

Client Alert

March 2020

Navigating Defaults, Foreclosures, Evictions and Workouts in the Wake of the Coronavirus Pandemic

The Coronavirus pandemic is causing and will continue to cause major disruptions and shocks to many parts of the economy. Businesses lacking significant cash reserves are in danger of defaulting on their lease and loan obligations – which are often backed by personal guarantees. While these defaults may be most prevalent in brick and mortar retail food, hospitality, travel and event service industries, many sectors and market participants will be impacted. Even where liquidity is not an immediate concern, without sales or foot traffic, and with large sectors of the economy being shuttered, many businesses are encountering cash flow shortages and will be out of covenant with lenders and in default of agreements.

A cash crunch also creates higher risk of default on vendor obligations. This in turn leads to the possibility of legal action – including potential involuntary bankruptcy – by vendors or to demands for payment terms that the stressed business cannot manage.

Some evictions and foreclosures will be delayed by recent moratoriums and court closures. In New York State, for example, the Court system has indefinitely suspended non-essential proceedings, including evictions and judicial foreclosures. Meanwhile, in New York City, a coalition of landlords have agreed to a 90-day moratorium on evictions.

Although there may be temporary reprise, lenders, franchisors, landlords and vendors may be under pressure from their own constituencies or financial condition to enforce default remedies as soon as they are allowed to. But doing so may come at its own costs. As we saw during the Lehman crisis and elsewhere, often a consensual restructuring or forbearance maximizes values for all stakeholders as compared to liquidation at the low point in the market.

Even for those businesses facing severe disruption, negotiations and legal processes may lead to a softer landing that preserves greater value and mitigates further legal risk.

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While the healthcare and financial response to the Coronavirus is unprecedented, the underlying covenant and default issues are not. Olshan's corporate bankruptcy and restructuring lawyers have long represented business owners, lenders, vendors and landlords in working through these issues and are here now to help existing and new clients during these challenging times.

We are prepared to advise clients on various courses of action that may be appropriate, depending on the particular facts and circumstances of each situation, including:

1. Negotiation of forbearance agreements among various constituencies to allow for sufficient time to work through the immediate crisis.
2. Negotiation of amendments to key agreements, including loan facilities, lease agreements, license and franchise agreements.
3. Negotiation for the use of financing facilities and cash collateral to help pay employees and vendors to keep the business afloat and to help clients comply with labor and employment laws and requirements.
4. Controlled workouts that may limit liability under agreements and personal guarantees.
5. Out of court workouts, restructurings and non-bankruptcy alternatives.
6. Chapter 11 restructuring.

Please contact Michael Fox, Adam Friedman or Jon Koevary or your contact at Olshan to discuss further.

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