



MARCH 7, 2024

## New York Court Decision Disrupts “Good Guy Guaranty” Liability Limitations

In the New York commercial leasing world, and in almost every privately-owned restaurant lease, the well-known “Good Guy Guaranty” is abundantly common. However, a decision by a judge in the Supreme Court for New York County, now on appeal, would significantly interfere with the liability limitations intended by a Good Guy Guaranty.

Like any guaranty, a Good Guy Guaranty guarantees the tenant’s obligations under the lease. The “good guy” limitation (as opposed to a full guaranty) means that if the tenant provides the required amount of written notice to the landlord that the premises will be vacated and the tenant is not otherwise in default, when the tenant vacates the premises and turns in the keys to the landlord in accordance with the notice, then the guarantor’s responsibility and liability to guaranty the lease for the remainder of the lease term is generally over (though the tenant remains liable under the lease). The guarantor ensures the tenant acts like a “good guy” in leaving the premises, and in doing so, is released from the burden of the guaranty.

In *122 East 42nd Street LLC v. Joseph Scharf and Sarah Gotlib*, the court ruled that the lease required the landlord’s consent to (or actual acceptance of) the early surrender of the premises and since the tenant did not obtain the landlord’s consent, the individual guarantors

should not be released from liability under the Good Guy Guaranty. The key finding to the court’s ruling was that the guaranty had to be read to incorporate *all* (emphasis added) of the terms of the lease, so the tenant’s failure to comply in obtaining the landlord’s consent to early surrender left the guarantors on the hook. The result: a seven-figure judgment against the tenant and individual guarantors. The Appellate Division for the First Judicial Department of New York affirmed the decision in December 2022 and the case is now on appeal before the New York Court of Appeals.

Needless to say, by incorporating the entire lease into the guaranty—specifically, a lease term that required that the landlord accept or consent to the early surrender of the premises—this decision has the ability to truly confound and thwart the purpose of the typical limitation on a guarantor’s liability under a Good Guy Guaranty. Landlords do not typically consent to the early surrender of leased premises unless an early surrender agreement has been pre-negotiated. If upheld, this decision will enormously impact commercial leasing in New York, especially for privately-owned restaurants, bars, nightclubs, and other, often smaller, businesses that typically have their leases backed by individual guarantors pursuant to a Good Guy Guaranty.

A lease requiring the acceptance by the landlord of an early surrender to satisfy the “good guy” requirements will render a Good Guy Guaranty useless unless that requirement is met. In light of this ruling, and (even if it is overturned by the Court of Appeals) as good practice, a Good Guy Guaranty should specifically reference only those provisions from the lease that need to be met in order for the guaranty to be effective, and specifically state that the tenant’s compliance with the entire lease is not a condition of the guaranty (and nor should the entire lease be incorporated by reference into the guaranty).

For assistance or advice, contact [Christy L. Reuter](#), [Matthew J. Crawford](#), or another member of Blank Rome’s [Hospitality](#) or [Real Estate](#) groups.

**Christy L. Reuter**  
Partner and Chair, Hospitality Practice  
212.885.5273 | [christy.reuter@blankrome.com](mailto:christy.reuter@blankrome.com)

**Matthew J. Crawford**  
212.885.5252 | [matthew.crawford@blankrome.com](mailto:matthew.crawford@blankrome.com)