

## New York Court Deems A Yellowstone Application Essential

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From the start of the unprecedented closure of the New York State Courts to now, “non-essential” filings until yesterday, commercial tenants had no remedy against a landlord seeking to terminate a lease as a result of a covenant or payment default. The so-called Yellowstone Injunction, named after a 1968 Court of Appeals case, has protected tenants served with a notice of termination for over 50 years by preserving the status quo and staying any cure period, thereby giving tenants an opportunity to litigate the propriety of any alleged default before the lease was terminated. Because once terminated a lease cannot be revived, tenants relied on this widely used and often granted injunction to preserve their interest in the leased premises.

Administrative Order 78/20 (AO/78/20), however, which remains in effect and which bars the submission of any “non-essential” new filings, was silent as to whether Yellowstone applications were considered “essential.” As such, tenants effectively were precluded from seeking Yellowstone relief. This is in stark contrast to Executive Order 202.8, which bars eviction proceedings, but did not bar lease terminations. In essence, tenants were therefore forced to sit and watch their lease terminate, and hope that once the Courts open up, they would be able to seek relief from a terminated lease, despite longstanding caselaw to the contrary.

Yesterday, however, the Supreme Court, New York County, permitted the filing of an application for a Yellowstone Injunction. In *Philippe MP LLC v. Sahara Dreams, LLC* (no index number assigned), the Plaintiff, a restaurant in Defendant/landlord’s hotel, requested “essential” filing status for its application for a Yellowstone Injunction. Specifically, the restaurant argued that as a result of the various Executive Orders prohibiting restaurants from offering table service, it was forced to lay off employees and cease operations. As a result, the restaurant argued that the “casualty” clause in its lease was triggered, its rent was abated, and thus the amount the landlord sought in its notice to cure was defective rendering the notice itself a nullity.

In its affidavit seeking “essential” filing status, the restaurant cited both its inability to operate, and also the potential hypocrisy created by the ban on evictions, without a corresponding moratorium of lease terminations. The Hon. Lynn R. Kotler agreed, and deemed the filing essential. As of the date and time of this publication, the request for a temporary restraining order has not been decided either way, but, at a minimum, the tenant was able to get into the Courthouse. We will continue to monitor the progress of this case and update this article accordingly.