PLAIN SPEAKING FROM A LAWYER

SOMETIMES IT PAYS TO LISTEN TO (AND PAY) YOUR BROKER

By JIm Hochman

At the conclusion of a more than four-year process collecting a lease commission for a client, I had to look back and wonder: a) What took so long? and b) Could this have been avoided? Here are the basic facts.

My client, a newly minted SIOR and managed by an SIOR, represented a law firm tenant who signed a small five-year office lease. The property was listed by a different firm, which had an exclusive listing agreement with the building owner, a doctor, of course, let's call him "Dr. X." In addition to the exclusive listing, my client alertly obtained a commission agreement signed by the listing broker. The lease was signed, the tenant occupied, and Dr. X did not step up to the plate to pay the fee. My client sensed a problem, and I was hired to prepare, record, and serve the notice of broker lien. In Illinois, like in many states, a broker seeking a lien must record it within 90 days of the tenant having the right-to-possession of the space. The listing broker was discouraged by my quote for fees and costs, and sought other counsel. He later retained a different firm, which filed a rather unusual looking notice of lien, and likely missed the 90 day window for filing a valid lien.

Dr. X stalled on paying both brokers, and the listing broker eventually filed its foreclosure action. My client, with a prior lien of record, became a defendant, and out of necessity, filed a cross claim to foreclose its own lien. Dr. X continued to protest, now claiming that his tenant vacated the space after only 1 year of the term, and therefore the broker should take less. We declined, and I warned Dr. X (who had not yet retained counsel) that his defense wouldn't work, that the fee was accruing interest, and we would also claim attorney fees. Dr. X was stubborn, and in the eyes of the court, he was just plain wrong. Years passed, with Dr. X working his way through several attorneys, and eventually we obtained summary judgment on our contract claim. With interest, attorney fees, and costs, the judgment exceeded $40,000.

Oddly, we were informed that the property had been sold! That event made things really interesting. Either the title company held money in escrow to cover the lien and lien foreclosure, and judgment, or there would be one very unhappy buyer. Either event would help me get my client paid.

Dr. X filed his own motion for reconsideration of our judgment (delaying enforcement), and on the day the court was to rule, Dr. X agreed to settle our claim. We agreed to accept the settlement, if paid within one week. Dr. X stalled all week long, and in court the next week actually reneged on his settlement agreement!

When the judge ruled, denying the motion for reconsideration, the judgment increased the judgment by our additional attorney fees.

I heard from the buyer's attorney who was not happy about the existing lien and judgment, asking me to contact the title company. He provided me a copy of the title indemnity. Dr. X's control over the settlement ended a week earlier, and the title company was now authorized to settle the claim. I made my case directly to the title company, warning that the foreclosure sale would follow, that we would name the buyer and its lender, and the title company would have to defend; and fees and interest would continue to accrue. The title company reached out to its insured (as a courtesy), but Dr. X, through his new counsel, still refused to pay the judgment. This time he was willing to offer the previously agreed settlement; but that ship had sailed, and my client's judgment had a much higher number and was no longer subject to appeal. We weren't interested in compromise any longer.

The title company, having done all that it could, didn't want to see the claim go on any longer. It settled our claim from the funds in the title indemnity (we got almost all that was being held). Dr. X still faces liability from the other (listing) broker, and my guess is that while that last claim is still pending, the title company will ask for more money from Dr. X.

My choice of headline now comes into play. My client was reasonable, patient, and even well down the road, flexible. Dr. X was warned that he had no defense to our claim, and my surmise is that his various lawyers who came into and went out of the case told him as much. You would think that a professional who gives advice (a physician), would listen to his own advisors.

Our case is closed, we (broker and lawyer) have been paid in full, so the story has a happy ending. If you happen to practice in the remaining 17 states and D.C. which don't have lien rights for brokers, maybe it's time to do something about that. ▽

TECH | CORNER

Reliable technology reviews provided by the SIOR Technology Committee

Microsoft OneNote

WHAT IT IS

OneNote is an electronic notebook, legal pad and/or 3-ring binder that allows users to gather and organize their notes (handwritten and/or typed) drawings, marketing flyers, stacking charts, presentations, and select emails into one computer program. While this may not sound earth shattering, having information at your fingertips – on your phone in an easily searchable function, can make all the difference in getting your next deal.

HOW IT WORKS

OneNote is available as part of Microsoft Office and Windows 10, but can also be available as a stand-alone application. As a Microsoft product, attaching emails, spreadsheets, and/or presentations from your computer is easy. The program can also interface with your phone or tablet.

WHY USE IT

While this product is not necessarily new, most CRE professionals are not aware of the power this tool can bring to their business. Users can capture notes from important conversations, emails, presentations/meetings as they relate to specific buildings, clients, or prospects, all in a form that is easily searchable and accessible in the field, on your phone, or in the middle of a meeting — when you need the information most.