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Attorneys: N.J. Supreme Court decision could affect commercial lease negotiation

By Evelyn Lee

While this week's state Supreme Court decision on a Kearny eminent domain case will likely not influence most New Jersey condemnation cases, it could still affect the majority of commercial lease negotiations in the state going forward, according to local attorneys.

On Thursday, the state's highest court invalidated Kearny's condemnation of the leases of **James Farm Market Corp.** and **James Wholesale Warehouse Inc.**, at a property owned by **Del Toch Inc.**, in the town. The owner's **DVL Kearny Holdings** subsidiary was designated as one of the redevelopers of a project that included the Del Toch property.

The decision "is going to have a minimal impact on the majority of condemnation cases, because in the majority of condemnation cases, the government will take the entire property from the owner," said **Timothy P. Duggan**, chair of the eminent domain group at law firm **Stark & Stark**, in Lawrenceville.

A condemnation of just a leasehold is "pretty rare," but it does happen in instances where the redeveloper also is the property owner, Duggan said.

One major impact of the decision, however, is that it will likely change the way commercial leases are negotiated in the future, said **Stuart M. Lederman**, a partner at law firm **Riker Danzig**, of Morristown.

The eminent domain clause in James' lease was a standard lease clause, which is included in about 90 percent of commercial leases, and is rarely negotiated, he said.

But going forward, "people are going to have to better define what is meant by 'premises' and 'property' in eminent domain clauses in a lease," Lederman said. Most tenants and landlords will have to do this, because "you can't sit here today and predict what's going to be condemned in whole or in part 10 years from now."

The decision also could affect existing leases, he said. If a tenant is looking to renegotiate its lease for lower rents, a landlord should consider recasting the eminent domain clause at the same time, he said.

Lenders may also be taking a closer look at leases to make sure they conform to this decision, because "it may impact the amount of funds available to pay off any loans the landlord might have," Lederman added.

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