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REAL ESTATE

Kramer Levin's Jay Neveloff Talks CRE's Legal Landscape Post-COVID

Attorney Jay Neveloff reps some of the biggest names in New York real estate, and the market has him excited – and a bit anxious

By Celia Young

At Commercial Observer's State of CRE conference in May, Kramer Levin's Jay Neveloff took the stage and began talking about L&L's redevelopment of the Palace Theatre in Times Square.

It was, Neveloff said, the most complicated deal he had ever worked on in terms of the legal questions involved.

"Yeah," said Rob Lapidus, his client, who was seated next to him. "Your bills reflected that."

Neveloff's fingerprints are all over the biggest real estate deals in New York City – and its most heated lawsuits. As the chair of Kramer Levin's real estate department, Neveloff represents the developers of 432 Park Avenue in a heated \$125 million lawsuit. Residents complained of flooding, broken elevators and an electrical explosion last June, while the developers, CIM Group and Macklowe Properties, claimed the condo board "vastly exaggerated" the luxury building's defects.

As New York City's real estate market faces rising interest rates, a potential recession and a lack of in-person office workers, Neveloff has seen some of his deals shelved, at least temporarily. But Kramer Levin's condominium market deals have marched on; the firm closed more than \$1 billion in condo sales over the first six months of 2022 and has another \$761 million under contract.

The 34-year veteran of the firm spoke with Commercial Observer about some of his projects, the demise of the lucrative 421a tax incentive program, return



YVONNE ALBINOWSKI/FOR COMMERCIAL OBSERVER

Jay Neveloff of Kramer Levin, in his office in New York, New York, July 26, 2022.

to office, converting office buildings to residential housing, and his former role as Donald Trump's go-to attorney for all real estate-related activity. This interview has been edited for length and clarity.

Commercial Observer: What projects are going to keep you busiest this year?

Jay Neveloff: I'm working on acquisition sales financings. I've had a number of deals that have been put on hold, probably because of the uncertainty of interest rates in the capital markets. I represent the developers of 432 Park Avenue, so I'm dealing with the ongo-

ing litigation from a macro, more transactional perspective. We represent a number of nonprofits, including two major medical centers in doing 30-year synthetic condominium leases to take advantage of real estate tax exemptions on leases for more than 30 years for nonprofits. But it's a full variety of problems, of transactions, some foreclosures, a lot of recapitalizations and a lot of joint ventures – it's a full gamut of work.

Can you give me an update on where the 432 Park Avenue case stands?

Nowhere. Anytime you go into litigation it is a cumbersome process. Right

now, there are a variety of professionals being brought into the case, on various allegations. It's really unfortunate that we got to the point that we're in litigation. The developers always said that they wanted to facilitate any necessary repairs. So we're now in the cumbersome process of getting all of the relevant parties at the table, and then discovery is going to start. It's just unfortunate that we are where we are. Nothing dramatic has happened.

Are there any unique legal challenges you've been seeing in your deals due to rising interest rates?

I'm not sure there are legal issues as opposed to business or transactional issues. Right now, there's a lot of uncertainty as to the cost of money. There are quote-unquote rumors flying around that some of the money center banks are not making portfolio loans anymore. The CMBS markets are quiet because of the uncertainty of rates. So you've got a few things converging: the uncertainty of pricing, asset classes and office buildings — do people want to keep on investing in office buildings and where do they want to invest? There needs to be a greater alignment between the asking and the offering prices. And that'll happen as the interest rates change.

The majority view and certainly my view is that interest rates are going to go up clearly for the next year or 18 months. I'm an optimist by nature, and I think that even though interest rates will go up it's not going to be so out of control. But I think that the market needs to get comfortable. The market needs to see that lenders are making balance sheet loans again, or more of them. There certainly are balance sheet loans being made based on relationships with high-quality borrowers. There's an awful lot of money looking at real estate. At least the investors that I talk to are all saying that they're seeing a greater allocation of funds going towards real estate. It's become so sophisticated that you can find almost anything you want in terms of potential returns versus risk.

Have you noticed a change due to the pandemic in the conditions that are in land or development deals, or even condos and real estate transactions more broadly?

Yes, from a legal point of view, there are

clauses where a pandemic becomes part of perhaps force majeure, and that's something to negotiate. There's more discussion of a pandemic when you're talking about time deadlines, because we've seen that the business world may not grind to a halt, but it will stop. People may not be going into offices — which, by the way, is driving me crazy.

It's less from a legal provisions point of view than from a practical realization: Everybody has a different opinion about whether people are going back to work at the office or not. Everybody is waiting for a big employer to set the tone. Law firms are waiting for the bigger firms to set where the market is. Until that happens — and I hope it happens soon — nobody's quite sure who's going to be back in the office. I'm glad I don't have to rent space right now, because I don't know how long to rent it for, or how much the rent is for. And that uncertainty is hitting the office markets.

Do you think the pandemic becoming a part of force majeure will become standard practice?

