

Alert | Real Estate



February 2020

Italian Supreme Court Requalifies Business Lease Into Property Lease

Shopping center owners should consider a recent Supreme Court ruling – a worrying precedent in the long-running debate over risk of requalification of business leases into property leases.

In a decision published 17 February 2020, the Italian Supreme Court requalified a business lease relating to a retail unit within a shopping center into a property lease. At the time of execution of the business lease, the complex of assets forming the going concern (in this specific case: the use of the real estate unit, certain movable assets, and certain know-how) had not yet been “organized” by the lessor for the exercise of the prospective business activity; in fact, according to the court, such “organization” was implemented by the lessee after execution of the lease.

Such decision contradicts established case law and the contractual practice in force in Italian shopping centers where business leases are consistently used to regulate the relationships with individual lessees; such contractual practice is determined – *inter alia* – by the need to allow the temporary transfer (for the duration of the business lease) of the benefit of the shopping center trading license to the individual lessees/operators of the individual units, so as to enable them to legally perform the business activity therein. The temporary transfer of such benefit would not be achievable through the execution of a property lease.

The decision also appears to lack any consideration for the inner workings of shopping centers, a concern in itself.

While the decision is a single precedent that may be contradicted by future rulings, it is fair to predict that – following such a decision – litigation between shopping centers owners and lessees over the qualification of business leases is more likely.

Author

This GT Alert was prepared by **Marzio Longo**. Questions about this information can be directed to:

- Marzio Longo | + (39) 02.771971 | Marzio.Longo@gtlaw.com
- Or your Greenberg Traurig attorney

Albany. Amsterdam. Atlanta. Austin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany.[~] Houston. Las Vegas. London.^{*} Los Angeles. Mexico City.[†] Miami. Milan.[»] Minneapolis. Nashville. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul.[∞] Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.[^] Tokyo.[¤] Warsaw.[~] Washington, D.C.[.] West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¤Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2020 Greenberg Traurig, LLP. All rights reserved.*