

MSF Client Alert

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New York City's Guaranty Law Struck Down as Unconstitutional in Recent Federal Court Decision

On March 31, 2023, United States District Judge Ronnie Abrams of the Southern District of New York held that New York City's Guaranty Law, which provided that personal guaranties related to certain restaurant and retail commercial leases are unenforceable, violated the Contracts Clause of the United States Constitution.

The Court's Decision in *Melendez*

In the Southern District's recent decision in *Melendez et al. v. City of New York et. al.*, No.1:20-cv-05301, United States District Judge Ronnie Abrams granted summary judgment to the Plaintiff in finding that New York City Local Law No. 55 of 2020, known as the "Guaranty Law", violated the Constitution's Contracts Clause by rendering guaranties as security for commercial leases unenforceable against said guarantor for unpaid financial obligations arising from March 7, 2020 to June 30, 2021. Judge Abrams noted in his decision that New York City failed to bring forth sufficient evidence rectifying five fundamental defects in the Guaranty Law identified by the Second Circuit on appeal: that the Guaranty Law (i) permanently cancelled rent, (ii) did not condition relief on reopening, (iii) placed the economic burden of the law exclusively on landlords, (iv) did not condition the application of the law on need, and (v) did not compensate landlords for unpaid rent.

Enacted by the New York City Council due to the potential of financial harm for business owners resulting from the COVID-19 pandemic, the Guaranty Law barred enforcement of a guaranty, provided that the guarantor was a natural person and a tenant was (i) required to stop serving food or beverages to be consumed on premises or cease operations under former Gov. Andrew Cuomo's Executive Order 202.3, (ii) a nonessential retail establishment that was subject to in-person limits under Executive Order 202.6, or (iii) required close to the public under Executive Order 202.7.

However, pursuant to the Southern District's decision in *Melendez*, the Guaranty Law, subject to any appeals that may be filed, is now unenforceable.

Recommendations for Landlords, Tenants and Guarantors

Melendez potentially transforms dormant claims for unpaid amounts under such personal guaranties into claims that may be pursued against guarantors, and now opens the door for landlords to collect amounts that may have accumulated during the period from March 7, 2020 to June 30, 2021. Guarantors under commercial leases affected by the Guaranty Law are no longer afforded legal protection and now, subject to the terms of their respective guaranties, remain liable for obligations arising during said period.

Landlords, tenants and guarantors are encouraged to review their commercial leases and guaranties and contact Scott Newmark with questions regarding the *Melendez* decision and whether under their guaranties, claims previously barred by the Guaranty Law have now become viable.

Meister Seelig & Fein PLLC

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Please contact Scott Newmark, Co-Chair of MSF's Real Estate Group, if you need assistance with respect to this information.



Scott A. Newmark

Partner | Co-Chair, Commercial Real Estate
(212) 655-3509 | san@msf-law.com

In Collaboration with:

Michael D. Forlini

Law Clerk | Commercial Real Estate
(646) 860-3134 | mdf@msf-law.com

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