I think that there are going to be legal provisions that will have a lasting life as a result of the pandemic. People are looking at lease termination provisions in spaces, and there's been some good case law that has said a lease is a lease and tried to allocate the risk. What's more interesting is renters during the pandemic were, by and large, rational and smart, and they didn't rush to enforce revenues, because it wouldn't be clear what the courts would actually do. We still have a pandemic, in a different sense. In April or May of 2020, nobody quite knew what was going to happen. The pandemic is different now, it's qualitatively different. Yet there were fewer people in [my] office today, I think, than there were in May or June. Maybe it's because of the summer.

Do you still feel that return to office is important? What is Kramer Levin's plan right now?

I do think it's important that people be in the office. I'm not going to say it's critical that people be in the office every day. I think that there needs to be a few days of the week when people are in the office and they interact, especially for lawyers. If they're chatting with their colleagues, if they're comparing notes, even if they're trading war stories, there

is still knowledge and experience being transferred. It's easier to tap that experience and knowledge if you're face to face — it just is.

I think Fridays are a thing of the past. Hopefully, Mondays through Thursdays we'll come in, but I'd like people in two or three days a week when they're all together. Kramer Levin has a policy right now that people are supposed to be in the office three days a week, and I have requested that my group — my lawyers and paralegals — be there at least two of the same days. But I noticed that with the last wave of the variant, more people are getting [COVID-19]. People's children or spouses are getting it. So that has impeded the return.

I'm hearing that some of the large firms — and this could be a rumor — have given up with August. Their position, whether they announce it or not, is August is remote, Christmas week is remote, Thanksgiving week is remote, but we want people back in the office starting right after Labor Day, on some basis. But I don't know. There are a lot of people coming in with COVID in one form or another.

How worried are you and your clients about the demise of 421a and the lack of a replacement so far?

I think it's problematic and shortsighted. History has shown us that these sorts of programs can be a benefit. Programs like 421a, if shaped a little bit, could have a profound beneficial effect on the city. I'm hopeful that the legislature will realize that these benefits are not a giveaway. It's a tool of government. And we want to build housing. We need housing in the city. The cost of renting an apartment in the city, wherever you are on the economic spectrum, is unbelievable — it's crazy. We need affordable housing.

So I think programs like 421a can and should be a tool. I'm an optimist. I'm assuming that the legislature will come to its senses and realize that you need the jobs, the housing, and that it's not going to come from thin air. The government's got to provide these incentives.

I'm wondering if you see any zoning changes that could be good for the city considering the abundance of office property and the lack of housing? How practical, from a legal standpoint, is converting office into housing?

I've had a handful of conversations with

Dan Garodnick, who's the chair of the City Planning Commission, and I think he and the city have the right vision. They recognize the need to adapt the zoning and to adapt the process to facilitate things like that. The conversion of office to hotel or office to residential is a location-by-location item. It's not one size fits all. I think a lot of the Class B office space is still valuable. It will still rent, but there's a lot of it. But a lot of the Class B buildings are relatively narrow and don't have side windows. Zoning isn't going to cure that. But I think that Garodnick, the city and the mayor are not afraid of using the rezoning tool, which I think is a terrific, terrific thing.

You are on the board of the affordable housing provider Phipps Houses?

I spent some time devoted to Phipps. We have close to 10,000 units that we already own and manage. We've got another several thousand in the pipeline being developed. It's a terrific organization and provides not only affordable housing, but there's a social network social component, which we call Phipps Neighborhoods, and they provide job and vocational training, after-school programs, summer programs and all sorts of social service-focused activities. I ended up being introduced to them

because I sued them a couple years ago. But they realized we were right.

Why did you sue them?

I sued them for a client. The client felt that they and Phipps had a development in a very strong part of Manhattan, and, if they started to take non-subsidized people in that project, it was so well-located, that the revenue generated from that would wind up being able to help Phipps do so much good elsewhere. They eventually wound up selling that development and put that money in the endowment.

I noticed that you signed a letter along with more than 2,000 other lawyers in support of a woman's right to an abortion. Why did you decide to speak out about that issue?

I view it as a basic right, and I'm allowed to have views as an individual, not as a lawyer. I think it's important that people express their views, and I feel very strongly that a woman's right to an abortion should not be a political issue. It should not be interfered with. I view it as a basic right.

Last time you chatted with Commercial Observer in 2016, you described your relationship with Donald Trump as "terrific." Are you still working with

him, and do you think your experience representing him and the Trump Organization impacted your other relationships in the legal field?

I am not representing him. I haven't represented him in several years. And the transactions I did with him were exciting, fun, challenging, and I don't believe it has had any impact on anything else. A lot of people know that I represented him for many years and did virtually every one of his deals. But I really don't discuss politics.

Is there anything else you want to mention?

I love what I do. I love the people that I work with and represent. I love the challenges. I'm clearly a deal junkie and I'm happy to talk to clients or prospective clients almost 24/7. My family has been incredibly supportive of it. Both of my sons are in real estate, and my wife is tremendously understanding because my phone rings all the time.

I'm having fun. I'm like one of the guys hanging out with my friends doing the deal. Part of it is I like the people that I do it with. I have fired clients. There are people that I just don't like and I don't want to deal with, so I don't. I'm dealing with people I like and I'm getting paid for it. How great is that?