



Photo by Julianne Mosher

Stores like Modell's Sporting Goods filed for bankruptcy before the coronavirus struck. Many retailers still hanging on are struggling to pay the rent.

The rent is still due

Experts: Retailers need to prepare for a second COVID wave, negotiate with landlords

By JULIANNE MOSHER

Many Long Island businesses, struggling to recover from the COVID-19 pandemic and battling to maintain cash flow, are months behind in their rent, an issue they need to address before the problem is irreversible, legal experts say.



ED PUERTA

Ed Puerta, a real estate partner with the Long Island office at Nixon Peabody, said that his law firm is seeing an increasing amount of vacancies and a lot of tensions

between landlords and tenants.

"We're in the eye of the storm," he said. "March and April were really bleak – there were a lot of deals on both sides."

Puerta explained that, typically, his clients forged mutual agreements allowing a tenant to pay back missed rent from March, April, May and June during the last quarter of the year. "This way, landlords were saying 'we're here for you now,'" he said.

Suddenly, it's August. Although the summer is usually important for these brick and mortar stores, they struggled to maintain foot traffic into their businesses with strict social distancing guidelines and the lack of interest from concerned customers.

Under the order of Gov Andrew Cuomo at the start of the pandemic, evictions were put on hold and the courts were not open to dispute cases. But many landlords wanted to see their tenants succeed – they, too, did not want to lose money.

"Places like mom and pops, pizza places, clothing stores, a nail salon – the heart and



GARY MELTZER

soul of shopping centers – landlords are just trying to keep them in business," Gary Meltzer, chair of Meltzer Lippe's Real Estate Practice Group and a partner at Meltzer,

Lippe, Goldstein & Breitstone, said.

Many of his clients, like Puerta's, are trying to come to a mutual agreement. "In the end, renters, landlords, lenders... everyone realizes that they need to work together to be successful," Meltzer said. "I keep telling clients it's a collaborative relationship. Your landlord needs you to be successful."



RICHARD MCCORD

But for other commercial spaces, it was not as easy to get people in the doors.

Richard McCord, a partner in Certilman Balin's Bankruptcy and Creditor/Debtor Rights Practice Group, said that big box retailer stores in local shopping malls already struggled with online shopping competition.

The pandemic did not make it any easier, especially with many stores going bankrupt right before COVID hit the U.S.

According to data by S&P Global Market Intelligence, a total of 424 companies have filed for bankruptcy protection this year as of Aug. 9. The study states this exceeds the number of filings during any comparable period since 2010.

Sophia Perna-Plank, an associate with Jaspán Schlesinger, said that a lot of those



SOPHIA PERNA-PLANK

stores have spaces on Long Island that will now become vacant.

"Landlords have to figure out and decide that if these stores go out of business, in this current market-

place, it will be hard to fill those spaces," she said. "And the spaces will sit there for months and months, and they will eventually be forced to repurpose those big spaces."

Some of the high-profile filings of retailers like Ascena Retail Group, J.Crew Group, Lord & Taylor, J. C. Penney Co. and Neiman Marcus Group that sought bankruptcy protection were already facing issues before coronavirus, and the COVID crisis accelerated the pressure, according to S&P Global.

Stores like Pier 1 and Modell's Sporting Goods will be shutting their remaining Long Island storefronts, Perna-Plank added.

"Leases aren't really being sold," she said. "For example, Pier 1 wasn't able to find a buyer, so they're stuck with these spaces and no income coming in."

And that means that the landlords of where those stores sit have not made any money lately, either.

"We see these big box stores suffering, but what we forget is that at the end of the day there is someone behind the scenes who owns that shopping center," she said. "There's a ton of commercial real estate on the Island, and it's sad to see... what is the landscape going to look like with these vacant stores?"

The fear of a future bankruptcy is felt by owners of stores inside local malls, too. "The pandemic has been the tipping point for

these tenants in malls to look at their leases," McCord said. "The balance of power is not with the landlord in that case, bankruptcy nullifies provisions of the lease."

For the stores that are staying open, and that might be hanging on by a thread, there are many pending questions.

"Businesses are operating as normal and are just waiting," Puerta said. "Once the weather turns colder, will COVID spike again? I don't know if landlords are sure they can do this again if there's a second wave."

Puerta advises his clients to keep planning ahead. "I think everyone right now is



ANTHONY CUMMINGS

exhaling... they're back in business and trying to get back to normalcy," he said. "Start forecasting for the future. Anticipate another potential lockdown."

He added that being creative has helped plenty of businesses during the lockdown and to keep that up. "You need to be creative and proactive with your real estate needs," he said. "Talk to your landlord, modify deals and extensions, and start projections... Have conversations about what you can do now and your modeling for the future."

Anthony Cummings, a partner in Certilman Balin's Litigation Practice Group, said that even before pandemic hit, the courts had been "bogged down." As of right now, evictions have been put on hold until Oct. 1, but he encourages those concerned to have a conversation,

"This is going to be an interesting time for quite some time," he said. "Make a deal... you'll be better off"