Chinese and did not speak any English. One of our Real Estate associates was able to speak to the victims in Chinese and help them with answering key questions for the preparation of the complaint.
- We represented a Harlem-based environmental justice not-for-profit in its lease of new headquarters space.
- We are representing a tenant's association in the Bedford-Stuyvesant neighborhood of Brooklyn in negotiations to convert their housing project into a cooperative corporation, which would eventually be owned and operated by the residents of the building.
- We are representing a disability services organization in lease negotiations for their school and early intervention program in the Bronx.

- We are representing tenant in lease negotiations at 220 Fifth Avenue, New York, NY. The tenant intends to use the space as a meeting hall where various social and cultural activities for the Ismaili community will be held.
- Along with representatives from The Legal Aid Society, Russell Wohl presented to a group of commercial tenants at the Bush Terminal in Brooklyn. The presentation, part of a series of commercial leasing workshops launched by The Legal Aid Society, was held at the request of the NYC Department of Small Business Services and the NYC Economic Development Corporation.

In Other News...

- Four of our Real Estate partners, Andrew L. Herz, Lawrence P. Lenzner, Robert M. Safron and Kenneth L. Sankin were included in *New York Super Lawyers 2010*, a peer and independent review publication that ranks the top 5% of lawyers in New York City.
- Our Real Estate practice has been consistently recognized by *Chambers USA*. The guide notes, "This team impresses with the strength of its leasing practice, which involves acting for both landlords and tenants."
- Two of our partners, Robert M. Safron and Andrew L. Herz, were recognized in *Best Lawyers in America 2010* referral guide as leading attorneys in the industry. Both Mr. Safron and Mr. Herz are members of the American College of Real Estate Lawyers.
- Andrew L. Herz has been designated as one of the world's top 25 pre-eminent Real Estate lawyers, included in *The Best of the Best in Real Estate* for 2011 published by Legal Media Group. ♦

This newsletter is for general informational purposes only and should not be construed as specific legal advice. If you have any questions about the Real Estate Update or wish any further information, please contact one of the following partners or counsel from the Patterson Belknap Webb & Tyler LLP Real Estate Practice Group:

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