STATE OF NEW YORK

10423

IN ASSEMBLY

May 11, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Cruz) -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property law, in relation to judicial interpretation of commercial leases regarding whether COVID-19 was an event that could have been foreseen or guarded against

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The real property law is amended by adding a new section 235-i to read as follows:

§ 235-i. Unforeseeable event: COVID-19. 1. If a court as a matter of law finds performance under a commercial lease contract is frustrated or objectively impossible, either wholly or in part, as a consequence of the outbreak of novel coronavirus, COVID-19, such court shall further hold that COVID-19 constitutes an event that could not have been foreseen or guarded against in such contract.

2. When a party claims that performance under a commercial lease has been frustrated or made objectively impossible, either wholly or in part, as a consequence of COVID-19, the parties to such contract shall be afforded a reasonable opportunity to present evidence as to the extent of the alleged frustration of purpose or impossibility, including but not limited to:

a. tenant's loss in income compared to similar time periods;

b. prohibitions and guidance from governmental or industry authorities; and

c. whether the temporary loss in income was otherwise recovered by the tenant.

The court shall review any private financial documentation offered as evidence pursuant to this subdivision in camera to the extent necessary to protect the privacy of the tenant.

§ 2. This act shall take effect immediately.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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