



Lowenstein Sandler's Real Estate Podcast: Terra Firma

Episode 10: Navigating the New York City Retail Landscape: Trends, Tactics, and Tenacity

By [Julia Sanabria](#), [Stacey Tyler](#), [Stephen Tanico](#)

APRIL 2024

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- Kevin Iredell:** Welcome to the Lowenstein Sandler podcast series. I'm Kevin Iredell, Chief Marketing Officer at Lowenstein Sandler. Before we begin, please take a moment to subscribe to our podcast series at lowenstein.com/podcasts. Or find us on Amazon Music, Apple Podcasts, Audible, iHeartRadio, Spotify, Soundcloud or YouTube. Now let's take a listen.
- Stacey Tyler:** Welcome to Terra Firma Conversations on Commercial Real Estate. I'm Stacey Tyler.
- Stephen Tanico:** And I'm Stephen Tanico. Stacey and I are real estate attorneys at Lowenstein Sandler. On today's episode, we'll be talking about New York City retail leasing. Joining us in this discussion is Julia Sanabria, a partner in the real estate group here at Lowenstein Sandler and maybe one of the most badass attorneys I've ever met in my entire life, both a proficient retail leaser and big buck hunter.
- Stephen Tanico:** Thanks for joining us today, Julia.
- Julia Sanabria:** Thank you so much for having me. It's nice to be here.
- Stacey Tyler:** Welcome. So, we wanted to start this conversation just kind of broad strokes, thinking about the evolution of the retail market, especially in New York City, since that's primarily where we're practicing and just how that industry has really changed over COVID. We've really been hearing nothing but doom and gloom. And we're just wondering, what have you seen on the ground in this market in the past, you know, several years.
- Julia Sanabria:** So, I mean, it's definitely changed a lot, post-COVID, but we've stayed really busy in the retail market. I think there are a few things that have just been changing about what landlords are looking for and what tenants are looking for.
- Where we've see in the most growth has been in more experiential retail. So people have really tried to figure out what is it that we could do that you have to do in-person, right? That's not going to be replaced by Amazon Prime or whatever online shopping you use. So we've seen more exhibitions, you know, stores that will have some kind of show associated with it
- And the other thing that has remained incredibly busy for us has been restaurants. So, you know, people still like the experience of going to a nice restaurant. Big name chefs in the city still have a huge pull. And interestingly, even though that is an

industry that I think suffered more than a lot in the COVID times because people weren't going out to eat, it also meant a lot of space that was already built.

So we had done a lot of restaurant leases before COVID that built out beautiful kitchens, beautiful dining rooms. Unfortunately, the restaurants didn't necessarily survive during COVID because no one was allowed to eat there. But when people came back, it meant that you could, as a chef, take over a space without the huge investment of having to build out your own kitchen.

So we've been seeing restaurant leases really consistently throughout the last couple of years, notwithstanding what you hear on the news.

Stacey Tyler: That's nice to hear, especially for us who like going out to eat.

Stephen Tanico: Now, with those restaurant leases, because those spaces are already effectively constructed, does that change the kind of negotiation that occurs where without that kind of large initial capital investment by either the landlord or the tenant, are you finding it's easier to get a restaurant into a space that already exists or is still seeing some of the same problems or issues that would arise in pre-COVID restaurant full buildout negotiation.

Julia Sanabria: I think it's been a little easier. There's less concern about getting permits, doing the work. It just cuts off a lot of the time. That was uncertain time before, right? How long would it take you for the DOB to approve something? How many times would you have to go through the plans before the landlord approved? So it meant opening faster.

I think the biggest difference I've seen, and not exactly what you asked, but kind of in terms of how deals are changing and related, in terms of like the capital risk is we're seeing a lot more percentage rent heavy deals. So post-COVID, it's not unusual for us to see a lease that for a few years will be percentage rent only.

