

**The New York Law Journal**  
**Trends in Litigation, Part 2: ‘Yellowstone’ Injunctions**  
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*Part 2 of Adrienne B. Koch’s four-part series examines Yellowstone injunctions, showing how lease ambiguities—such as payment terms or tenancy classification—can affect a tenant’s ability to obtain this relief. The series overall explores how courts interpret lease provisions in disputes.*

This article is the second in a four-part series surveying recent New York case law to provide takeaways for structuring real estate transactions that anticipate how courts will apply the law in the event of a dispute. Up next: how the terms of a lease impact a court’s determination of whether or not a tenant is entitled to a *Yellowstone* injunction.

### **Prerequisites for a ‘Yellowstone’ Injunction**

A *Yellowstone* injunction—named for the case that originated the concept, *First Nat’l Stores, Inc. v. Yellowstone Shopping Center, Inc.*, 21 N.Y.2d 630 (1968)—enables a commercial tenant “confronted by a notice of default, a notice to cure, or a threat of termination of the lease to obtain a stay tolling the running of the cure period so that after a determination of the merits, the tenant may cure the defect and avoid a forfeiture of the leasehold.” *170 Tillary Corp. v. Gold Tillary Realty, LLC*, 244 A.D.3d 658, 661 (2d Dept. 2025) (citations and internal quotation marks omitted).

A tenant seeking a *Yellowstone* injunction need not meet the high standard generally applicable to motions for injunctive relief. Rather, the tenant needs only to show that it (a) holds a commercial lease; (b) received a notice of default, a notice to cure, or other threat of termination of the lease; (c) sought *Yellowstone* relief before the cure period expired; and (d) is willing and able to cure the alleged default. *Id.*

The purpose of a *Yellowstone* injunction is to protect the tenant against an unnecessary forfeiture of its leasehold. It offers a tenant who disputes a landlord’s claim of default—but can cure the default if it turns out the landlord is correct—the opportunity to fully litigate the question of whether a default exists before the time to cure it (and thereby avoid expiration of the lease) expires.

If the court determines that the tenant’s conduct indeed violated the lease, the cure period resumes with however much time was left before the *Yellowstone* injunction interrupted it.

Importantly, a *Yellowstone* injunction is available only where the tenant would be at risk of losing the lease without one; it is not available where the tenant has other protections against that result.

Thus, for example, where the default relates to a failure to pay rent and the notice of default is served solely as a prerequisite to the commencement of a non-payment proceeding, the tenant will generally not be able to obtain a *Yellowstone* injunction because, under Section 751 of the Real Property Actions and Proceedings Law (RPAPL), the tenant can avoid termination by paying the disputed rent into court. See *170 Tillary*, 244 A.D.3d at 661-62.

Similarly, *Yellowstone* relief is generally limited to commercial tenants because residential tenants are subject to other provisions of the RPAPL that protect them from forfeiture. See *Wharton-Bickley v. 388 Broadway Owners LLC*, 237 A.D.3d 72, 78 (1st Dept. 2025). But *170 Tillary* and *Wharton-Bickley*—both decided just last year—illustrate how ambiguity in a lease’s terms may affect the application of these principles.

### **‘170 Tillary’: The Effect of Ambiguity as to the Nature of Particular Payments**

In *170 Tillary*, ambiguity in the characterization of particular payments gave a tenant the right to seek *Yellowstone* relief. The lease in that case required the tenant to pay certain real estate taxes and water and sewer charges as “additional rent,” but specified that “the tenant was to pay such sums by delivering a certified check to landlord payable to the appropriate city agency.” 244 A.D.3d at 659 (cleaned up).

When the tenant fell behind on its payments, the landlord served a rent demand listing all amounts due—including late fees, real estate taxes, and water and sewer charges. The tenant sued, claiming the amounts were “waived, uncollectible as unenforceable penalties, or charged in violation of” applicable law, and sought a *Yellowstone* injunction to prevent termination of the lease while the parties litigated over whether the charges were valid.

