

ALBERT VALENCIA QUOTED IN LAW360 ON ROLE OF MAC CLAUSE IN TERMINATING A

08.19.2020

Law360

Albert Valencia, Co-Chair of ECJ's Real Estate Practice Group was recently quoted in a *Law360* article titled, "What To Watch As Simon Looks to Exit \$3.6B Taubman Deal."

The article discusses Simon Property Group Inc.'s efforts to get out of its planned \$3.6 billion acquisition of indoor mall operator Taubman Centers Inc. Simon's argument includes the material adverse change (MAC) clause, which allows parties to terminate agreements if an adverse change occurs after the deal is signed.

Retail, real estate and operational issues are being raised during a time that indoor shopping malls are struggling due to the coronavirus pandemic. According to Al, the court could be seen determining that "the MAC clause does not apply because Taubman was not affected any greater than any other indoor mall holder". He adds that the court might also say Taubman was disproportionately affected if compared to every other retail real estate owner.

The MAC clause does not mention a pandemic and there is no precedent when dealing with a global health crisis like this one. "It does seem as if they're posturing for what could very well be a long and expensive legal battle," notes Al. "Typically the courts frown upon this. They don't want a buyer to have an automatic out."

Access the full article here (*subscription required*).

PROFESSIONALS

Albert C. Valencia

PRACTICE AREAS

Real Estate