So that way the landlord is dealing with empty space, right, no one wants a big, beautiful empty restaurant at the bottom of their building or in their shopping center. But the restaurateurs don't have the risk of no one coming. So you're kind of both in it together. So with that, I would say economically, the biggest change that we've seen and then obviously landlords aren't having to give the huge tenant improvement allowance because a lot of it is decorative instead of structural or putting in kitchen equipment.

Stacey Tyler: Together with that percentage rent construct, are you seeing landlords agree to give a termination right to the tenant if they never cross a profitability threshold?

Julia Sanabria: We do sometimes, and usually there's a kind of lock in period where you have to give it a go for at least, you know, three, four or five years, whatever it may be. But yes, that's that's exactly what's happening.

The thing that we always have to be really cautious about is in order for a tenant to get that, they have to really be doing what they're supposed to be doing under the lease. Right. So you can't say, you know, I don't want this space anymore. I think it's not going to work. So I'm just not going to operate in order to get the benefit of that termination.

We really need you to be operating in the hours you said you're going to be operating fully staffed, fully stocked, all of that stuff, so that you can really both sides can feel

comfortable that you gave it a chance and you tried to make it work. And, you know, for forces kind of without outside of your control, you couldn't.

Stacey Tyler: So that seems like a pretty significant shift in bargaining power just at deal terms in general in the market. Are you seeing any other kind of ways that deal like power contract is changing post-COVID?

Julia Sanabria: I think generally, you know, the tenants are doing better than they were before. I think we're actually starting to see that shift back a little.

I think people are leaning into retail more than they were previously. We've seen it in our deal flow. We've seen it in the structure of the deals. I think, you know, a lot of them are getting better for the landlords than they were a few years ago. So it's been really interesting, especially, you know, we do a lot of shopping center leases, seeing the tide turning a little bit that the landlords, I think, are getting better deals than they were in the last couple of years.

Stephen Tanico: To an amateur like myself, it would seem kind of even just walking around New York City, that shopping center, retail has really kind of come back stronger than like ground level retail you see just on the street. Are you seeing that as well in your practice or am I just walking in the wrong neighborhoods in Manhattan?

Julia Sanabria: No, I think you're right. I mean, and I think the reason for it is if you're in a shopping center and the shopping center is doing well, you're picking up all those other customers, I think and this is something we've seen turning a little bit and maybe we can talk about another podcast, but the offices do, at least from our perspective, are coming back more in midtown Manhattan.

But for a long time, post-COVID, they weren't. So you weren't necessarily having the people walk by, right, that you would get otherwise to see your storefront and come in. Whereas in the shopping center, if you know people are going there because, you know, there are great restaurants in that shopping center, they're going to have to walk by the store.

So it's driving foot traffic in a way that I think is more appealing to the tenants than some of the street retail has been.

Stephen Tanico: In terms of these shopping center leases. You know, we met we talked about experiential becoming kind of more prevalent now. Are you seeing a change in what would be considered a traditional anchor tenant in these shopping centers and now post-COVID?

Julia Sanabria: I would say yes. In that department stores, from what I've seen, are just less prevalent generally. So I think there is more of a drive for that to be something experiential also. And you know what? That may be, whether it's a museum, you know, we've done a bunch of anchor tenants recently that are art exhibitions and it's not something we typically would have seen in a shopping center, but people come to see it and it's something you can't see at home so much like we were talking about with the street retail.

So much of this is about what's going to actually get people to come in and walk by the stores and see something in the window that they make them want to go into the store. So I do think that that's shifting a little bit as well.

Stephen Tanico: Fascinating, because the other part that's so interesting is I would assume an art exhibition hall is a pretty similar big box or space, the department store versus, you

know, a smaller retail store being harder to fill outwards as opposed to wanting less space. You know, we're seeing things go online and, you know, retail stores in some ways just acting almost as like a brick-and-mortar advertisement for a company than traditionally holding retail and selling retail. In that sense is something like an art exhibition hall. Do you think able to sustain in a shopping center for a period of ten years as opposed to just kind of a more prominent fad that's occurring in retail markets right now?