The Appellate Division agreed with the landlord that the late fees were truly “additional rent” recoverable in a nonpayment proceeding, and therefore could not form a basis for *Yellowstone* relief. But as to the real estate taxes and water and sewer charges, the court held that because the lease required the tenant to pay those amounts by giving the landlord a certified check “payable to appropriate city agency,” it was “uncertain whether such sums could be collected in a nonpayment proceeding and, more importantly, whether the tenant could take advantage of the protections afforded to a tenant under RPAPL 751(1).” As a result, the court held that a *Yellowstone* injunction was warranted “insofar as it applied to the real estate taxes and water and sewer charges sought in the... rent demand.”

### **‘Wharton-Bickley’: The Effect of Ambiguity as to the Nature of the Tenancy**

Another kind of ambiguity that could trigger *Yellowstone* relief arises where a tenancy that is arguably residential is described as a commercial tenancy in the governing lease. That was the situation in *Wharton-Bickley*. The plaintiffs were the principal owners of a company called The Series Events, LLC, which had entered into a “New York Commercial Lease” for “Unit 4E” in a multiple dwelling building owned by the defendant landlord. The plaintiffs guaranteed the lease,

which authorized use of the premises as “live/work office space”; they “thereafter resided in the unit.”

About six months after moving in, the plaintiffs “submitted an application for protected occupancy status with the New York City Loft Board,” asserting that they were “the residential occupants of the unit, and that the unit [was] a registered interim multiple dwelling under the Loft Law.” 237 A.D.3d at 74.

The landlord later served a notice of default on Series Events, largely based on a claim that the unit was being used “as an unauthorized and unlawful cabaret, banquet hall or social club where alcoholic beverages were sold without a license.”

The notice demanded that the defaults “be cured on or before May 19, 2023, or the lease would be terminated as of May 31, 2023.” The plaintiffs sought a *Yellowstone* injunction, arguing that although their tenancy was residential in nature, the landlord had “asked [them] to create a commercial entity for the purpose of leasing the unit because the building did not have a residential certificate of occupancy”—and that as a result they should be afforded the protections available to commercial tenants through *Yellowstone* relief.

The lower court denied the injunction, largely on the grounds that because the unit was registered “as a dwelling,” the plaintiffs could not claim to be commercial tenants.

The Appellate Division reversed. The court first noted that “[t]he form of the lease and the circumstances ... relating to the tenancy demonstrate that the nature of the tenancy is ambiguous.” It then reasoned:

If we characterize the lease incorrectly at this juncture in an effort to prevent plaintiffs from both enjoying *Yellowstone* relief (which is typically reserved for commercial tenants) and having access to relief under RPAPL 753 (which is reserved for certain residential tenants), we run the risk of depriving them of any cure-related remedy.

In light of “the equitable nature of *Yellowstone* relief” and “the consequences of depriving a party of a *Yellowstone* injunction (the running of the cure period and the potential termination of the lease)” the court announced that it would “err on the side of caution in determining whether a plaintiff qualifies to seek that relief.”

## **Take-Aways**

*170 Tillary* and *Wharton-Bickley* illustrate the consequences of certain drafting choices. In *170 Tillary*, the provision requiring the tenant to fulfill specified monetary obligations by delivering certified checks payable to third parties likely served an important business purpose of the landlord. Among other things, if it had been followed to the letter, it would have saved the landlord the administrative cost of having to write checks from its own account and being reimbursed by the tenant.

But when things went awry, that same provision formed the basis for *Yellowstone* relief. Similarly, both the landlord and the tenant in *Wharton-Bickley* undoubtedly had business reasons for preferring to characterize the lease as commercial. But when their relationship soured, the characterization became the basis for *Yellowstone* relief.

The parties in these cases may have made the same choices regardless of the potential *Yellowstone* consequences—and perhaps they actually considered those potential consequences in drafting their respective leases.

But the cases highlight the importance of taking such consequences into consideration in negotiating the terms of any lease that is (or might be characterized as) commercial in nature.

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