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Broker's filing rings up 26th local lawsuit over Farmer Jack

The flurry of lawsuits over former **Farmer Jack** stores continues with a commercial real estate broker now suing the closed stores' parent company.

On the heels of landlords claiming they have not been paid rent since June, a lawsuit has been filed by Farmington Hills–based **Howard Schwartz Commercial Real Estate LLC**, claiming **The Great Atlantic and Pacific Tea Co. Inc.** has not paid the commissions or expenses the firm is owed.

Schwartz's filing is the 26th lawsuit by a local company against the Montvale, N.J.–based grocery store chain.

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.

A&P had been paying rent on 27 stores in metro Detroit that are under long–term leases, with some running beyond 2020, according to a list of stores the company released in 2007.

In June, the company sent a letter to the owners of those stores, indicating it intended to stop lease payments, triggering lawsuits by nearly all the landlords.

In his complaint, filed Nov. 5 in **Oakland County Circuit Court**, Schwartz Commercial managing member Howard Schwartz said he was hired by A&P to find tenants for the portfolio of vacant Farmer Jack stores. He was to be paid a commission for each sublease deal

and then a bonus for each store where the tenant took over the lease from A&P.

Schwartz said he was not paid a commission for a lease signed with Dearborn Heights–based **English Gardens Inc.** on a Livonia site.

Nor was he compensated for the time and expenses he was to be paid under the contract with A&P, he claims in the breach-of-contract suit.

In June, Schwartz said he got a letter from A&P indicating that his contract would be terminated early because the company did not intend to be involved with the real estate.

Schwartz is seeking \$631,000, which he says he would have been paid if he had found a tenant for each of the stores he was assigned.

"I'm disappointed in how they met their obligations to me and to landlords across the state," he said. "The lawsuit speaks for itself."

A&P's senior director of public relations, Lauren LaBruno, did not respond to two e-mails and two phone messages requesting comment on the case.

A&P's attorney, Mark Krysinski, a partner at Southfield–based **Jaffe, Raitt, Heuer & Weiss PC**, also declined to comment.

A&P has not issued a public comment on the case and has not disclosed the Detroit–area cases in recent conference calls and investor disclosures.

But during an Oct. 22 conference call, CEO Sam Martin referred to a "program" the company has in place to "minimize any negative cash flow related to dark stores."

Schwartz's case is interesting in the context of the landlord cases, said Michelle Harrell, managing shareholder in the complex litigation group at Southfield–based **Maddin, Hauser, Wartell, Roth & Heller PC**, representing five cases against A&P.

Harrell said A&P argues that the landlords should have done more to find tenants after Farmer Jack left. However, she said, the broker

hired by A&P, Schwartz, couldn't find many new tenants after hours and hours of work.

"Their own person couldn't fill all these stores. How could the landlords be expected to do it?" she said.

She added that it speaks to A&P's business ethics that the company isn't even paying the person hired to help fix its problems.

"It's like running someone over with a car, then shooting the doctor that you hired to help the victim," she said.