

Supreme Court Enjoins Enforcement of New York State's Eviction Moratorium

Client Alert | August 13, 2021

Decided August 12, 2021

***Chrysafis v. Marks*, No. 21A8**

On Thursday, August 12, 2021, the Supreme Court granted Gibson Dunn's request for an extraordinary writ of injunction pending appeal and held that New York State's eviction moratorium law ("CEEFP")—which bars landlords from commencing or continuing eviction proceedings against any tenants who self-certify that they are suffering a COVID-related "hardship," with no opportunity for property owners to challenge those hardship claims—is inconsistent with fundamental due process principles.

Background:

CEEFP was enacted in December 2020 and extended in May 2021. The law prohibits New York property owners from filing eviction petitions, continuing pending eviction cases, or enforcing existing eviction warrants, even in cases initiated prior to the COVID 19 pandemic, if their tenants submit a "hardship declaration." It also requires landlords to distribute these hardship declarations, along with government-drafted notices and government-curated lists of legal service providers, to their tenants.

On May 6, 2021, Pantelis Chrysafis, Betty S. Cohen, Brandie LaCasse, Mudan Shi, Feng Zhou, and the Rent Stabilization Association of NYC, Inc. ("Plaintiffs"), represented by Gibson Dunn partners **Randy M. Mastro** and **Akiva Shapiro**, filed suit in the U.S. District Court for the Eastern District of New York. Plaintiffs alleged that CEEFP—which shuts them out of the housing courts without a hearing and compels them to convey government messages against their own wishes and interests—violates the Due Process Clause and the First Amendment.

Despite finding, after an evidentiary hearing, that Plaintiffs had adequately alleged irreparable harm, the district court declined to enter a preliminary injunction and dismissed the case on the merits. Among other things, the district court determined that CEEFP did not implicate property owners' procedural due process rights; that it only compelled commercial speech and was thus subject only to rational basis review; and that the government's interest in combatting the pandemic outweighed the irreparable harm that Plaintiffs had demonstrated. A Second Circuit panel denied Plaintiffs' motion for an emergency injunction pending appeal.

Issues:

1. Whether Plaintiffs' constitutional challenge to CEEFP was likely to succeed.
2. If so, whether the eviction moratorium should be enjoined on an emergency basis pending appeal.

Court's Holding:

Yes and yes.

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"[The moratorium] violates the Court's longstanding teaching that ordinarily 'no man can be a judge in his own case' consistent with the Due Process Clause."

Per Curiam Opinion of the Court

What It Means:

- CEEFPA's prohibitions on initiating eviction proceedings, prosecuting existing eviction cases, and enforcing existing eviction warrants—along with its requirement that landlords distribute hardship declarations to tenants—cannot be enforced during the pendency of appellate proceedings in the Second Circuit and, potentially, before the Supreme Court. Six Justices agreed that the challenged "scheme"—under which, "[i]f a tenant self-certifies financial hardship," the moratorium "generally precludes a landlord from contesting that certification and denies the landlord a hearing"—"violates the Court's longstanding teaching that ordinarily 'no man can be a judge in his own case' consistent with the Due Process Clause." Slip. op. 1 (citation omitted). While the analogy to other state and federal COVID-19 eviction moratoria is not exact, the decision suggests that government actors cannot close the courthouse doors for any extended period of time to landlords seeking to protect their property rights by prosecuting eviction actions.
- The majority effectively rejected the dissenting Justices' arguments that emergency relief was unwarranted because, *inter alia*, CEEFPA is set to expire in a number of weeks and courts should defer to a state government's pandemic-based defenses or justifications. See Slip. op. 3-4 (Breyer, J., dissenting). Moreover, even those dissenting Justices acknowledged "the hardship to New York landlords" that the eviction moratorium has caused, and they signaled that they might be inclined to grant a renewed application for emergency relief if the State were to extend the moratorium beyond its current expiration date of August 31. Slip. op. 4-5 (Breyer, J., dissenting).

The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact Randy M. Mastro (+1 212.351.3825, rmastro@gibsondunn.com), Akiva Shapiro (+1 212.351.3830, ashapiro@gibsondunn.com), or the following practice leaders:

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