

SOMETHING BIG IS HAPPENING v2



COUNSEL'S CORNER

Continuing from last month's blast . . .

Bellevue Square, LLC leased 34,000 square feet to Whole Foods in July 2015. Other tenants in Bellevue Square include Macy's and Nordstrom. The Whole Foods Lease obligated the Tenant – Whole Foods – to continuously operate its business for the first 10 years, keeping it open to the public during the days and hours designated by Landlord.

Whole Foods opened its *365 by Whole Foods* store in September 2016. Sales did not meet projections.

Whole Foods informed its customers by email that it would be vacating Bellevue Square on October 14, 2017. This is how Bellevue Square learned of the pending closure.

The Lease between Bellevue Square and Whole Foods allowed the Landlord the right to specifically enforce the Tenant's obligations through injunctive relief. So Bellevue sued Whole Foods, requesting an injunction requiring Whole Foods to continue business operations.

To support its request for an injunction, Bellevue Square cited an adverse impact on the leased premises and negotiations with other tenants, lenders and similar. Whole Foods established only that financial harm would result to Whole Foods if it was forced to continually operate an unprofitable store.

The Court found that Whole Foods' closure has "given rise to a well-grounded fear of immediate invasion of Bellevue Square's rights," and that "Bellevue Square has demonstrated that Whole Foods' premature closure is resulting in actual and substantial injury to it."

For those of my readers living under a tree stump in Mogadishu – here’s a news flash: Amazon purchased Whole Foods last June for \$13.7 billion. This fact was probably not lost on the Court, as the Court concluded that Whole Foods could easily withstand losses that would send other retailers into bankruptcy, or at least insolvency.

Injunction granted; Whole Foods must reopen for business within two weeks and “work in good faith with Bellevue Square to fulfill the purposes of the Lease.” The injunction is conditioned upon Bellevue Square’s deposit with the Court of a \$2 million bond.

It remains unclear how Whole Foods is supposed to staff the store, what type of products must be offered, whether or not Whole Foods may increase or decrease pricing or add or subtract an inventory line, change its operating hours and its suppliers and manners of restocking shelves, and a myriad of other questions and issues.

So, first Starbucks (Teavana). Now Whole Foods. I don’t know who is next, but I sense a trend where Courts may not be so reluctant to require tenants to continue business operations, even though they may incur substantial losses.

See *Bellevue Square v. Whole Foods Market Pacific Northwest, Inc.*; No. 17-2-27617-1-SEA; Superior Court of Washington for King County; December 7, 2017: <https://www.seattletimes.com/business/amazon/judge-orders-whole-foods-to-reopen-shuttered-bellevue-square-365-store/>.

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