Julia Sanabria: Well, it's hard to say right.

Stephen Tanico: Exactly, if we had that crystal ball, we'd all be doing different jobs right now!

Julia Sanabria: Exactly right now. I mean, I do think that it is something that people have been interested in for a long time. And I don't think we'll stop being interested in something that's for sure, out of my wheelhouse. But how much of that becomes more, you know, Internet driven and all of that? I think time will tell. But I do think people still enjoy seeing certain things in person, and now it's just about being really thoughtful about what those things are and what is a different experience.

As someone who loves art and does a lot of charity work with art, I'd really like to believe that people want to keep coming to see art, and I love seeing it go in that direction because I think it's wonderful to have kind of the consumerism of the shopping center, but also the educational part of having like an art exhibition.

So I don't know, but I'm really hopeful that that is something that like kind of stands the test of time.

Stacey Tyler: I've seen even in the malls near where I live in New Jersey, where there has been a huge drop off just in tenancy in general, lots of vacant space. That seems like a lot of operators are retaining a lot of those spaces that go vacant and doing pop ups or other kind of like more like common area amenity type things for just the people to be there, you know, like a little playground or something like that in a mall.

Are you seeing that happen in the city where there's kind of different amenity spaces popping up?

Julia Sanabria: Definitely. And we we usually structure them as licenses because they're short term. But absolutely. And sometimes it is things a lot of times driven towards kids. You know, they might have a short-term thing around the holidays that the kids can come in and take pictures or there's cool holiday lights or whatever.

But again, always just thinking about like how do you get people to leave their houses, especially to then spend the time and walk around the mall. So I also have seen something that's been interesting to me as I've done more shopping centers, is the focus on where in the shopping center things are. So you'll notice sometimes, you know, all the restaurants will be on the top level and you might think like, that's kind of strange.

Maybe they want it separate. But really what they want is for you to walk through the whole shopping center in order to get where you're going. So I think you'll see some of those experiential things sort of, you know, scattered throughout the shopping centers so that it does drive foot traffic past the other stores.

Stephen Tanico: Those are fascinating because, you know, shopping centers, particularly in New York City, almost seems like a newer concept as opposed to, you know, even pre-COVID, the development going on in the Middle East and like places like Dubai, we're talking

to developers out there. It was all experience whole. And that was like Museum of Ice Cream, museum of this, whatever they could get their hands on experientially in these shopping centers.

And it's interesting seeing that kind of pull back to New York City now, where it's still a little bit weird in some ways going into a shopping center to go to a restaurant, for example, for dinner, where in many other parts of the world that's the expectation and absolutely common practice. Have you seen anything in terms of talking to your clients where they're shifting, how they think about these developments in these shopping centers in terms of whether it's something kind of traditionally American or they're pulling from other successful shopping centers around the world.

Now, what works or is work there that might work in New York City?

Julia Sanabria:

This is interesting, I think they are pulling from other places because I think you're right, historically with a few exceptions, you would think it was strange to go to a shopping center in New York to go to like a very high-end restaurant. So, I think they're definitely getting inspiration from other places. I think a decent amount of actually comes from California and the outdoor malls there you see that kind of mentality where, you know, if you're on the West Coast, it's maybe less uncommon to go to a shopping center.

It would be probably outdoors plus indoor just because our weather's better, better parking. Exactly. But yeah, I think people are really just trying to figure out what is going to be most successful long term. Something interesting I've noticed, probably unrelated to my work, but just kind of following what my clients are doing. I think it's not just the post pandemic getting people to come out again.

I think it's also like social media taking over and what draws people to places. So you will see. I mean, I'm sure, you know, Stephen, you see in New York, everyone takes their picture by the same wall and you're like, where is that wall? And inevitably it's like either in a shopping district or in a restaurant. So I think that people are tailoring things that more like, do we have things that people are going to want on Instagram?

And that's a lot of times what you'll see in the pop-up spaces, right? Like what I never would have imagined just because I, you know, social media wasn't a thing, but stores that the entire point like the museum of ice cream. Right. Like I feel like those stores exist primarily so people can take pictures and post it on their Instagram.

