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Yellowstone Injunction Update

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What is a Yellowstone Injunction and when is this relief not available to a commercial tenant? - by Andrew Baranetsky

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In New York, when a commercial tenant breaches the terms of its lease, the landlord generally must serve a notice to cure on the commercial tenant to provide the tenant an opportunity to timely cure the default, or face the possibility of its lease being terminated and being evicted from the commercial space. To extend a default cure period, a commercial tenant may be able to obtain a form of legal relief called a Yellowstone Injunction, which prevents the landlord from terminating the lease and evicting the tenant until the dispute is settled or adjudicated by the court.

The Yellowstone Injunction was established by and takes its name from the landmark 1968 legal case National Stores, Inc. v. Yellowstone Shopping Center. In this case, the New York Court of Appeals ruled that a commercial tenant, after receiving a notice to cure from its landlord, could seek an injunction from a New York court preventing the landlord from terminating its lease and evicting them. In response to the Yellowstone court decision, for a period of time landlords started including language in leases prohibiting tenants from seeking a Yellowstone Injunction, however in 2019 when a New York appellate court confirmed that such waivers could be included in commercial leases, the New York State Legislature immediately overruled the court's decision by passing New York Real Property Law § 235-h, which states that "No commercial lease shall contain any provision waiving or prohibiting the right of any tenant to bring a declaratory judgment action (i.e. a Yellowstone Injunction) 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." Accordingly, the Yellowstone Injunction still remains available to commercial tenants, who are trying to prevent their leases from being terminated.

To terminate a lease, leases generally require a landlord to first serve its tenant with a notice to cure its breach of the lease within a specified time period. When the notice to cure period expires, the landlord is then generally required by the lease to serve a notice of termination on the tenant, informing the tenant that its time to cure has expired and the lease is thereby terminated. Typically, a notice of termination provides a five-day notice period and upon its expiration the lease is terminated and courts are generally unable to reverse the termination. As a result, it is imperative that the notice to cure and notice of termination are properly drafted and served so that a lease termination cannot be reversed by a court based on technicalities.

Commercial tenants however, can try to stop the lease termination process by commencing an action seeking a Yellowstone Injunction before the notice to cure period expires and the lease is terminated. Courts have the power to extend a tenant's time to cure via granting a Yellowstone Injunction, which prevents termination of the lease and the commencement of an eviction action. Based on case law, courts grant Yellowstone Injunctions as long as the tenant can show (1) it received a notice to cure, (2) that the time to cure within the notice has not expired, (3) that there is a still valid lease between the parties for the commercial space, and (4) that the tenant plans to and has the ability to cure the alleged default.

It is important for landlords and tenants to be aware that some lease defaults are by their nature uncurable, such as a breach of the standard commercial lease provisions requiring commercial tenants to have insurance coverage for the entirety of the tenant's tenancy or restricting them from assigning or subletting the commercial space to another entity or person. The failure of a commercial tenant to maintain insurance for even a portion of the lease term or assigning or subletting the commercial space to another entity or person in breach of the lease provisions governing these matters has been ruled by New York courts to be an uncurable breach of the lease. Therefore, under these circumstances, a tenant will generally not be eligible to obtain a Yellowstone Injunction.

In circumstances where a tenant's default is curable and the other three Yellowstone Injunction criteria are satisfied, and a Yellowstone Injunction is granted, the tenant's cure period will be placed on hold until the court makes a legal ruling on whether a lease default actually exists. Finally, it is important to note that the grant of a Yellowstone Injunction by the court does not relieve the tenant of its other obligations owed to the landlord pursuant to the lease, such as the payment of rent. If a tenant fails to meet its other obligations a landlord can seek to have the obligations enforced by the court, such as obtaining a court order requiring the tenant to continue making rent payments during the pendency of the Yellowstone Injunction.

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