

Handling Real Estate Matters Most Effectively: One Firm's Solution

The Editor interviews Ronald D. Sernau and David J. Weinberger, Partners and Co-Chairs of the Real Estate Department, Proskauer Rose LLP in New York.

Editor: Ron and David, tell us about your practices and that of the firm's real estate department.

Sernau: Our real estate department is unique in the sense that unlike a lot of other big firms that have real estate departments, we offer the full spectrum of real estate practice. We represent the people who are putting up the money, including the equity investors and those who are investing in a real estate transaction at all different levels in the capital structure. We are also "dirt lawyers" who deal with the physical assets. As such, our clients include the builders and those who are seeking financing for those assets. David is more on the finance side and I'm more on the dirt side even though we really don't make any formal distinctions in our department.

Weinberger: I generally, but not exclusively, represent institutional lenders. Two years ago, most loans with which we were involved were being originated in connection with securitizations. There would be a senior piece which would be securitized, one or more "b notes" which were secured by the first mortgage but which were not included in the securitization, and then multiple layers of mezzanine financing. The loans, with which we were involved, would generally be from a hundred to a couple of billion dollars. Unfortunately, those days are largely over for now.

We are starting to see some financing. In fact, we closed two loans last week, and we have another loan that is going to close tomorrow. The good news is we're seeing deal flow and we're closing loans. The bad news is that the loan size is much smaller.

There are many synergies between what I do and what Ron does because I have had the opportunity through Ron and my other partners on the "dirt" side to represent major developers and owners of properties in the financing of their properties. For example, when Ron represented CBRE in connection with the acquisition of 1540 Broadway, I got involved on the financing side. And of course Ron's been representing borrowers for a long time as well. When I'm representing a lender and a borrower says, "I can't do that because it doesn't work from an owner's perspective," I can walk down the hall and talk to Ron or one of my other partners on the "dirt" side and perhaps find a way to make it work for everyone.

Editor: What are the advantages of being part of a large firm?

Weinberger: The lawyers who are members of the Real Estate Department are truly real estate experts. For environmental advice, we rely on people in that practice group. We have corporate-



Ronald D. Sernau

type people who specialize in corporate-related real estate transactions, such as the creation of real estate investment trusts and the issuance of real estate securities.

Sernau: We have partners in the tax department that do nothing except focus on the tax implications of real estate transactions. We are on the phone almost every day with our separate real estate litigation group. From my perspective, the great advantage to being a real estate lawyer in our firm is that, when I have an environmental, tax, bankruptcy, litigation or other question that needs the attention of a specialist, I don't have to learn that area of the law. I just pick up the phone and talk to someone in our firm with world-class knowledge of the subject.

Editor: During the depths of the recession, you both probably had clients who had severe problems. Is this area of your activities still important?

Weinberger: On the finance side, we represented a number of borrowers and lenders. Many of their loans were underwater. We worked with our clients to find ways to salvage any value that they might retain. In many cases, we were able to find ways that, through modification of loan terms (such as deferring interest or lengthening the term), they got back their principal and all or a portion of their interest. And we continue to do this.

Editor: Why don't you describe what's currently happening in your respective practice areas. Are deals being done and what kinds?

Weinberger: On the financing side, I am seeing a pickup in deals. The deal size is much smaller than what it was at the height of the market, but we are seeing more financing transactions – so obviously that's a good sign.

Sernau: A large number of buildings in New York every day need attention, so there's an endless amount of work just in dealing with those buildings. Probably the best example of that has been a



David J. Weinberger

consistent stream of leasing activity. The lower rents currently available have stimulated an increase in the number of leasing deals. These include some pretty big ones, including Proskauer's own major lease transaction to move to 11 Times Square – which I think is the biggest lease of the year so far.

There have also been some sales transactions where there has been really a lot of traction. We just finished representing an affiliate of Hines Interests in the sale of 600 Lexington Avenue – a deal that received a lot of interest in the marketplace. We are also representing other prospective purchasers on the other deals that are in play right now, so there has been a fair amount of activity in that area as well. The unavailability of financing has slowed down the market, but there is a lot of equity capital that has been waiting in the wings. There's still a mismatch in expectations between buyers and sellers, but sooner or later the floodgates will open.

Editor: What are some of the unique skills that have made each of you successful in your practices?

Weinberger: One of the skills that we think is most important is our ability to consistently have both sides of a transaction feel positive about a deal when it closes. Certainly on the financing side, our clients, the lending parties, want to do repeat business with borrowers. Borrowers don't want to come away from the experience feeling they were dealing with some large New York firm that just pushed the work down to the most junior associate who had no idea what they were talking about and was just churning out papers. Even transactions which, to us, may be relatively small from a dollar perspective are important to both our clients and the folks sitting across the table from us. I think this is something that many attorneys seem to forget.

Ron and I, as well as the other partners in our department, are thoroughly involved in negotiating the documents and following every deal. We are all working partners who genuinely enjoy doing deals. I know our clients all appreciate our personal involvement in transactions.

Editor: Are you seeing more foreign players?

Sernau: There has been an influx of foreign capital partially because of the exchange rate fluctuations and also because foreign capital is more patient. I've found that domestic capital frequently has a short time horizon. They want to make a hefty return and get their money out within five years. It's very hard to make those deals because you've got to buy the property at a particularly low price. In my judgment, this accounts for the greater interest from foreign investors.

Editor: Do you alert clients to legal developments that affect real estate transactions?

Sernau: When there is a new legal development affecting our clients, we, of course, keep them advised.

Editor: Clients have become increasingly cost conscious. Ron, tell us how your automated system for commercial leasing saves cost.

Sernau: While it doesn't really reduce the time spent in doing the negotiation, it does reduce the amount of time that we have to devote to the documentation process. When the other side wanted language to be included in the lease addressing a particular concern, it was necessary to page through existing leases searching for a precedent or invent language that addressed the other side's concern. This involved reinventing the wheel because there really wasn't a truly automated process for quickly finding a clause that addressed that concern. Our system now allows the needed clause to be quickly retrieved.

Editor: Tell us about the ground rules you follow in working with in-house counsel?

Weinberger: On the financing side, although I do interface with in-house counsel a bit, it's much less than you might expect. I'm generally interfacing with the business folks who are making the deal. In some cases, in-house counsel will review drafts of the documents as they are distributed. In other cases, they will review the final turn of the documents before the deal closes. Generally, it's the business folks with whom I have the closest relationships and who are really intimately involved in the deals.

Sernau: I also deal with the business people more than in-house counsel, but I deal with plenty of in-house counsel. As far as the ground rules are concerned, I view in-house counsel as our clients, and we will go to the ends of the earth for them. That includes things as mundane as making sure that our time entries are entered in a way that meets their needs to developing alternative fee arrangements that are fair. We'll be as flexible as we need to be to keep our clients happy.

Please email the interviewees at rsernau@proskauer.com and djweinberger@proskauer.com with questions about this interview.