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Leases May Waive Yellowstone Injunction Relief

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What is a “Yellowstone injunction”? No, it’s not related to the National Park. Since the New York Court of Appeals landmark decision in *First National Stores Inc. v. Yellowstone Shopping Center, Inc.*, commercial tenants have had a powerful tool to delay termination of their commercial leases for alleged violations. However, a recent decision from the New York Court of Appeals (New York’s highest court) affirmed a ruling that a waiver of the tenant-friendly Yellowstone injunction does not violate public policy.

Before we get into the momentous decision and its impact in the commercial landlord-tenant arena, we must understand what a Yellowstone injunction is. Simply, a Yellowstone injunction is a tool for commercial tenants to delay termination of their commercial leases for alleged violations. In action, upon being served with a notice to cure, a commercial tenant, who could show an ability to cure the alleged default (short of vacating the premises), could seek an injunction, staying the lease termination, and preserving the status quo, while seeking an adjudication that they are not in default of the lease or taking the necessary steps to cure the default. Such injunctions have been termed Yellowstone injunctions and can often take on a life of their own, spurring several years’ worth of costly litigation.

In *159 MP Corp. v. Redbridge Bedford, LLC*, 2019 NY Slip Op 03526 (May 7, 2019), the Court affirmed the Supreme Court, Appellate Division decision that the waiver of a Yellowstone injunction did not violate public policy (with one Justice dissenting). Public policy was central to the Court’s reasoning and holding. Here, two prevailing public policies were at odds and the Court had to decide which one was more compelling after “balancing” the public interests.

Tenant asserted that the declaratory judgment waiver is unenforceable because it is void against public policy. Their contention was that even the most well-counseled, knowledgeable or sophisticated commercial tenant could not waive the right to bring a declaratory judgment action because it is so central and critical to the public policy of the State of New York. The Court was not persuaded. The Court found that the public policy favoring the “freedom of contract” outweighed the right to bring a declaratory judgment action.

The Court stated, “Here, the declaratory judgment waiver is clear and unambiguous, was adopted by sophisticated parties negotiating at arm’s length, and does not violate the type of public policy interest that would outweigh the strong public policy in favor of freedom of contract.”

Significantly, the Court noted that the Tenant’s inability to obtain a Yellowstone Injunction did not bar them from “raising defenses in summary proceedings” and the Yellowstone Injunction is “not essential to protect property rights in a commercial tenancy which, of course, are governed by the terms of the lease negotiated by the parties.”

It is clear that parties to commercial leases are now free, when negotiating and drafting a commercial lease, to incorporate the waiver language into their agreement, thereby

precluding the commercial tenant from obtaining injunctive relief in court and limiting the parties to Civil Court summary proceedings to resolve their alleged breaches of the lease. Moving forward, we can expect a trend in commercial leases to include declaratory judgment waivers. At the very least, the Court's decision adds a strong bargaining tactic in favor of landlords when negotiating commercial leases.

In reaction to this decision, the New York Legislature passed Section 235-H of the Real Property Law, specifically providing that "No commercial lease shall contain any provision waiving or prohibiting the right of any tenant to bring a declaratory judgment action with respect to any provision, term or condition of such commercial lease. The inclusion of any such waiver provision in a commercial lease shall be null and void as against public policy".

<https://www.nysenate.gov/legislation/laws/RPP/235-H>