

To Our Clients and Friends

Memorandum

December 23, 2020

NYC Laws Protecting Tenants Affected by COVID-19 Upheld by New York Courts

In a victory for New York City tenants impacted by the COVID-19 pandemic, New York courts have rejected legal challenges to three city laws enacted to protect certain commercial and residential tenants from the economic impact of the COVID-19 pandemic. In *Melendez v. City of New York* (“*Melendez*”), a group of landlords argued in New York federal court that the laws that expanded the prohibition on harassing tenants and prohibited the enforcement of certain personal guarantees until March 31, 2021, were unconstitutional.¹ The Court dismissed each of these claims in their entirety and upheld each of the City laws. Likewise a New York state court rejected a landlord’s challenge to the personal guaranty law in the case of *204 E. 38th LLC v. Sons of Thunder LLC* (“*Sons of Thunder*”).²

New York City’s City Council implemented a number of local laws at the outset of the COVID-19 pandemic in order to protect certain impacted tenants from landlord lease enforcement actions.³ One of these measures expanded existing laws that prohibit landlords from “harassing” residential and commercial tenants. Harassment in this context is generally defined to mean any act causing or intending to cause a tenant to vacate the property. The new law prohibits landlords from so harassing tenants based on their status as a person impacted by COVID-19, their receipt of a rent concession or forbearance for rent owed during the COVID-19 period, or in the case of residential tenants, based on their actual or perceived status as an essential employee. The landlords in *Melendez* argued that this expansion of the anti-harassment law violated the landlords’ constitutionally protected free speech rights by prohibiting them from sending routine rent demands, and also violated constitutionally protected due process because the laws were too vague. The Court rejected both of these arguments and held that the amended laws were sufficiently clear: landlords are still permitted to send routine rent demands under the terms of the amended laws.

Another measure enacted by the City was Local Law No. 55-2020, titled “Personal Liability Provisions in Commercial Leases” (the “Guaranty Law”) which suspended the operation of certain lease guaranties until March 31, 2021. The Guaranty Law provides that a guaranty by a natural person (and not the tenant) of lease obligations of certain retail tenants is unenforceable from March 7, 2020, until March 31,

¹ *Melendez v. City of New York*, 2020 U.S. Dist. LEXIS 222774 (S.D.N.Y. Nov. 25, 2020).

² *204 E. 38th LLC v. Sons of Thunder LLC*, 2020 NYLJ LEXIS 1797 (Sup. Ct. N.Y. Cnty., Nov. 20, 2020).

³ For an overview of these laws, see Fried Frank Client Memorandum, Covid-19 Alert: N.Y.C. Council Int. No. 1932-A (2020) and N.Y.C. Council Int. No. 1914-A (2020) Enacted to Protect COVID-19 Impacted Tenants (May 26, 2020).

2021, provided the tenant was subject to certain of Governor Cuomo's orders shutting down or limiting the operation of their business and the tenant defaulted on a guaranteed obligation between March 7, 2020, and March 31, 2021.

The plaintiff landlords in *Melendez* argued that the Guaranty Law violated the Contracts Clause of the federal Constitution by prohibiting them from collecting under their guaranties for their tenants' failure to pay rent during the COVID-19 period. The Court found that the Guaranty Law is not unconstitutional because the law served a legitimate public purpose and the means chosen to achieve that purpose are reasonable and necessary. Critically, the Court held that the law is sufficiently reasonable because it is tailored to achieve its purpose of preventing small business owners from facing financial ruin under the terms of their guaranties: the law only applies to a specific subset of commercial leases, the law is limited in time only to debts that arose between March, 2020, and March, 2021, and the law leaves landlords with other means through which they can recoup their lost rental income. The Court acknowledged that the impairment was substantial, and that the debts covered by the Guaranty Law—for defaulted obligations during the period of March 7, 2020 to March 31, 2021—will never be recoverable by landlords, even retroactively after the statutory period expires. Notably, the Court declined to endorse a reading of the statute that would make those guaranties wholly unenforceable after the statutory period expires, and the ruling makes clear that once the statutory period has expired, the guarantors will remain liable for defaults outside the statutory period on a go-forward basis.⁴ In *Sons of Thunder*, the Court similarly held that the Guaranty Law did not violate the Contracts Clause of the federal Constitution because it was not unreasonable or inappropriate in order to prevent the potential burden on guarantors caused by the COVID-19 pandemic.

Although these rulings represent a victory for certain tenants affected by the COVID-19 pandemic, we anticipate that these laws will continue to be challenged on other grounds. The ruling in *Melendez* is already being appealed and it is possible that the *Sons of Thunder* ruling will be appealed as well. The City may also extend the protections offered to tenants as the pandemic continues to affect the City, in which event it remains to be seen whether further protections will tip the balance in favor of landlords by weakening the argument that the law is reasonable. We will continue to monitor developments in this area as they unfold.

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⁴ The landlords also argued that each of the harassment laws and the Guaranty Law were preempted by certain New York State executive orders issued in response to the pandemic, but these arguments were similarly rejected by the Court.

Authors:

Meyer Last

Janice Mac Avoy

Jennifer A. Yashar

Ben Paull

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its contents. If you have any questions about the contents of this memorandum, please call your regular Fried Frank contact or an attorney listed below:

Contacts:

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|--------------------|-----------------|--------------------------------|
| Janice Mac Avoy | +1.212.859.8182 | janice.macavoy@friedfrank.com |
| Meyer Last | +1.212.859.8151 | meyer.last@friedfrank.com |
| Jennifer A. Yashar | +1.212.859.8410 | jennifer.yashar@friedfrank.com |