

Ruling clarifies rights of residential tenants

BY JACK MALLEY

A recent decision by the Appellate Division, second department, in *Goldcrest Realty Co. v. 61 Bronx River Road Owners Inc.* has made it clear that in Westchester attempts to terminate a residential tenant's lease may be enjoined by the order known as a "Yellowstone Injunction" until a lawsuit between the tenant and landlord determines whether the tenant is in default of his lease obligations.



This is significant because the test for obtaining such an injunction, which is typically issued with respect to commercial leases, is less onerous than the usual test for the issuance of an injunction under Article 63 of the New York Civil Practice Law Rules.

To obtain an Article 63 injunction, a party must meet the heavy burden of demonstrating that he will most likely win the lawsuit between the parties. In contrast, to obtain a Yellowstone Injunction, the name of which derives from the Court of Appeals' 1968 decision in *First National Stores Inc. v. Yellowstone Shopping Center Inc.*, a tenant only needs to demonstrate that:

- it holds a lease;
- the landlord served a notice to cure;
- the tenant sought the Yellowstone

Injunction prior to the expiration of the cure period; and

- the tenant has the ability and the desire to cure the alleged default.

In *Goldcrest*, the plaintiff sponsor was the holder of unsold shares allocated to 15 apartments located within a cooperative building in Yonkers. The defendant cooperative corporation was the owner of the building.

The dispute arose when the sponsor failed to pay maintenance fees claiming it had prepaid them. The trial court granted the sponsor's application for a Yellowstone Injunction one day before the termination date set forth in the co-op's Notice of Termination, but 12 days after the expiration of the cure period set forth in the co-op's Notice of Default.

In opposition to the co-op's appeal, the sponsor argued that the Yellowstone Injunction test should not apply because the alleged default was a non-payment of rent by a residential tenant. The second department reversed the trial court and reaffirmed a prior decision holding that outside of New York City a Yellowstone Injunction is the only vehicle by which a residential tenant can enjoin a lease termination.

In addition, the second department closed a loophole in the law by which some tenants have obtained Article 63 injunctions enjoining a lease termination even though an application for a Yellowstone Injunction would have been denied because the cure period had expired.

The second department agreed with previous decisions by the Appellate Division, first and third departments holding that applications for Article 63 injunctions seeking to enjoin a lease termination must be submitted before the expiration of the cure period.

The decision provides something for both landlords and tenants to hold onto. In Westchester, it is now clear that residential tenants may enjoin a lease termination by meeting the less onerous Yellowstone Injunction test.

Outside of New York City a Yellowstone Injunction is the only vehicle by which a residential tenant can enjoin a lease termination.

However, if a tenant does not submit his application before the cure period expires, it will be denied under the tests for an Article 63 injunction and a Yellowstone Injunction.

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