So I think that's also like using social media to get people to go to certain stores in a more organic way of like people just taking pictures and tagging the store has been driving a lot of change from what I've seen.

Stephen Tanico:

Now that makes complete sense. It's wild having gone from, you know, graffiti on the street in Soho to now like an entire space being effectively built for social media. I've definitely seen some new, you know, air quote, hot restaurants in New York City, where it seems to be entirely driven by social media hype at the behest of the food in some instances.

And the food lived up to the hype in some instances. Yeah. You talked about short term licenses earlier. I just want to circle back to that because I feel like particularly the beginning of COVID, a lot of what we saw in the leasing market was subleasing. I don't I can't be in this space anymore. I need to give it to someone else.

I need to get out of this. Are you seeing is the licensing following a similar pattern where it really is a existing tenant that no longer can operate? Or are landlords just

entering into these direct licenses? Even though, less time understanding the value of having this experiential space, for example, on a short term is better than having nothing at all or a long-term tenant that's not functioning or operating.

Julia Sanabria:

Yeah, I from what I've been seeing, it's mostly direct with the landlords. So I think it's that I think it's either things that are seasonal by nature, so it doesn't make sense to have like, you know, maybe you put some kind of exercise thing on an outdoor plaza that like obviously you'll get less people in December than you would in July.

So sometimes it's driven by that, sometimes it really is, as you see more kind of like new brands emerging and things like that where it's their first time going into brick and mortar. Right. They're not sure. They don't know how it's going to play. They'll do a short term license and maybe the landlord gets in with a brand new brand that is going to take off.

And everyone loves it and they've established a relationship already. Or, you know, maybe it is more of a flash in the pan, but people are coming into the center anyway to see it. And so it's been interesting in that way. And I think what you said earlier, we see a lot of it. It's almost like an advertisement. It's like, you know, you're going to pop up for three months and everyone's going to see the store and everyone's going to see on Instagram.

And it's so exciting. And now everyone knows you are so that word online. So maybe they don't need the brick and mortar anymore, but it still served their purpose. Then, just like flooding people, you know, with ads on their social media.

Stephen Tanico:

Do you think landlords are more receptive to this kind of shorter-term agreements as a product of just post-COVID? The landscape change or just an understanding that, you know, a traditional ten-year lease is just not going to work regardless because of social media and the Internet kind of and the the play that has on commerce and e-commerce in particular.

Julia Sanabria:

So I think at least from what I've seen, probably started as a reaction to COVID, especially when you deal with shopping centers and they have co tenancy provision. So, you know, stores want to be guaranteed that there's all their stores in the shopping center, right, because it doesn't help you if somebody has to walk through four floors of empty stores to get to you.

So I think initially it was like, how do we fill these stores? How do we make sure that this is still a vibrant and functioning center? But I think people have also really come to understand the value of those deals. And I think in some ways they're sought out, especially, you know, not to tie it again to social media, but a lot of it is what is like the hot new thing.

And if you want the hot new thing, they may not have the credit to sign a ten year lease that your lender is going to approve. They may not make sense for either of you to commit to that kind of long term relationship. So I think it kind of serves both parties and maybe it turns into something and maybe it doesn't.

Stacey Tyler:

So you raise an interesting point. Just talking about it sounds like there's a lot more permutations of deal that we're seeing now. Just for all of these reasons that we're discussing. And I know in our experience we do see both sides of this. We represent landlords and tenants. And I feel like, at least for me and I'm sure you have a lot to say on the subject, there's such a huge difference in the creativity that is brought to a deal just based on who each party has on their team to help them navigate it,

especially with, as you say, a tenant who might be kind of growing, coming into the space.

Their team that they have representing them can really help navigate that deal. So can you talk a little bit about how you select your team, you're your broker in particular and what you see as the value add that those people can bring to a deal?

