



Law: Sometimes a guaranty is no guarantee at all - by Richard Blumberg and Brenna Strype

March 23, 2021 - Front Section



Richard Blumberg

Brenna Strype

In direct response to the COVID-19 pandemic, New York City's City Council passed a local ordinance on May 26, 2020 in an attempt to protect tenants of commercial rental agreements. Many commercial leases in New York City contain "personal guaranty" clauses which permit landlords to collect unpaid rent, utilities or taxes directly from the business owners, who contract and agree to be responsible for the unpaid rent of the business in the event of a default. In fact, those personal guaranty clauses are the only reason many landlords agree to rent out their buildings to businesses.

However, Guaranty Law No.55-2020 gave a reprieve to commercial business owners who signed personal guaranties in their contracts, as long as they meet certain conditions, which include being forced to shut down or substantially limit their businesses as a result of governor Cuomo's executive orders (which were passed in direct response to the pandemic in March of 2020). It appears this law does not contain any avenue for landlords to ever recoup unpaid rent due between March 2020 through March 2021, in direct contravention to the lease agreements that were signed.

Although we believe that there may be multiple constitutional challenges to this local ordinance, one such case was recently decided by the Southern District of New York. In that case, Judge Ronnie Abrams determined that said ordinance was constitutional as it did not violate the contract clause, finding that although the landlord plaintiff "plausibly alleged substantial impairment to his contract...this circuit affords "substantial deference" to those policymakers making good-faith efforts to act in the public interest." (Melendez v. The City of New York, no. 20-CV-5301 [S.D.N.Y.

November 25, 2020]). As such, the court found that this legislation advanced a legitimate public interest and did so in a reasonable and necessary manner.

Richard Blumberg is a partner and Brenna Strye is an attorney at Forchelli Deegan Terrana LLP in Uniondale, N.Y.

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