

We trade as Phatboys Thai, and currently run three Thai takeaway shops, two within shopping centres and one in a busy precinct above a railway station.

We have been in business for just over ten years, and within that time we have had five separate retail leases, of which three are current.

We also own a small shop which we lease out, under the terms of the NSW retail tenancy act.

Fortunately our businesses are doing well, and we have no issues with any our landlords. Our own tenant has had some business issues, but at the time of writing, things seem to have sorted themselves out.

We wish to make some relatively simple points to the Productivity Commission.

Nobody has ever forced us to sign a lease. We look at each opportunity to open a new shop on its merits and make our own best assessment of how busy a particular location is likely to be, the amount of competition there is, the likely demand for our products, and whether or not the rent represents good value for money for us.

Over time we have become extremely selective, and turn down many more opportunities than we accept. One of our family jokes concern Westfield: How many times do we have to turn them down before they stop asking us again? (We are up to fourteen times over the past five years!) Its not that we don't like them, they just have not offered us the right shop yet.

Before a shopping centre landlord will accept us as a tenant, there are many conditions we must meet. Most of these conditions imposed are quite reasonable and include things like:

- They want to agree the design concept of the shop that we propose to put in the tenancy, to insure that it matches their standards and all of the legal requirements with respect to construction and occupation certificates. Typically for us this means that we end up investing about \$4000.00 per square meter in shop fitting.

- They impose a time limit for the construction of the shop (typically one month)

-They require a bank guarantee or a retail bond, typically for three months rent and outgoings.

We have no objections to any of these conditions, they are just standard business practice. What it does mean however, is that we have to invest (or if you prefer, gamble) roughly \$300,000 in each retail outlet before we make a single sale.

For our part, each time we take on a new lease, we do it through a separate company. This is a common business practice amongst many retailers, to mitigate the risk of taking on a lease commitment for a business that might fail. If for example, we invest our \$300,000 in a non-performing shop, this gives us the option of putting the company that that shop relates to into administration or liquidation after a year or so, to stem our losses and to get out of the lease commitment, and to protect the rest of our business.

Many less experienced retailers do not do this, and sign a lease in their own names, or have all of their leases within one company. Both courses of action can be a recipe for personal and business disaster.

To counteract this trend of putting leases into separate companies, we have noticed recently that landlords will ask their tenants to provide personal guarantees for a lease. When we have been asked to provide such guarantees, we have always refused to give them, on the basis of our investment in the shop, and our bank guarantee should be sufficient to persuade any landlord of our commitment to our business in their centre. WE HAVE NEVER BEEN REFUSED A TENANCY BECAUSE WE HAVE REFUSED TO GIVE A PERSONAL GUARANTEE.

Many less experienced retailers would be persuaded to give a personal guarantee, and this can end up being a source of many personal disasters. My single point to the Productivity Commission is this:

It should be made illegal for landlords to seek personal guarantees from their tenants for a lease.

It may well be that a consequence of this is that larger bank guarantees are sought by landlords. That is not necessarily a problem since in my experience everything is negotiable.....

I hope that this submission helps