



Yellowstone injunction and commercial tenancies in New York

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The phrase "Yellowstone injunction" is a legal term often bandied about by real estate litigators in certain commercial lease disputes. However, for all of its familiarity to those in the legal profession, the Yellowstone injunction - and more specifically, both its meaning and application - remains an enigma to many commercial landlords and tenants. Since the Yellowstone injunction is a useful, and often necessary, tool for a commercial tenant who has received a default notice (typically non-rent related), this article provides a brief explanation of the Yellowstone injunction and its significance to commercial landlords and tenants alike.

The Yellowstone injunction, which originated in 1968 by way of the New York Court of Appeals decision in the case entitled *First National Stores, Inc. v. Yellowstone Shopping Center, Inc.*, is a procedural device by which a commercial tenant, when confronted with a notice to cure a lease default, may obtain a court-ordered stay tolling the cure period so that, upon an adverse determination on the merits, the tenant may cure the default and avoid a lease forfeiture. More simply, when a tenant breaches one or more provisions of its lease, the landlord may serve it with a notice to cure the default within a specified time period. If the tenant does not effectuate a timely cure, the landlord will be able to prematurely terminate its lease. More often than not, the tenant will contest the alleged breach specified in the landlord's notice to cure. In order to avoid the termination of its lease on contested grounds, the tenant will seek judicial intervention and apply for a Yellowstone injunction. If granted, the Yellowstone injunction will stay the tenant's time to cure the purported lease default until the merits of the underlying dispute have been addressed by the court. Since the Yellowstone injunction is designed to protect a commercial tenant from the premature termination of its lease, it is a form of relief frequently requested, and often granted by the Supreme Courts of this state.

Pursuant to *First National Stores, Inc. v. Yellowstone Shopping Center, Inc.* and its progeny, in order for a commercial tenant to prevail on an application for Yellowstone relief, it must demonstrate to the court that: (i) it holds a commercial lease; (ii) it has received a notice of default or notice to cure from the landlord; (iii) it sought injunctive relief prior to the termination of the lease; and (iv) it has an ability and desire to cure the alleged default by any means short of vacating the premises. Since a Yellowstone injunction is designed to avoid the tenant's forfeiture of its valuable leasehold interest while it challenges the propriety of the landlord's default notice, courts accept far less than the normal showing required for preliminary injunctive relief. However, the issuance of a Yellowstone injunction does not spell the end of the case for either the landlord or the tenant. The Yellowstone injunction is simply preliminary relief to maintain the status quo, and the parties must still litigate the underlying merits of the case, which typically center upon the tenant's alleged breach of its leasehold obligations.

While the Yellowstone injunction is invoked to protect a commercial tenant's leasehold interest during the pending litigation, a landlord on the receiving end of this injunction is not without remedies. In many circumstances when the court grants a Yellowstone injunction, it will condition this relief upon the tenant's posting of a bond or other financial undertaking to protect the landlord in the event it is ultimately determined that the injunction should not have been awarded to the tenant. Moreover, the issuance of a Yellowstone injunction does not, in any way, negate the landlord's rights and remedies under the lease. Often, the court will require the tenant to continue making rent, or use and occupancy payments, to the landlord throughout the duration of the underlying action and otherwise comply with its lease. Further, assuming the landlord prevails on the underlying action, it may be entitled to recover all legal fees accrued in the defense of the Yellowstone proceeding, provided the lease contains an attorneys' fee provision.

On a final note, it is worthy to recognize that over the years, the courts have extended the reach of the Yellowstone to certain limited residential matters; however, as of today, the Yellowstone remains a creature that primarily inhabits the commercial domain.

Andrea Lawrence is senior counsel for Epstein Becker Green, New York, N.Y.