

Weekend MBA:
closer than you think

CRAIN'S DETROIT BUSINESS

Detroit and Southeast Michigan's premier business news and information website

Advanced Search: Detroit Business»

- Home
- This Week's Issue
- News
- Crain's Awards
- Features
- Lists/Resources
- Columns
- Blogs
- Events
- Video

Welcome FREDERICK MARX! [PROFILE](#) | [ACCOUNT](#) | [LOG OUT](#) | [Detroit Jobs](#) | [Free E-Mail Signup](#) | [Subscriber Service](#) | [Mobile](#) | [Contacts](#) | [Advertise](#) | [Classifieds](#)

October 03, 2010 8:00 PM

A&P stops rent on Farmer Jack spaces: 24 lawsuits filed; owners in default

Like

Nearly three years after the **Farmer Jack** stores left metro Detroit, the chain's parent company is trying to walk away from nearly \$150 million in unpaid rent across the region, according to a Crain's analysis of lawsuits and property records.

Great Atlantic & Pacific Tea Co. Inc. has stopped paying rent on nearly 2 million square feet of retail and industrial space locally, triggering 24 lawsuits.

As a result, owners are in default on their loans and worried about losing their buildings in the coming months.

Representing five cases against A&P, attorney Michelle Harrell said the cases are fairly unusual actions for a company not in bankruptcy.

"This is very bold as a large-scale strategy for a company to abandon Michigan," said Harrell, managing shareholder in the complex litigation group at Southfield-based **Maddin Hauser Wartell Roth & Heller PC**.

"And now it's having a domino effect because landlords aren't getting paid, so they can't pay their lenders and they can't pay expenses to maintain properties for the tenants who are left."

Lauren LaBruno, senior director of public relations for A&P, was contacted by *Crain's* and did not comment on the issue.

Farmer Jack grew out of a single store founded in 1924 in Detroit by immigrant Tom Borman and grew through a series of acquisitions and expansions before it was acquired in 1989 by Montvale, NJ.-based A&P.

CHRISTINE LASEK, CRAIN'S DETROIT BUSINESS



A&P has stopped paying rent on nearly all of its local long-term leases, including for this former Farmer Jack store on 7 Mile in Livonia.

WHAT THEY OWE

Before the **Farmer Jack** stores of metro Detroit were closed, parent company **Great Atlantic & Pacific Tea Co. Inc.** signed long-term leases with landlords across the region. As lawsuits are filed by the landlords, the losses are adding up. [Here are the stores and the amount of money owed for the duration of the lease.](#)

Be included in *Crain's* Philanthropy issue with

The **CRAIN'S DETROIT BUSINESS**
Giving Guide

Reach an audience with an average net worth of **\$1.9 Million plus**

[CLICK HERE to learn more](#)

Full run in Oct. 25 issue **PLUS 400 bonus distribution.**
ISSUE DATE: October 25 • CLOSE DATE: October 12

Buy Crain's 2010 Book of Lists extended Excel version online today!

A one-stop download of our marquee 2009 lists in Excel format. The lists include ranking and full contact details where available.

In 2007, A&P decided to leave the region, vacating 66 stores. Twenty were either bought or leased by **Kroger Co.**, and several others have been leased or subleased.

There are 27 stores remaining under long-term leases, with some running beyond 2020, according to a list of stores the company released in 2007. Leases are in the name of **Borman's Inc.**, the Farmer Jack parent company prior to A&P.

For three years, A&P had been paying the rent and seeking subleases until letters started arriving in June.

Most landlords got the same letter, from Mark Krynski, a partner at the Southfield law firm Southfield-based **Jaffe, Raitt, Heuer & Weiss PC.**

The letter says that Borman's "has decided to return possession of the leased premises" to the owner and that the company will "cease paying rent." It added: "Enclosed please find the keys to the front door of the locked premises."

Krynski declined to comment.

That letter was cause for nearly all of its recipients to file lawsuits, alleging breach of contract, among other charges.

Typical leases are 20-year terms that are guaranteed by A&P, meaning the company is legally required to pay the rent for the entire term.

A&P's answer to the lawsuits offers no explanation of why the company is walking away from the leases. In the legal briefs, the company denies allegations of breach of contract and states repeatedly that "the lease speaks for itself."

Harrell believes the strategy is a ploy to negotiate down the unpaid lease liabilities.

