

## **Southern District of New York Upholds New York City Council COVID-19 Tenant Protection Ordinances**

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On November 25, 2020, Justice Ronnie Abrams of the United States District Court for the Southern District of New York issued a decision in *Melendez, et al. v. The City of New York, et al.* (No. 20-CV-5301 (RA)) upholding amendments to certain New York City Council ordinances prohibiting landlords from harassing residential and commercial tenants impacted by COVID-19 and preventing landlords from enforcing personal guaranties in commercial leases if the tenant's monetary default was caused by the pandemic.

As the COVID-19 pandemic was spreading throughout the country and causing widespread disruption throughout New York City, the City Council enacted multiple local ordinances and laws aimed at combating the resulting economic impact. The "Residential Harassment Law" and the "Commercial Harassment Law" each amended pre-existing ordinances prohibiting landlords from harassing residential and commercial tenants, respectively, out of their lawfully-occupied properties by adding a prohibition against harassing tenants impacted by COVID-19. Violations of these laws carry civil penalties of up to \$50,000 plus damages.

The City Council also enacted the "Guaranty Law", which limits the ability of commercial landlords to enforce a personal guaranty against an individual guarantor for payments of rent, utility expenses, taxes, fees or charges due between March 2020 and March 2021. There are two requirements for a commercial tenant to qualify for protection under the Guaranty Law. First, the tenant must be a business that is or was (i) required to cease serving food or beverages for on-premises consumption, (ii) a gym or movie theater subject to closure, (iii) required to close as a non-essential retail establishment subject to in-person limitations, or (iv) a barbershop, salon or tattoo parlor subject to closure. Second, the default giving rise to personal liability must occur between March 7, 2020 and March 31, 2021. The ordinance only applies to individual guarantors who are not the named tenant. Notably, if a guarantor qualifies, a landlord may not pursue that individual personally for monies owed between those dates, even after the pandemic ends, although the landlord still may assert its claims against the actual tenant.

The plaintiffs, owners of commercial and residential buildings in New York City, challenged the three ordinances. They argued that each of the Harassment Laws prevents them from pursuing routine

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efforts to collect rent from their tenants, and that the laws violate free speech by prohibiting them from sending routine rent demand notices. They also claimed that the laws are vague and violate due process because they are unclear about what conduct is prohibited. The Court rejected both contentions, holding that neither law prevents landlords from making “routine rent demand notices and discussions about the consequences flowing from unpaid rent and efforts to collect rent” and therefore do not violate free speech rights, and while the laws could have been written more clearly, they are not sufficiently vague as to violate the Due Process Clause of the Federal Constitution because the Court could not conclude that a “person of ordinary intelligence” would understand the laws to prohibit routine rent demands.

The plaintiffs also challenged the Guaranty Law, claiming that it prevents landlords from recouping income pursuant to personal guaranties in connection with defaulting commercial tenants. The plaintiffs argued that the law violates the Contract Clause of the Federal Constitution, which prohibits laws that impair the obligations of contracts. The Plaintiffs claimed that a personal guaranty provision is a “primary inducement” to entering into a lease because such a provision is essential and the plaintiffs would not have entered into commercial leases without the protection of a personal guaranty.

The Court held that while the Guaranty Law does impose a substantial impairment to the plaintiffs’ contracts, it is reasonable, necessary and passed to advance a legitimate public interest and therefore does not violate the Contracts Clause. The Court noted that the law protects small businesses, which in turn employ nearly half of the City’s workforce. Moreover, the law is limited to a personal guaranty made by an individual who is not the tenant, allowing the landlord to pursue a tenant-guarantor or any corporate entity guarantor. While admitting that it may be difficult, if not impossible to collect from commercial tenants under the circumstances, the Court held that the Guaranty Law does leave commercial landlords with other means through which they can recoup lost income, including recovering unpaid rent or interest from tenants, charging late payment fees, terminating the tenant’s right to possession, eviction and recovering damages so that landlords are not “without the possibility of other recovery” thus providing a basis for a finding that the law was reasonably enacted. Finally, the law is sufficiently limited in scope to protect guarantors of commercial tenants directly impacted by COVID-19, and only covers the period between March 2020 through March 2021.

The plaintiffs further argued that the Guaranty Law and Harassment Laws are preempted by New York state law under the doctrines of conflict preemption, wherein a local law is preempted if there is a direct conflict with state statute, and field preemption, wherein a local law is preempted if the legislature indicated its intent to occupy the particular field. The Court rejected the conflict preemption argument, holding that the State’s granting of certain protections to persons experiencing financial distress caused by the pandemic does not preclude the City from granting additional protections to a wider group of New Yorkers. The Court rejected the field preemption argument because the Governor’s Executive Orders specifically leave room for local regulation.

The Court recognized that the laws at issue, particularly the Guaranty Law, shift some of the economic burden of the pandemic from tenants and their guarantors to landlords. However, the Court ultimately extended considerable deference to the City Council in shaping its policy and enacting pandemic-related legislation protecting tenants, concluding that the ordinances are constitutional. The plaintiffs’ time to appeal the decision will expire on December 28, 2020.

As you are aware, things are changing quickly and the aid measures and interpretations described here may change and are subject to wide interpretations. This article represents our best

understanding and interpretation based on where things currently stand and is not intended to address all potential legal risks or to be a definitive statement of law.

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