Julia Sanabria:

It was interesting because I see all levels of broker involvement in deals and if you find the right retail broker, I think you can make a world of difference.

You know, we have a few brokers we work with regularly who are wonderful, and I think the thing that stands out most about them is they understand the tenant's business, particularly on the restaurant side. So if you can get a broker who's going to walk the space for you and understand from a technical standpoint what you need, you know, for your kitchen, what you need for your exhaust, all of that kind of stuff, that saves you a lot of time to begin with because they're only looking at spaces that make sense.

But even more than that, like actually understanding the business. And it helps on both the landlord and the tenant side because I've had, you know, some of the brokers who I've had the best experience with be like, Listen, you can ask for this, but it just doesn't make sense for them. And they're not arguing against the interest their own client.

They're trying to explain what makes is going to make the best deal for everyone. And that really comes with really understanding the business, understanding how their profits work, understanding what's going to drive business to them and what isn't. So it's funny how like a broker I think can make a world of difference in terms of like the deal getting done efficiently and really understanding where the landlord or tenant should and shouldn't push and what really matters.

And particularly, I would say on the restaurant side, and it's especially true in New York, but I think true anywhere a broker who understands liquor licensing and how that whole process works, because the last thing you want to do is get all the way done with the deal and understand that like something the lawyers have negotiated, it makes it so, you know, they're not going to get their liquor approval.

And so knowledgeable brokers, I would say, is like probably the number one thing to get your deal done efficiently.

Stephen Tanico:

You particularly see it with newer tenants if they're entering a lease for the first time, kind of having the guidance of a knowledgeable broker really keeps the train on the tracks in some ways and then progresses. I think the deal much quicker towards signing than getting lost in the weeds on random, you know, less negotiated provisions. But for some reason someone on the tenant side is hyper focused on it and it's almost impossible to get them off of that particular point.

And you can find it really will destroy a deal over something that really shouldn't have been an issue to begin with. Are you also seeing now I mean, obviously a knowledgeable broker is going to be knowledgeable about a whole bunch of stuff, but almost more niche retail brokers popping up where it's I only specialize in experiential spaces, I only really specialize in restaurants and kind of a even more niche expertise finding a path these days in New York City.

Julia Sanabria:

So it's interesting. I would say yes, on the tenant side, the landlord side, usually it's kind of building by building and you know, whatever makes sense for that building is

who they're going to use. So but on the tenant side, absolutely, We deal with a lot of brokers who only do restaurants and they understand restaurants in ways that you would not expect a commercial real estate broker to understand restaurants.

I think when you start getting into more kind of like general dry good retail, then it's a broader spectrum. And there I would feel like maybe neighborhood is the most important is you want a broker who really understands the neighborhoods, so they know, you know who's shopping there, why they're going to that neighborhood, when they're going to that neighborhood.

But absolutely, on restaurants, I think, you know, there are tenants and, you know, especially for the restaurants that are expanding rapidly, if you are the broker for a restaurant, whatever one you see popping up everywhere, it's a lot of your time. Right. And you're kind of following them wherever they go. And a lot of those, you know, kind of fast casual restaurants will use the same broker across all their markets.

So it could become, you know, a big part of your time on your job is servicing kind of one client. If you end up being in that kind of situation.

Stephen Tanico: That's fascinating. So a broker going across market would really be more of an expertise in the industry than the area. Yeah. Does that have any kind of drawbacks as you kind of move to a more national market with a more niche broker who might specialize in one area but an expert in restaurants, for example? Or do those issues kind of translate across the country?

Julia Sanabria: So I think the technical issues translate right? So they understand this. This tenant needs this in every lease period. Right. And you guys know their stuff that, like some clients care so, so much about and other clients like, why would I care about that? Why are you even raising this as an issue? So they have the benefit of that and that doesn't change across markets.

But I think what does happen, what I've seen happen is they'll kind of team up with a local broker, just like we might use local counsel if we were doing a deal that required like a mortgage in a state that we're not familiar with, we would engage someone there. The biggest brokerage houses can do it obviously in-house, but often you'll see them pair up with boutique firms that it's more local to the market so they can speak more to, you know, what's driving foot traffic to this area.

