



Court Rules Retail Landlords Can Utilize Radius Restrictions to Protect Their Tenant Mix

Rebecca Lunceford

Radius restrictions, in their most basic form, are intended to protect a landlord's ability to realize percentage rent and avoid gross sales "kick outs" by preventing a tenant from cannibalizing its own sales. In addition, landlords can use radius restrictions to keep competing shopping centers from drawing away the most desirable shoppers seeking a particular retail store.

This latter situation was recently addressed by Georgia courts when a tenant challenged the enforceability of radius restrictions. In that case, AGG successfully represented the landlord when a tenant breached the radius restriction in its lease. The tenant argued that the radius restriction, which prohibited it from opening another store within five miles, was an unfair restraint on trade and, thus, unenforceable under Georgia law.

AGG attorneys Jim Gober and Rebecca Lunceford rebutted this argument by showing that the radius restriction was limited and necessary to serve a legitimate purpose—that being to protect the exclusivity of the high-end, destination shopping center. Notably, the lease did not contain a corresponding percentage rent or gross sales-based kick out provision that would have given an even more compelling basis for the inclusion of the radius restriction. Nonetheless, the court ruled that maintaining the exclusive nature of a shopping center by prohibiting a tenant from opening another store within five miles served a legitimate business purpose without being overly restrictive. Accordingly, the provision was enforceable and, since the tenant had opened another store within the restricted area, the tenant had breached the lease.

Also, because of a prevailing party attorneys' fees provision in the lease, not only did the tenant ultimately lose the lawsuit, it was also obligated to pay the landlord's attorneys' fees. While this was certainly a win for the landlord in this lawsuit, it does not result in all radius restrictions being automatically enforceable—a landlord still must be able to show that the radius restriction is tailored to serve a legitimate business purpose, necessitating consideration as to every lease and not automatically lending itself to boilerplate incorporation.

Authors and Contributors

Rebecca Lunceford
Associate, Atlanta Office
404.873.8616
rebecca.lunceford@agg.com

not *if*, but *how*.[®]

About Arnall Golden Gregory LLP

Arnall Golden Gregory, a law firm with more than 150 attorneys in Atlanta and Washington, DC, employs a “business sensibility” approach, developing a deep understanding of each client’s industry and situation in order to find a customized, cost-sensitive solution, and then continuing to help them stay one step ahead. Selected for The National Law Journal’s prestigious 2013 Midsize Hot List, the firm offers corporate, litigation and regulatory services for numerous industries, including healthcare, life sciences, global logistics and transportation, real estate, food distribution, financial services, franchising, consumer products and services, information services, energy and manufacturing. AGG subscribes to the belief “not if, but how.” Visit www.agg.com.

Atlanta Office
171 17th Street, NW
Suite 2100
Atlanta, GA 30363

Washington, DC Office
1775 Pennsylvania Avenue, NW
Suite 1000
Washington, DC 20006

To subscribe to future alerts, insights and newsletters: <http://www.agg.com/subscribe/>

©2015. Arnall Golden Gregory LLP. This legal insight provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice. Under professional rules, this communication may be considered advertising material.