

Litigation Alert: Superior Court Confirms Viability Of Restaurant's Claims To Be Excused From Lease Obligations Due To COVID-19 Restrictions

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It is without question that the COVID-19 pandemic and resulting Executive Orders have negatively affected the restaurant industry, leading to hundreds of restaurants going out of business. However, restaurant tenants may now have defenses to claims by landlords where COVID-19 Executive Orders restricted their business operations and prevented the restaurants from operating as intended under the governing lease.

Brach Eichler represented a plaintiff restaurant operator against its landlord to be relieved of its rent obligations due to Governor Murphy's COVID-19 Executive Orders. "The Court determined that we asserted valid claims for not having to pay rent to the landlord during the Executive Order periods based upon frustration of purpose, impossibility of performance and impracticality of performance, and refused to grant a motion to dismiss the Complaint despite a standard boilerplate force majeure provision in the lease" says [Bob Kasolas](#), plaintiff's attorney and Brach Eichler Litigation Member.

In *The Office at Ridgewood, Inc. v. Mouzakitis, et al.*, Docket # BER-L-001353-21, the plaintiff restaurant operator filed a Complaint alleging, among other things, that its rental obligations under the lease should be excused because Governor Murphy's Executive Orders limiting indoor dining frustrated the purpose of the parties' lease, and made it both impractical and impossible for the parties to perform as originally intended and envisioned pursuant to the lease. The landlord also filed counterclaims seeking to recover unpaid rent.

In an issue of first impression, and while not fully dispositive or final on the merits, the Court denied the landlord's motion to dismiss the restaurant tenant's Complaint.

The Court's decision demonstrates the viability of these claims because the Governor's Executive Orders substantially impacted the purpose of restaurant leases by: (i) precluding restaurants from operating as intended under the lease; and (ii) precluding landlords from leasing the restaurant premises for indoor restaurant use. Moreover, many restaurant leases did not contemplate a pandemic that would restrict restaurant operations for over a year. This issue of whether the parties contemplated a yearlong pandemic may also impact the enforceability of a force majeure clause depending on its language and intent, an argument the Court agreed with.

The Court's decision could have far-reaching consequences for the rights of restaurant operators significantly affected by the State's COVID-19 restrictions. The decision confirms the viability of restaurant tenants' claims and/or defenses to not be contractually responsible to pay rent for indoor restaurant dining leases during the time periods where the Executive Orders prohibited or restricted indoor dining. The Court's decision may also potentially affect the insurance industry regarding business interruption claims, including whether parties envisioned a scenario like the COVID-19 pandemic and the ensuing restrictions under the terms of their insurance policy.

Any restaurant business whose operations were affected by the State's COVID-19 restrictions should seek legal advice to determine whether it has any claims or defenses relating to the payment of rent during the time frames where the Governor's Executive Orders limited or prohibited indoor dining in restaurants.

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