But they may not be able to say, you know, X restaurant always needs outdoor seating. They always need this whatever is specific to their brand.

Stephen Tanico: Interesting. So have you seen, and this is really just in reaction to what you're saying, tenant or entities bringing brokers in-house, even if they're not real estate companies so that they can kind of directly work on this full time as opposed to what it sounds like being an in-house broker but working kind of as an out-house counsel effectively.

Julia Sanabria: Yes, we've definitely done deals opposite like national tenants, that it's their in-line brokerage company. Maybe it's one person. It depends on how big the tenant is, but yes, and then they'll engage with the outside brokers who maybe know the market more. But it's almost like dealing with an in-house counsel.

Stephen Tanico: Yeah, fascinating. And is that a relatively new experience or have you seen that kind of throughout your career, particularly with bigger tenants?

Julia Sanabria: I've seen it throughout. I would say that the brokers sort of straddle a little bit like brokerage and like more pure business. So they sort of serve both functions. But a lot of times it's people who start in the brokerage community and then move into the business side. So I've seen it here and there. I wouldn't say it's like incredibly common, but we've definitely seen it with some of the bigger tenants.

Stacey Tyler: It certainly makes negotiation easier when they already speak that language. Exactly. So we're getting about to the end of our time here. But for our last question, we just wanted to hear if you had any kind of big ticket, big picture advice for a tenant who's getting ready to go into their first kind of retail negotiation, anything that you would encourage them to pay more attention to than they might otherwise think?

Julia Sanabria: I would say definitely like understanding the building process of wherever they're going. So we see this a lot doing most of our work in New York City, oftentimes with tenants who are not based in New York City. And it may be their first-time coming in. And we will talk to their attorneys and there's a lot of things that, for better or worse, are New York specific.

So, you know, we have a pilot payment in lieu of taxes. Right. And that comes up all the time in our deals in New York. And people like what? What is this like, why are you making me read this thousand-page document? So I think like making sure that you're hiring someone who can negotiate those provisions and understand them saves a lot of time.

I feel like a lot of times we'll be talking to someone and explaining something that we're used to, people not even asking about because it's so commonplace in New York and the lawyers asking about it are right, Right. They should be asking these questions. It does look really weird. But to the extent you can hire somebody who has dealt with these things before, who has represented other tenants in New York, if it's your first time in New York, I think it probably saves you more time.

Even then, having somebody who has done every one of your deals and maybe they do it together. But I do think like there are just some things that I mean, you guys must see it all the time, too, are just weird in New York and it's like, it sounds terrible, but it's not. It's just the way it is.

Stacey Tyler: It's hard to have that conversation, too, when they're saying this makes no sense. And we're just saying, well, it's market that's we're just going to win this. Sorry.

Stephen Tanico: I try to remember when I'm seeing leases in other places. I think it's in California where I just saw a glaring like asbestos warning. I was like, this can't be good. And it's like, "no, no, this is totally market." Everyone just ignores it. And it's like, but it's all in bold and capital letters.

Julia Sanabria: Yeah, it's just like, I don't know. That's right. It's like we see stuff like that in Florida too. I mean, I feel like when you get your like mattress in the mail and it's got like terrible things on it and you're like, okay, like, I mean, what are you supposed to do? But it is for California.

Stephen Tanico: Awesome. I think that about wraps it up today. So thank you, Julia, for joining us and helping us get smarter on New York City and kind of general retail leasing.

Julia Sanabria: Thank you guys so much for having me. It's been a pleasure.

Stephen Tanico: Thank you, listeners, for tuning in today. Be sure to like, subscribe and follow Terra Firma wherever you are Listening to this episode, Stacie and I would love to hear

from you, so feel free to reach out to us at Terrafirma@lowenstein.com. Until next time.

Stacey Tyler:

Ciao

Kevin Iredell:

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