

## **ROSENBERG & ESTIS, P.C.**

733 THIRD AVENUE NEW YORK, NY 10017

PRESS CONTACT:       Shea Communications, LLC  
George Shea, Mark Faris (212) 627-5766

*FOR IMMEDIATE RELEASE:*

### **ROSENBERG & ESTIS, P.C. SUCCESSFULLY VACATES YELLOWSTONE INJUNCTION ON INSURANCE/ ASSIGNMENT DEFAULT**

Rosenberg & Estis, P.C secured a victory for Sheldon Solow at the Appellate Division, First Department by overturning the lower court's granting of a *Yellowstone* injunction. The injunction was issued in favor of Bliss World, LLC, a tenant occupying the entire third floor at 10 West 57th Street, where it operated a spa offering massages and beauty treatments to the general public. The lease violations involved inadequate insurance and an unauthorized assignment. The Appellate Division held such breaches to be incurable and vacated the injunction. The Court also held that the tenant cannot retroactively provide insurance coverage to cure its default under the lease.

Warren A. Estis, member, Norman Flitt, member, Laura Davidov, associate, Richard B. Corde, associate, and Alexander M. Estis, associate, represented the landlord, 10 West 57<sup>th</sup> Street Realty LLC.

While the tenant expressed its willingness to cure the insurance default, the Appellate Division rejected the proposed cure and wrote: "The tenant provides various steps that it will take to cure if it is ultimately found to be in material violation of the insurance provisions of the lease. None of these proposed cures involve any retroactive change in coverage, which means that the alleged defaults raised by the landlord are not susceptible to cure...."

On the assignment breach, the Court said the following: "With respect to the assignment of the lease, although the tenant has generally stated that it is willing to cure any assignment violation, it does not explain how it will undo the assignment or indicate whether it is willing or able to do so...."

The Appellate Division did not resolve the merits of the parties' dispute, stating "[t]here is an ongoing dispute between the parties regarding whether the landlord's claimed defaults are meritorious, either because they are not really defaults or they are not sufficiently substantial. We do not resolve those disputes. The denial of a *Yellowstone* injunction does not resolve the underlying merits of disputes about whether there is any default warranting termination of the lease in the first instance."

While the landlord still has to prove "the bona fides of the claimed default," the Appellate Division's order presents a clear path forward for doing so.

Further, as the tenant waited until the last day to seek injunctive relief, the cure period has expired, and the landlord has now terminated the lease. Thus, if the landlord succeeds in establishing “the bona fides of the claimed default,” the landlord can proceed to evict the tenant.

“The moral here, is that *Yellowstone* injunctions can successfully be challenged or blocked by landlords, giving the landlord incredible leverage over the tenant,” said Flitt.

*About Rosenberg & Estis, P.C.*

*Founded in 1975, Rosenberg & Estis, P.C. is widely recognized as one of New York City’s pre-eminent real estate law firms. Rosenberg & Estis, P.C. represents clients in all aspects of real estate development, transactions, financing, litigation, rent regulation and governmental affairs.*

###