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Partner Lisa M. Rolle and Associate Vito John Marzano Obtain Dismissal of Third-Party Indemnification Claims

Related Attorneys: Lisa M. Rolle

On June 1, 2019, Traub Lieberman partner Lisa M. Rolle and associate Vito John Marzano successfully secured dismissal of all third-party claims on behalf of a corporate entity and its principal in a third-party action in the New York State Supreme Court, County of Bronx. The underlying action concerned a trip and fall that occurred on a public sidewalk located in the Bronx. Plaintiff commenced suit against the corporation property owner and its principal. Defendants/third-party plaintiffs commenced the third-party action seeking contractual and common-law indemnification against three third-party defendants, the corporate tenant, another corporate entity that was not a party to the lease and its principal. Traub Lieberman represented the latter two third-party defendants.

On behalf of the corporate entity that was not a party to the lease, Traub Lieberman moved for dismissal on the basis that the lease constitutes documentary evidence establishing as a matter of law that the non-tenant corporation cannot be held liable to third-party plaintiffs. On behalf of the principal, Traub Lieberman sought dismissal for failure to state a cause of action because the principal was shielded from liability by virtue of having incorporated his business, and the complaint did not allege a claim for piercing the corporate veil.

In opposition, third-party plaintiffs sought to amplify their pleadings by alleging that a *de facto* merger had occurred between the non-tenant corporation and the tenant corporation. Third-party plaintiffs further argued that the corporate principal executed a guaranty to the lease, thus accepting liability on behalf of the tenant corporation.

Traub Lieberman responded that it is procedurally improper to use an opposition to a motion to dismiss to allege entirely new causes of action such as *de facto* merger. Nevertheless, third-party plaintiffs had not sufficiently pleaded a cause of action for *de facto* merger and have not established a fact issue concerning whether Traub Lieberman's client was subject to the lease. As it relates to the principal, Traub Lieberman pointed out that the clear and unambiguous text of the guaranty can only mean that the principal accepted liability for unpaid rent, and not for any obligation to indemnify third-party plaintiffs for bodily injuries that may occur on the premises.

Third-party plaintiffs attempted to introduce new issues at oral arguments, but the Court disregarded them as improper. In its Decision and Order, the Court granted Traub Lieberman's motion in its entirety, dismissing the claims against the non-tenant corporate entity on the basis that it cannot be held liable because it was not a party to the lease, and third-party plaintiffs failed to properly advance any argument with regard to the guaranty as it relates to the principal.