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ROSENBERG & ESTIS SECURES RULING WITH IMPORTANT *YELLOWSTONE* INJUNCTION IMPLICATIONS

Rosenberg & Estis, P.C., New York City’s largest real estate law firm, successfully represented its client before the Supreme Court, Appellate Division, in the vacating of a *Yellowstone* injunction granted in 2015 to a tenant that rented space in a hotel owned by the client. The decision allows for the eviction of the tenant, a gentlemen’s club, and also included an important ruling on *Yellowstone* relief that may prove important in later decisions.

Norman Flitt, a Member of Rosenberg & Estis, P.C., 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 Justice Carol Edmead in New York County Supreme Court and before the Appellate Division.

In September 2015, the New York County Supreme Court 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 cure period expired.

“Due to the court’s finding, the termination of the tenant’s lease, which included options through 2026, was upheld,” said Flitt. “This was a major victory for our client, because the tenant was occupying a large portion of the ground floor, and its continued occupancy under the

Yellowstone injunction was preventing the owners from completing renovations to the ground floor, the lobby and the entire building.” This decision will likely impact future cases, as it clarifies when a tenant needs to make an application for *Yellowstone* relief, and the showing that a tenant must make if it moves for *Yellowstone* relief after a termination notice has been served.

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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