If a landlord, for example, has a loan on a building with a clause requiring a personal guarantee of \$4 million, he is liable to pay that amount if the building goes to foreclosure, she said. In that example, if A&P owes \$9 million in back rent, the landlord may be willing to bargain.

"So A&P can come to the table and say, 'OK, you're not going to get the \$9 million, but you can get \$4 million and be able to walk away from your guarantee,'" she said.

Several property owners are in default on their loans.

The Jefferson Village Shopping Center has lost several tenants since it was fully occupied when Farmer Jack pulled out in 2007. Now it is in default on a \$15 million loan, said Charles Allen, managing partner of Detroit-based **Graimark Realty Advisors.**

Allen built a 65,000-square-foot store in 2004 for Farmer Jack. It's been empty since 2007 and will be in foreclosure soon, he said.

"We went in on nothing but good faith," he said. "They've shown a complete lack of faith."

Similarly, the Colony Park property in Dearborn Heights at Warren Avenue and Garling Road went into default on a \$5 million loan in August, according to Wayne County property records.

Landlords and real estate sources say at least five other former Farmer Jack properties are in default.

The landlords involved range in size. Some are individuals who own one formerly Farmer Jack-anchored strip center and nothing else; others are international real estate companies with massive portfolios.

Downsview, Ontario-based **H&R Real Estate Investment Trust**, for example, owns stores in

Meet the 2010 class of 20 in their 20s

Crain's Twenty in their 20s

- Check out their profiles
- Watch the video

[go »](#)

Livonia and Canton Township, purchasing them for \$12.7 million and \$15.3 million, respectively, according to data from Bethesda, M.D.-based **CoStar Group**.

H&R owns eight buildings leased by A&P in Ontario and is one of just two owners not to file a lawsuit against the company. H&R CEO Tom Hofstedter was traveling last week and unable to respond to a request for comment from *Crain's*.

Members of the Gershenson family, which founded the Farmington Hills-based real estate investment trust **Ramco-Gershenson Properties Trust** (NYSE: RPT) own a building in White Lake Township.

One lawsuit is filed for an industrial property, a 385,000-square-foot warehouse in Livonia owned by New York-based **Ashley Capital LLC**.

The firm built the warehouse for Farmer Jack, outfitted with an expensive set of refrigerated areas, said Sue Harvey, senior vice president of the firm's metro Detroit office in Van Buren Township.

When Farmer Jack left, the firm found a sublease for the building, but there is a large gap between the rent paid by the sublessor and what was paid by Farmer Jack. That difference had been paid by A&P for three years and stopped in June.

"It's frustrating," she said. "We've had a great relationship with A&P, and there was no heads-up at all."

Representing Ashley Capital is the Farmington Hills law firm **Taubman, Nadis & Neuman PC**, which has a total of four A&P cases.

Partner Phillip Neuman said the purpose of having a lease is to ensure a payment, and the law is very clear.

"I've never seen anything like this," he said. "Every other real estate attorney I've spoken with is baffled by this."

Neuman said A&P's strategy is still unclear.

"At this point, there's just a lot of speculation," he said. "Nobody has heard an explanation. Will they go bankrupt? What's their strategy?"

A&P has had a tough decade, financially. The company has posted net losses of \$122.6 million, \$171.4 million and \$559.6 million for the past three quarters. The company posted full-year net losses in its fiscal 2010, along with 2009 and 2008. From 2000 to 2010, the company posted a positive income only in 2000, 2006 and 2007. A recent attempt for a turnaround came at the expense of Ann Arbor-based bookseller **Borders Group Inc.** (NYSE: BGP). Ron Marshall resigned as CEO of Borders in January to take over as CEO of A&P.

However, Marshall was replaced in July after sales continued to slump. Named in his place was Sam Martin, former COO for Naperville, Ill.-based **Office-Max Inc.** (NYSE: OMX). Martin remains CEO.

The company's vacant buildings have added to the stock of empty retail spaces in Southeast Michigan, preceding the closings of **Circuit City**, **Cost Plus World Market** and **Steve & Barry's** stores.

In the case of the empty Farmer Jack stores, there are not many retailers looking for space right now, said Randy Thomas, president of Southfield-based **InSite Commercial Group**.

"Any large space, in general, is going to be difficult right now because there aren't a lot of secondary users expanding in metro Detroit," he said. "Over time, the landlords will need to make the spaces smaller or find other ways to respond to the market and get those filled."



“But it is going to be a while.”

Daniel Duggan: (313) 446-0414,