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The Only Guarantee in Life Is That There Are No Guarantees

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By **Susan Vuernick**
Associate | Real Estate

On May 26, 2020, New York City Mayor Bill de Blasio signed into effect New York City Local Law 55 of 2020 (the "Guaranty Law") that amends the administrative code of New York City[1] to prohibit the enforcement of provisions in a commercial lease or other rental agreement that provide for personal liability of a natural person who is not the tenant (*i.e.*, a guarantor, but not an *entity* guarantor) for certain charges under the lease in cases where the tenant has been impacted by the COVID-19 pandemic for defaults that accrued between March 7, 2020 and September 30, 2020. Specifically, the Guaranty Law prevents property owners from holding personal guarantors of certain commercial tenants liable for debt obligations incurred when (i) the tenant had to stop serving patrons food or beverage on the premises or had to cease operations under Governor Cuomo's Executive Order 202.3; (ii) the tenant was a non-essential retail business owner subject to in-person limitations under Governor Cuomo's Executive Order 202.6; or (iii) the tenant was required to close to the public under Governor Cuomo's Executive Order 202.7. If any one of these conditions is met and there is a personal guarantor of the tenant's lease, the landlord will be prevented from enforcing that guaranty in order to collect unpaid rent, utilities, fees, building maintenance charges, or taxes owed by the tenant arising from defaults occurring between March 7, 2020 and September 30, 2020.

The Guaranty Law has recently been challenged in litigation[2]. On July 10, 2020, landlords Marcia Melendez and Ling Yang (the "Plaintiffs") sued in the Southern District of New York seeking to invalidate the Guaranty Law, among other laws. The Plaintiffs claim that the Guaranty Law (1) violates the Contracts Clause of the U.S. Constitution by "rewrite[ing] Plaintiffs' contracts with their tenants, stripping Plaintiffs of remedies to enforce personal guaranties that were a material benefit of those agreements"; (2) is not a reasonably necessary means of promoting a legitimate public purpose because it "impermissibly impose[s] a drastic impairment when other more moderate courses would have equally fit any legitimate purpose the defendants sought to advance"; and (3) directly conflicts with the New York State Legislature's grant of emergency power to Governor Cuomo because it "prescribes a wholly different set of procedures that property owners and tenants must abide by during the pendency of the Pandemic" from those procedures set forth in Governor Cuomo's executive orders. Plaintiffs additionally argue that the Guaranty Law "burdens landlords and benefits tenants in ways not necessary to advance the City's policy goals. And, these laws benefit a far wider segment of the tenant community than is needed to advance any legitimate governmental interests."

Since the case is still pending before the Southern District, there is no clear answer as to whether or not commercial tenants should rely on the Guaranty Law. This presents difficulties because, as a practical matter, personal guaranties to commercial leases are often the only effective means of a landlord recovering on a tenant's default. Under the Guaranty Law as it exists today, the personal guarantor would not be responsible for rental arrears between March 7, 2020 and September 30, 2020. However, if the court rules that this law is unconstitutional, then the same guarantors may be liable for such arrears.

We will continue to monitor this case and any other cases pertinent to legal constraints.

[1] N.Y.C. Administrative Code § 22-1005.

[2] See *Melendez et al. v. The City of New York, et al.*; 1:20-cv-05301 (S.D.N.Y.).