

COVID-19 Update: Supreme Court Denies Request to Lift CDC's Eviction Moratorium

July 30, 2021



By **Eunji Jo**
Special Counsel | Real Estate

On June 29, 2021, the Supreme Court denied an application by a group of real estate agents and associations to lift the eviction moratorium issued by the Centers for Disease Control and Prevention (the "CDC"). Originally issued on September 4, 2020, the CDC's order temporarily banned evictions of residential tenants in an effort to mitigate the spread of COVID-19. The order, which was originally set to expire on December 31, 2020, was extended to January 31, 2021, further extended to March 31, 2021, and extended again until June 30, 2021. Most recently, on June 24, 2021, the CDC Director renewed the order until July 31, 2021.

The applicants, a group of real estate agents and associations, with the Alabama Association of Realtors acting as lead plaintiff, filed an action on November 20, 2020, against the United States Department of Health and Human Services, alleging that the eviction moratorium issued by the CDC exceeds the CDC's statutory authority. On May 5, 2021, U.S. District Judge Dabney Friedrich ruled that the eviction moratorium exceeded the power that Congress had given the CDC. In response, the Department of Justice appealed to the U.S. Court of Appeals for the District of Columbia Circuit and requested an emergency stay of the order pending the appeal, which was granted. On June 2, 2021, the Court of Appeals upheld the emergency stay, which meant the eviction moratorium remained in place. The plaintiffs then filed an emergency application with the Supreme Court to vacate the stay.

The Supreme Court decided 5-4 to deny the application to vacate the stay. Justices Thomas, Alito, Gorsuch and Barrett would have granted the request to lift the CDC's eviction moratorium. Justice Kavanaugh wrote a short concurring opinion, stating that he agreed with the District Court and the applicants that the CDC exceeded its statutory authority by issuing the nationwide eviction moratorium. However, because the moratorium is set to expire in only a few weeks, and because those few weeks will allow for "additional and more orderly distribution" of the congressionally appropriated rental assistance funds, he voted to keep the stay in place. He noted that "clear and specific congressional authorization (via new legislation) would be necessary for the CDC to extend the moratorium past July 31."