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When ‘Best Efforts’ Are Not the Best Effort

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Case law remains unclear in interpreting the various standards of performance under which a party must act (i.e., “best efforts,” “commercially reasonable efforts,” et cetera). There seems to be a consensus that a sliding scale exists between “endeavor” and “best efforts,” with the range of options including “diligent efforts,” “good faith efforts,” “commercially reasonable efforts,” “reasonable efforts,” “commercially reasonable best efforts” and similar variations. However, very little jurisprudence exists, as courts have failed to provide consistent guidance in interpreting efforts clauses and delineating between the actions that may be required of a party based on the contracted standard. In this article, SRZ real estate partner Julian M. Wise and former SRZ attorney Alykhan A. Shivji discuss how lawyers should seek to clarify the actions and performance criteria that are expected of the contracting parties.

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