

# CLIENT ADVISORY

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DECEMBER 2019

## GANFER SHORE LEEDS & ZAUDERER WELCOMES PAUL HANAU

Ganfer Shore Leeds & Zauderer LLP is pleased to welcome Paul E. Hanau as Of Counsel to the firm's Real Estate Transactions and Cooperatives and Condominiums practice groups.

Mr. Hanau has more than 30 years of experience with real estate, property, and facility management. In recent years, Mr. Hanau has handled large leasing and subleasing transactions in Manhattan and several large "build to suit" net lease transactions in the metropolitan New York area and beyond. He has also negotiated real estate-related tax incentive agreements as well as real estate management, brokerage, construction (including architects, engineers and third party advisors), and service agreements ranging from those relating to an individual property to those relating to a multinational real estate portfolio.

Mr. Hanau has a wide-range of experience with procurement, outsourcing and contract negotiation. He has actively negotiated numerous domestic and international outsourcing, service, and travel-related contracts (including contracts for call center operations, off-site enterprise record management, travel management and airline pricing, IT services, brokerage services, design services, catering and cafeteria services, corporate aviation and aircraft management, security, consulting services, and mailroom operations). He also has extensive experience in the area of real estate and non-real estate branding and sponsorship, including handling the naming rights agreements for three current National Football League stadiums and several other well-known sports leagues and events.

Prior to joining Ganfer Shore Leeds & Zauderer, Mr. Hanau was responsible for company-occupied real estate on a global basis for a Fortune 100 corporation for twenty years. In that capacity, he was involved in real estate transactions (including purchases, sales, dispositions, leases, subleases and space-sharing arrangements) and operational issues both in the United States and abroad. He also served as lead attorney responsible for Stuyvesant Town and Peter Cooper Village in Manhattan, where he dealt with landlord-tenant matters and operational issues. Additionally, Mr. Hanau has been involved with the branding of buildings (including major Manhattan office buildings), building signage rights, blimps, and parks. We welcome Paul Hanau and his practice to the firm.

## **REMINDER: TIME FOR MOST BOARDS TO PROVIDE THEIR ANNUAL INTERESTED TRANSACTION DISCLOSURES**

Under New York State legislation that took effect in 2018, cooperative and condominium boards are required to circulate an annual report to their shareholders or unit owners on the subject of contracts entered into by the board in which a board member has a financial interest. At least once per year, the board must submit a report to the shareholders or unit owners, signed by each board member, containing information on all contracts entered into or approved by the board where there was at least one board member with a financial interest in the transaction. The report must include a list of all such contracts, and for each contract, must identify the names of the other contracting party or parties and the amount, purpose, and term of the contract. The report must also record the dates of all board meetings at which the board voted on such contracts, including who was present and how each board member voted. If the board approved no contracts during the year in which a board member had a financial interest, this fact must be stated.

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These reports are required annually, so boards that have not already approved and circulated their report for 2019 must do so during December 2019. Because significant areas of uncertainty continue to exist as to exactly which types of transactions must be reported, boards with questions about their disclosure obligations should consult promptly with their legal counsel.

### **NEW YORK CITY PROPERTY OWNERS CANNOT DELEGATE RESPONSIBILITY FOR SIDEWALK MAINTENANCE**

New York City Administrative Code § 7-210 provides that owners of certain real property in New York City have the duty to maintain City-owned sidewalks abutting their property in a reasonably safe condition, and are liable for personal injuries that are proximately caused by a failure to maintain the sidewalk. The law provides that “[f]ailure to maintain such sidewalk in a reasonably safe condition shall include, but not be limited to, the negligent failure to install, construct, reconstruct, repave, repair or replace defective sidewalk flags and the negligent failure to remove snow, ice, dirt or other material from the sidewalk.”

The Court of Appeals, New York’s highest court, recently interpreted this provision as imposing a *non-delegable* duty of sidewalk maintenance on the property owner. **Xiang Fu He v. Troon Management, Inc., 2019 N.Y. LEXIS 3023, 2019 N.Y. Slip Op. 7643 (Oct. 24, 2019)**. This means that the property owner may be found liable to an injured person even when the owner has leased the property to a third party, is out of possession, and relies on the tenant to maintain the sidewalk. In view of this decision, property owners should monitor to ensure that the sidewalks outside their properties are being properly maintained, should ensure that their lease agreements contain appropriate indemnification provisions and insurance requirements, and should also confirm that their own insurance protection is sufficient.

### **NEW LEGISLATION AFFECTING NEW YORK EMPLOYERS**

The New York State Legislature and New York City Council continue to adopt employment-related legislation affecting employers in all fields, including the real estate industry. Effective February 1, 2020, the broad anti-discrimination and anti-harassment provisions of the New York State Human Rights Law will apply to *all employers* in New York State. Previously, many provisions of the Human Rights Law applied only to employers with four or more employees.

Effective May 10, 2020, employers in New York City may no longer require job applicants to be tested for cannabis use. The law covers business, non-profit, and governmental employers, but excludes construction workers, commercial drivers, health and childcare employees, and employers who are required to screen for cannabis use under federal law. The new law does not affect screening for drugs other than cannabis.

### **MEMBER CONSENTS DEFEAT CLAIM OF LACK OF AUTHORIZATION**

In a commercial foreclosure action against a limited liability company (LLC), the defendant LLC asserted that the LLC was not authorized to execute the mortgage. The LLC relied upon a term sheet that had been executed in connection with the formation of the LLC years earlier, which reflected a lower loan amount. Based on this term sheet, the LLC argued that the originating lender and any subsequent assignee should have been on notice of an issue as to whether the mortgage was duly authorized. The lender responded that it relied upon later consents signed by the LLC members at the time the loan was funded, and cited long-established precedent holding that a lender does not have a duty of care to ascertain the validity of the documentation presented by an individual who claims to have the authority to act on behalf of a borrower corporation or entity. The court agreed with the lender and dismissed the affirmative defense of lack of authority. **Atlantic Washington Funding, LLC v. Atlantic Upreal, Index No. 500538/2019 (Sup. Ct. Kings Co. Oct. 23, 2019)**. Ganfer Shore Leeds and Zauderer LLP represented the lender on this successful motion.