



SECOND CIRCUIT REINSTATES CHALLENGE TO NEW YORK CITY BAN ON ENFORCING PERSONAL GUARANTIES OF COMMERCIAL LEASES

The United States Court of Appeals for the Second Circuit, in a 2-1 decision released on October 28, 2021, revived a constitutional challenge to New York City's ban on enforcing personal guaranties for commercial leases. In *Melendez, et al v. City of New York, et al*, the Second Circuit reversed the District Court's dismissal of a claim that the restriction on recouping under a personnel guaranty rent due from March 2020 through June 2021 violated the contract impairment clause of the United States Constitution.

The Second Circuit applied the three part analysis now in effect for claims that a state has violated the United States Constitution's prohibition of impairing contractual obligations and remanded the case back to the District Court for further proceedings. The Second Circuit held that while the guaranty ban fostered a significant public purpose there were issues whether it was reasonable or appropriate. The Second Circuit emphasized that the ban permanently prohibited the enforcement of a guaranty of rent obligations under a commercial lease for a 16 month period as opposed to only delaying the ability to enforce the guaranty for that time period. The Court also noted that there was no required showing of hardship on the part of the guarantor and the ban "seriously upsets landlords' reasonable expectations."

For New York City commercial property owners this is a very important decision and property owners should continue to pursue their rights under personal guaranties executed by the principals of commercial tenants.

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