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ROSENBERG & ESTIS, P.C. SECURES EVICTION OF GENTLEMEN'S CLUB FROM PRIME TIMES SQUARE PROPERTY THEREBY ALLOWING DEVELOPMENT TO PROCEED

Rosenberg & Estis, P.C., New York City's largest real estate law firm, successfully obtained the removal of a gentlemen's club commonly known as Cheetahs from the former Hotel Carter, which had been purchased by a client of Rosenberg & Estis, P.C. Cheetahs was one of the last two tenants remaining at this important property, occupying ground floor space which interfered with the new owners' plans to redevelop the building and the lobby.

Rosenberg & Estis, P.C., working through Norman Flitt, a member of Rosenberg & Estis, and Laura Davidov, an associate at Rosenberg & Estis, represented the owners, defendants 250 West 43 Owner LLC, 250 West 43 Owner II, LLC and 250 West 43 Owner III, LLC, against the tenant, Three Amigos SJL Restaurant Inc., before both Justice Carol Edmead in New York County Supreme Court, the Appellate Division, First Department and also in Bankruptcy Court for the Southern District of New York.

Previously, the Rosenberg and Estis team obtained a major victory at the Appellate Division, reversing an order of Supreme Court, New York County that granted the tenant's motion for a *Yellowstone* injunction, thereby preventing the owners from enforcing a notice of termination of lease and evicting the tenant. The lease had been terminated because the tenant had failed to maintain the insurance coverage required under its lease.

In response to the tenant's motion for a *Yellowstone* injunction, the owners sought a declaration that the lease had properly been terminated as a result of the insurance default. Supreme Court however declined to issue the requested declaration "at this juncture" prompting the owners' appeal.

The Appellate Division held that the tenant was not entitled to a *Yellowstone* injunction because it had sought relief after the expiration of the cure period specified in the lease. According to prior rulings, a tenant is not entitled to a *Yellowstone* injunction after the cure period has expired unless the tenant can establish that the default is such that it could not be cured within the specified cure period, and that the tenant was continuing its attempt to cure, with diligence and in good faith. The tenant did not make the required showing, as it had done nothing further to cure after the 15-day period expired. By its

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order, the Appellate Division resolved all of the possessory claims in owners' favor, and severed Cheetahs' remaining claims for damages for future adjudication.

Following the Appellate Division's decision, the Rosenberg & Estis team drafted a judgment to effect the Appellate Court's declaratory judgment and to also provide for Cheetahs' ejection from the premises. The entry of this judgment prompted a flurry of activity on the tenant's part, first the tenant filed a Chapter 11 proceeding in Bankruptcy Court which required Rosenberg & Estis to move to vacate the Bankruptcy stay to allow Cheetahs' eviction. This motion was ultimately granted by Judge Stuart Bernstein of the Bankruptcy Court. Immediately thereafter, Cheetahs returned to State Supreme Court seeking stays of its eviction, while it attempted, ultimately unsuccessfully, to challenge and vacate the ejection judgment.

Rosenberg & Estis faced and successfully defeated four applications at Supreme Court for interim stays and to vacate the judgment, and also defeated a contemporaneous motion that the tenant made before the Appellate Division to reconsider and reverse the Appellate Court's decision, for permission to appeal to the Court of Appeals, and to vacate the judgment and stay its eviction.

Rosenberg & Estis had delivered the judgment promptly to the Sheriff of New York County before the Bankruptcy stay went into effect, and once all stay applications and motions to vacate had been defeated in Bankruptcy Court, Supreme Court and the Appellate Division, Rosenberg & Estis instructed the Sheriff to resume efforts to execute the judgment. Ultimately, the Sheriff served a notice of eviction and gave full legal possession of the premises to the owners.

This, however, did not stop Cheetahs from applying to the Appellate Division to be restored to possession and obtain an interim stay of eviction while it attempted to appeal from Supreme Court's denial of its applications for a stay and Supreme Court's refusal even to entertain Cheetahs' motion to renew and vacate the judgment.

Cheetahs' motion at the Appellate Division was resolved the day it was made and Rosenberg & Estis achieved a full settlement of the entire litigation, including Cheetahs' damage claims. The settlement was extremely favorable to owners and resulted in immediate possession of the premises and a discontinuance of the action with only an extremely modest "face saving" payment to the tenant.

The tenant is now gone and the owners' construction project can now proceed in the area formerly occupied by the gentlemen's club.

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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.

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